



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

NATIONAL ASSEMBLY

THE HANSARD

VOL. II NO. 80

THE HANSARD**SPECIAL SITTING****Thursday, 14th September 2023**

The House met at 2.30 p.m.

[The Speaker (Hon. Moses Wetang'ula) in the Chair]

PRAYERS

QUORUM

Hon. Speaker: Serjeants-At-Arms, you may continue ringing the Quorum Bell.*(Quorum Bell was rung)*

Hon. Members, we now have quorum to transact business. Clerk-at-the-Table, call the Orders.

(Hon. Wanami Wamboka walked into the Chamber)

Hon. Wamboka, take the nearest seat. We might need tutorials.

Order, Hon. Members. I have two short Communications to make. The first one is on appointment of Members to the Mediation Committee on the Public Finance Management (Amendment) Bill (National Assembly Bill No.16 of 2023).

COMMUNICATION FROM THE CHAIR**APPOINTMENT OF MEMBERS TO THE MEDIATION COMMITTEE
ON PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL**

Hon. Members, you may recall that during the Morning Sitting of today, Thursday, 14th September 2023, the House rejected a Motion to consider Senate amendments to the Public Finance Management (Amendment) Bill (National Assembly Bill No.16 of 2023). In the circumstances, consideration of the said business in the Committee of the whole House as listed in the Order Paper could not be proceeded with.

This is not the first time Senate amendments to a Bill originating in the National Assembly have suffered such a fate. In all previous cases where such a scenario arose, my predecessors applied Standing Order 149 and referred the Bills to Mediation Committees as contemplated under Article 113 of the Constitution. In this regard, I wish to inform the House that, pursuant to Standing Order 149, Senate amendments to the Public Finance Management (Amendment) Bill (National Assembly Bill No. 16 of 2023) stand referred to a Mediation Committee.

In consultation with the leadership of the Majority Party and Minority Party in the House, I hereby appoint the following Members to represent the National Assembly in the Mediation Committee to consider the Bill:

1. Hon. Owen Baya, CBS, MP, as Co-Chair.

2. Hon. Martha Wangari, MP.
3. Hon. Omboko Milemba, MP.
4. Hon. Abraham Kirwa, MP.
5. Hon. Millie Odhiambo-Mabona, MP.
6. Hon. (Dr) Makali Mulu, MP.
7. Hon. Daudi Mohamed, MP.

This is conscious of the urgency to operationalise the Public Debt and Borrowing Framework for monitoring public debt levels. I urge the Members of this House appointed to the Mediation Committee to earnestly liaise with Senate counterparts and commence consideration of the contested amendments in order to have the bicameral consideration of the Bill concluded within the statutory timelines.

I thank you.

(Several Members walked into the Chamber)

Members, take your seats before the next Communication. Take the nearest seat. Member for Matayos, what does 'nearest' mean to you? Take the nearest seat.

DELEGATION FROM THE COUNTY ASSEMBLY OF HOMA BAY

Hon. Speaker: Order, Hon. Members. The next short Communication is a recognition of a delegation from the County Assembly of Homa Bay County.

I wish to introduce to you a delegation from the County Assembly of Homa Bay County, seated in the Speaker's Row. The delegation comprises members of the County Assembly Committee on Hansard, Media, Library and Broadcasting. I hope they are up there. They are:

- | | | |
|-------------------------|---|----------------------------------|
| 1. Hon. Vickins Bondo | - | Chairperson, head of delegation. |
| 2. Hon. Yvonne Abonyo | - | Member. |
| 3. Hon. Molo Reuben | - | Member. |
| 4. Hon. Margaret Oweje | - | Member. |
| 5. Hon. Lazarus Ojang'o | - | Member. |
| 6. Hon. Milka Orony | - | Member. |
| 7. Hon. Daniel Odongo | - | Member. |
| 8. Hon. Paul Odok | - | Member. |
| 9. Hon. Apopo Lentana | - | Member. |

Four members of staff from the County Assembly accompany the delegation. The delegation is on a benchmarking visit to share experiences and best practices with the Select Committee on Parliamentary Broadcasting and Library, the Directorate of Hansard and Audio Services, the Directorate of ICT and Library, the Directorate of Public Communication and Media, and the Parliamentary Broadcasting Unit.

On my behalf and that of the National Assembly, I welcome them to Parliament and wish them fruitful engagements with their counterparts. Thank you.

(Applause)

Next Order.

PAPERS

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Speaker, I beg to lay the following Paper on the Table:

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Legal Notice No. 133 of 2023 relating to the Architects and Quantity Surveyors (Amendment) By-Laws, 2023 and the Explanatory Memorandum from the Ministry of Lands, Public Works, Housing and Urban Development.

Thank you.

Hon. Speaker: Thank you. Next.

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Speaker, I beg to move the following Motion:

THAT, pursuant to Standing Order 30(3)(a), this House orders that, should the time appointed for adjournment of the House today, Thursday, 14th September 2023 be reached before conclusion of all business listed on the Order Paper for the Sitting, the Sitting shall stand extended until conclusion of the listed business.

Hon. Speaker, appreciating that today we have a Special Sitting, and having seen how we transacted business in the morning, I must commend the many Members who sat through the morning session. We could not conclude all the business listed for the Morning Sitting; the Privatisation Bill has been extended to this afternoon. Hon. Nyikal was on the Floor and had a balance of six minutes. I am also certain there is a lot of interest in the Privatisation Bill and the Sugar Bill, which is listed for the Committee of the whole House.

There are two other Motions: Appointment of the Director of Public Prosecutions and the National Government Constituencies Development Fund (NG-CDF) Board. We also have consideration of the Memorandum by the National Treasury on action plans to revive and commercialise the state-owned sugar companies. Looking at all these listed businesses, we may not be able to conclude at the time of the normal sitting hours, and that is why we are seeking to extend the time until we are done. If we can finish before midnight, well and good, but if we have to go up to midnight, I am certain these Members have dedicated today for that purpose.

If you peruse through the Order Paper, you will see the many amendments, especially on the Sugar Bill. There are very many Members who are keen to prosecute that business. Given that the Committee of the whole House is where actual legislation occurs, I beg Members to be patient and available until we conclude this business.

I request Hon. Jematiah to second this Procedural Motion for extension of time.

Hon. Speaker: Hon. Jematiah.

Hon. Jematiah Sergon (Baringo County, UDA): Thank you, Hon. Speaker. I second.

(Question proposed)

Hon. Members: Put the Question!

(Question put and agreed to)

Hon. Speaker: Before we call the next Order, I want to ask the Leader of the Majority Party to approach the Chair. Where is the Leader of the Minority Party? He is not there. Hon. Nyikal, are you the Leader of the Minority Party?

(Hon. Kimani Ichung'wah approached the Chair)

Hon. Speaker: Hon. Members, on this Privatisation Bill, we will proceed as follows: I am advised, and I concur that we allow the Member for Seme to finish his contribution. I will thereafter give an opportunity to the Member for Funyula, and Member for Ruaraka, and then we shall consider closure. Hon. Dr Nyikal, can you proceed?

BILL

Second Reading

THE PRIVATISATION BILL (National Assembly Bill No.22 of 2023)

(Hon. Kimani Ichung'wah on 14.9.2023 – Morning Sitting)

(Resumption of debate interrupted on 14.9.2023)

Hon. Speaker: Hon. Dr Nyikal.

Hon. (Dr) James Nyikal (Seme, ODM): Thank you, Hon. Speaker. As the House rose in the morning, I had indicated that I saw a lot of good intentions in this Bill. It provides for disputes that are likely to arise when you have a privatisation process, particularly where the Government and the private sector work together. I also said that is a good transitional provision in the Bill.

I raised concerns about the speed at which this Bill is being pushed. As it was presented in the morning, it was supposed to be before the Committee of the whole House this afternoon. It is coming together with the Sugar Bill and the Memorandum on Commercialisation of the Sugar Bill. One gets the impression that there is a specific purpose for which this Bill is being pushed. As much as the intention of this Bill and its content are good, the speed at which it is going creates the impression that something has to be done urgently. What is it that has to be done urgently that we have to push this?

The previous Bill of 2005 failed. The Commission therein failed, and as the Leader of the Majority Party said, it was because of state capture. I am concerned that there is nothing to stop us from thinking that, even now, there are people in the Government... He repeatedly said that it is the Government and the people who 'captured' it. I want to remind this House that decisions of the Government are by the President and the people he listens to. We are not in a situation where those people are pushing through this Bill so that we quickly privatise without properly organising ourselves.

The Chairman of the Departmental Committee on Finance and National Planning introduced the Agency Theory to the House, with reference to the people who generally head State corporations. How do they get served by this? You get suspicious when the Chairman of the Departmental Committee on Finance and National Planning talks like that.

The intentions and content of the Bill look good, but the speed at which it is being pushed makes me say that I do not support it.

Hon. Speaker: Thank you, Hon. Nyikal.

Hon. Members, before the next contributor....

(Loud consultations)

Order, Hon. Members. Your conversations are too loud. Order, Hon. Members. Hon. Mawathe, I can see you in a place I do not see you. In so doing, you are causing a commotion, which is not right.

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(Laughter)

Hon. Members, allow me to acknowledge the presence of students seated in the Speaker's Gallery. We have Koelel Forces Academy, Gilgil Constituency, Nakuru County and Munyu Girls High School in Thika Town Constituency, Kiambu County. In the Public Gallery, we have Ololulung'a Boys High School, Narok South Constituency, Narok County; St. Catherine Girls High School, Bomet East Constituency, Bomet County; Lenana Junior Primary School, Dagoretti South, Nairobi; and Kavuvoni Primary School from Mbooni Constituency, Makueni County.

Hon. Members, I welcome the schools to Parliament on your behalf and the whole House.

The Hon. Member for Gilgil requested me to give her a chance to welcome a school from her constituency. However, I will allow you to extend the welcome to all the schools on behalf of your colleagues.

Hon. Martha Wangari (Gilgil, UDA): Thank you, Hon. Speaker, for indulging me in welcoming all the learners in our galleries as they observe the proceedings of the House. I welcome one of the greatest extra county schools in Nakuru County based in my constituency, Koelel Forces Academy. It is one of our largest public boys' schools. It has a population of almost 1700 students. We have churned out great men in this country, including your predecessor, the now Attorney-General of this country, Hon. Muturi, who is also an alumnus of that school. We also have some sitting Members like the Member for Starehe Constituency, Hon. Amos Mwago, who is also an alumnus of this school.

It is one of the trendsetters in Nakuru County and the country. We hope that the students from this school and the others in the galleries can pick excellent manners and role models and learn one or two things as they observe the proceedings of the House.

On my behalf and that of the House, I welcome them and hope they can be seated where we are in a few years to come.

Thank you, Hon. Speaker, for the indulgence.

Hon. Speaker: Thank you, Hon. Martha Wangari. For the record, Dr. Nyikal cast aspersions on the speed at which this Bill has been processed, which also touched even on the Chair. For the record, this Bill was published on 6th June 2023. We are in mid-September. I do not think that qualifies to be described as a rush. You should check your records because you have said the only reason you are against it is because of the rush. There is no rush here. Most Bills are processed that way.

Hon. Oundo.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Speaker, for giving me an opportunity to contribute to the Privatisation Bill (National Assembly Bill No.22 of 2023). I will start by saying the obvious. The business of Government is not to do business. It is to create an enabling environment so that those who have competent capacity can do business. By its very nature, the Government is passionate and unfriendly to business. It cannot undertake business. That is why we must always privatise, get the Government out of business, and let those whose motive is profit-making undertake business.

This country has a long-chequered history of privatisation. We started during President Moi's days. There were success and failed stories. We went through the previous Act. Through it, there are few semblances of privatisation. The one that remains the most successful is Safaricom, Telkom, and the rest. Many of us hold back with nostalgia the days of Kenya Posts and Telecommunications Corporation and Kenya Power and Lighting Company Limited, as we used to call them then. However, we have to accept that the economy has changed, and we have to get out.

Privatisation is privatising public assets. Therefore, the general public and the people's representatives must be involved. The Bill has good intentions, but there are some missing gaps. What do we do with the staff, beneficiaries, and suppliers of existing corporations that will be privatised? It is not very clear. Will we dump them, tell them to find their devices, and suffer in silence because we are privatising these institutions. That is not very clear. We hope we will have enough time to grab something to persuade or save them.

Curiously, Clause 26 (3) of the Bill says that a national Government-owned entity is not eligible to participate in privatisation. That particular Clause presents two dilemmas. One, privatisation means divesting from public to private. So, obviously, there is no contemplation of any public entity that can participate. I find that particular statement not very well grounded. What will happen to the county government-owned entities? Are they allowed to participate because they are not national Government-owned entities? That needs to be very clear, otherwise, there will be abuse.

There are many issues to be dealt with. Allow me to delve into one or two things in respect of privatisation process. The danger has always been that the moneyed, well-connected cartels that exist at the particular moment end up with most privatised public entities. We hope the process put here will use the public offer so that as many Kenyans can benefit from this process.

As I conclude so that we can transact other business, we do not wish to cast aspersions on the House leadership and the rest. However, the purpose of the Second Reading of a Bill is for Members to ventilate. The Committee in charge of the Bill should listen to the Members so that when they are making amendments at the Committee of the whole House, they benefit from listening to Members who contributed.

After we conclude the Second Reading of the Bill, it will go to the Committee of the whole House. Essentially, debate in the Second Reading is just in vain. It is window dressing. It is just for public relations. We need to look at how we conduct business in this House so that our discussions are not just in vain. We understand the genesis of the rush to conclude, as Dr Nyikal has said. However, we cannot do that clouding the process of debate and legislation-making in this House.

Thank you, Hon. Speaker. I support the Bill.

Hon. Speaker: Hon. Rindikiri.

Hon. Mugambi Rindikiri (Buuri, UDA): Thank you, Hon. Speaker, for giving me this opportunity to contribute. First of all, let me wish Hon. Speaker a belated happy birthday. He is not listening.

I want to contribute to this Bill because the Government made the right decision in bringing it to the House. It will bring efficiency and, by extension, effectiveness in the running of the affairs of the privatisation of government entities. It brings in the qualifications of the staff and board that are required for running the privatisation process.

Secondly, I support this Bill because one of the things lacking is responsiveness as far as the discharge of the privatisation process is concerned.

There were many organisations that were intimidated to be privatised for a long time, but because of lack of the authority, experience, and expertise to deal with the process, the process has been delayed. One of the greatest problems that we have is accountability. There is the aspect of identifying the values of the assets that need to be disposed of by the Government, including the valuation of the State corporations that need to be disposed of *in lieu* of having an authority to deal with that process. In the process, what has happened is that many people have lost faith in the Government. I agree that so many institutions need to be disposed of. The Government is not in the business of running businesses, but there are some essential services that it needs to remain in control. When the Government wants to dispose of its shares and its control over some State corporations, it is because they are no longer

necessary, and they need to be laid off because there is a lot of duplication in so many corporations.

We have a problem with transparency. There has been a very serious problem regarding disposal of private enterprises or entities. This Bill has come in good time because it has reached the stage of what needs to be done, when and how.

The issue of public participation, reporting, and entering into agreement has been lacking in the current law. I thank the Leader of the Majority Party for bringing this Bill because, for the first time, we see a structured way of public participation, reporting the deliberations and the entire aspect of the entity that needs to be disposed of and, most importantly, the agreement. It is very interesting that we can sit back, congratulate, and start hammering this Government. This is the only Government that has come out very clearly and exposed the rot that has been there in the previous Government. You know Telkom Kenya Ltd was sold at night behind bars by unscrupulous people. This Bill will not give unscrupulous government officers, State mechanics, and State captors the opportunity to sell institutions of Government like what they did to Telkom Kenya Ltd.

So, I support this Bill. The time has come. This is the openness of the Kenya Kwanza government to do things overboard. I thank the Leader of the Majority Party for bringing this Bill. This is the best way of dealing with government business.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, do we call the Mover to reply?

Hon. Members: Yes!

Hon. Speaker: There is a Member by the name of Hon. (Dr) Mwiti who has asked me to give him two minutes. Hon. (Dr) Mwiti, is he there? Go ahead. After you, Leader of the Majority Party, be ready to reply.

Hon. (Dr) Shadrack Mwiti (South Imenti, JP): Hon. Speaker, I rise to support the report on privatisation of the state-owned entities. Over the years, the Kenyan economy has experienced several challenges that have required the Government to intervene and inject funds to stabilise state-owned enterprises. However, with constant injection of funds to various organizations, the state-owned enterprises have experienced serious problems. Constant infusion of funds has had no substantial benefits realized over the years.

We have experienced several challenges. We have seen funds injected into organizations such as Kenya Airways (KQ), which has constantly been funded but with little success. With the struggling economy, privatisation of these state-owned companies will efficiently ensure that the Government raises revenue that can be injected and improve the well-being of these entities.

The revenue generated by the organisations that are currently not performing well is not very good. That is why we require these state-owned organizations to be privatised. I urge the authority to be established to ensure transparency and openness during transactions of these entities. During the privatisation of the entities, there is need for the Government to ensure that issues of employment are taken care of because there will be loss of various jobs. The Government should have mechanisms for selecting entities to be privatised. Profit-making organizations such as the Kenya Electricity Generating Company (KenGen) and Postal Corporation of Kenya should be maintained. Privatisation of the entities that are not performing is long overdue.

With those remarks, I support this Bill.

Hon. Speaker: Mover. Before you move, if you have any fit of generosity, you can give Hon. Justice Kemei one minute.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Speaker, let me donate two minutes to Hon. Justice Kemei.

Hon. Justice Kemei (Sigowet/Soin, UDA): Thank you, Hon. Speaker, for the one minute I have been given to support this Privatisation Bill.

In the same vein, I thank the Leader of the Majority Party for giving me this opportunity. I want to say two things. The time for the Government to be in business went long ago. The private sector drives the economic wheel of this country and that of the entire global industry. We need to privatise all public enterprises. In any case, they have achieved the social purpose for which they were established.

Secondly, during my studies, my thesis was on the Press and Parastatals in Kenya. The person I quoted when I was doing that thesis is Hon. Musalia Mudavadi, who happened to be at the top level in the Government.

I also quoted David Ndii, who also happens to be advising the Government on economic issues in this country. The two gentlemen should be able to guide this country on matters of privatisation.

Finally, when we do it, let us make it open. It is a good objective to privatise all public enterprises.

Hon. Speaker, I again appreciate the opportunity you have given me. I also appreciate the Leader of the Majority Party, Hon. Ichung'wah.

Hon. Speaker: Leader of Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Speaker, with your indulgence, I want to donate one-and-a-half minutes to Hon. Komingoi.

Hon. Speaker: Hon. Komingoi.

Hon. Kibet Komingoi (Bureti, UDA): Thank you very much, Leader of the Majority Party.

Hon. Speaker, Kenyans are growing impatient if you have been following the discussions that have been happening across the country after one year of President William Ruto's Government. Action is needed now on the majority of the things that were promised to be streamlined. Therefore, this Bill is not being hurried. It is in response to the thoughts and ideas that Kenyans want to be implemented. It is meant to clean up the Government for purposes of delivering to the people of Kenya so as to create efficiency within our economy. We want the Government to be supported by the private sector with new ideas, efficiencies and new ways of tackling the problem that was created in the past. We may have had solutions in the past, but given the speed at which the economy is growing, and the information being circulated within the country, we have come to realise that some of the parastatals and some of the government agencies are now ripe for privatisation. This Bill, therefore, seeks to remove the challenges and impediments. We shall save what we have been using to bail out some of the non-performing or underperforming sectors of our economy controlled by these agencies.

I support this Bill and urge that we move with speed to implement it and see that Kenyans reap its benefits and that our economy expands by injecting new blood, new ideas, and new ways of managing these agencies.

Hon. Speaker: Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Speaker, I now beg to reply.

First, I thank all the Members who contributed during the morning session, like Hon. Nyikal and others who contributed this afternoon. We note that all the Members who have contributed to the debate on this Bill were in support. Save for the reservation registered by Hon. Nyikal on the speed at which the Bill is being enacted, none of the other Members who spoke raised any reservations about this Bill. That is, indeed, commendable. It is an indication that they appreciate the need for us to have a new legal framework for the privatisation of state-owned corporations.

I give Hon. Nyikal comfort that there is no rush to do anything mischievous. The rush is to deliver and ensure that we realise value at the right time from our state-owned entities that

we may need to privatise. It is contradictory because Hon. Nyikal is among those who have been pushing the Government to deliver everything that we promised within the first year. I am shocked that when we are struggling to ensure that we deliver on our promise to the sugar companies that we want to privatise, he now has a problem that we are moving fast. We must move fast, Hon. Nyikal, to realize value from the state-owned entities. We have a five-year mandate to deliver to the people of Kenya just like Members of Parliament. One year is gone and, therefore, there must be a rush to ensure that we deliver on everything that we promised the people of Kenya.

With those remarks, I beg to reply and invite Members to join us during the Committee of the whole House to finalise this Bill.

(Question put and agreed to)

(The Bill was read a Second Time and committed to Committee of the whole House today by leave of the House)

Hon. Speaker: Hon. Members, as I call Hon. Murugara to move that Motion...

(Hon. Peter Kaluma walked while the Speaker was on his feet)

Order, Hon. Kaluma! You are the least I expect to be disorderly.

Hon. Members, after Order No.10, we will deal with Order No.11, skip Order No.12 and dispose of Order No.13. We will then come back to Order No.12 (i) and (ii). The Chairperson of the Departmental Committee on Finance and National Planning should be ready. Immediately after disposing of Order No.11, we will jump to Order No. 13.

Hon. Murugara.

SPECIAL MOTIONS

APPROVAL OF NOMINEE FOR APPOINTMENT AS DIRECTOR OF PUBLIC PROSECUTIONS

Hon. George Murugara (Tharaka, UDA): Hon. Speaker, I beg to move the following Special Motion:

THAT, taking into considerations the findings of the Departmental Committee on Justice and Legal Affairs in its Report on the vetting of a nominee for approval as Director of Public Prosecutions, laid on the Table of the House on Thursday, 14th September 2023, and pursuant to Article 157(2) of the Constitution and Section 8(1) of the Public Appointments (Parliamentary Approval) Act, 2011, this House approves the appointment of Mr Renson Mulele Ingonga, OGW, as the Director of Public Prosecutions.

Hon. Speaker, this Report contains the proceedings and deliberations of the Committee on the approval hearing of Mr Renson Mulele Ingonga, a nominee for appointment as Director of Public Prosecutions (DPP) in the country.

The name of the nominee was forwarded to this House by His Excellency the President vide a communication dated, 17th August 2023. We, thereafter, conducted the approval hearings. I wish to inform the House that going by the Members of the Justice and Legal Affairs Committee, this was more of a peer review as Mr Ingonga is actually an experienced advocate who has worked in many sectors of the country, including the Lands Office and the Office of the DPP. During the vetting process, apart from myself and my Vice Chairperson, Mr. Eckomas Mwangi Mutuse, we had a seasoned lawyer, Hon. Farah Maalim. We had another long-serving

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advocate, Hon. Francis Joseph Kajwang', the Member for Ruaraka. The others included our Chief Whip, Hon. Osoro Silvanus Onyiego, Hon. Makali John Okwisia, Hon. Muriu Edward Wakili, Hon. Jane Maina Njeri, Hon. Gichohi Kaguchia John Philip and Hon. Mogaka Stephen, and not leaving out another long-serving advocate Hon. Aden Daudi of Wajir East. We also had Members who are possibly paralegals by now. They include Hon. Muchira Michael Mwangi and Hon. Siyad Amina Udgoon.

We all sat and listened to the nominee responding to questions. We evaluated his academic papers and other documents and confirmed that the nominee was suitable. His responses to our questions left us without a doubt that he understood what was expected of him. Each of these Members asked him questions to establish whether he was prepared to take up such an onerous position of DPP in the country. The country has been without DPP for a while, so there was some anxiety we had to allay.

Some of the questions touched on what we consider to be fundamental today. We know the Office of DPP recently terminated high cases for lack of evidence. The question was why such cases were taken to court when there was insufficient evidence. His response was that it remains the question, but he would put together a team of advocates, once appointed, to look at all cases taken to the office to confirm whether they can be sustained in court or they are cases that should not be proceeded with.

Another interesting question was how he would cushion the office against interference by the Executive and any other arm of government, including Parliament. His response was that bearing in mind that the Office of DPP is an independent office, he would avoid any activities that may reveal elements of interference. He said that while he knows that he has to cooperate with the Executive, the Legislature, and the Judiciary when working, he also knows that he must avoid involvement in matters that may compromise the office. We then went into a long debate and produced a comprehensive Report, which we may all have to look at. You will see that having considered all the matters, including his background as a practising advocate, we also went into the process of his nomination by the Public Service Commission that interviewed him after the Selection Panel shortlisted him.

We also went into his suitability, including academic qualifications. We were satisfied that he meets all the requirements, including his response to questions under Chapter Six of the Constitution and the Public Officer Ethics Act as regards civil servants. His response was satisfactory. In summary, after listening to him, we formed an opinion that the nominee is qualified. He is a Kenyan citizen, and does not have dual citizenship.

We also confirmed that being an Advocate of the High Court of Kenya with 18 years of experience, he meets the requirements of Article 157 (3) of the Constitution. We also confirmed that the nominee meets the requirements of Chapter Six of the Constitution on leadership and integrity. We further interrogated him and confirmed that with regard to his tax compliance, higher education loans repayments, ethics and integrity, criminal records, and other political party affiliations, he has met the statutory requirements for appointment to the office as proposed.

Finally, the Committee invited the public to submit memoranda under oath on the nominee's suitability to hold office as required by the Public Appointments (Parliamentary Approval) Act. We wish to confirm to this House that no memorandum in opposition was received. I also wish to confirm that we got memoranda in his support. This is not a requirement in approval hearings. However, it is worth noting that even the Law Society of Kenya (LSK) wrote a memorandum supporting his appointment as the DPP.

Therefore, having weighed all the matters that were brought to the Committee and having considered everything that was submitted to us, we now wish to confirm that we have made a Report, which I present to the House, recommending that the National Assembly approves the appointment of Mr. Renson Mulele Ingonga to the position of Director of Public

Prosecutions. He has met all the requirements, and we are convinced he will serve the country. This is a big office. He will have a lot of work to do, especially given that the Office of DPP has been vacant for quite some time.

With those remarks, I move that this Report be adopted and request my able Vice-Chairman, Hon. Eckomas Mwengi Mutuse, to second the Motion for adoption.

Hon. Speaker: Hon. Mutuse.

Hon. Mwengi Mutuse (Kibwezi West, MCCP): Thank you, Hon. Speaker. I stand to second the Motion for approval of the Director of Public Prosecutions nominee, Mr. Renson Mulele Ingonga. As the Chairman has ably articulated, Mr Renson appeared before our Committee. During his appearance, the Committee was guided by the Constitution, particularly Article 157, the Office of the Director of Public Prosecutions Act, and the Public Appointments (Parliamentary Approval) Act. In terms of all the requirements under the law, we confirm that the nominee was found to have all the required qualifications. More importantly, Mr Ingonga has been a public servant. After completing his university studies and being admitted to the Bar of Advocates, he was employed in the Public Service Commission as Registrar. He later transferred his services to the Office of the DPP.

He is currently in charge of the Office of DPP in the North-Eastern Region. One of the things we observed as a Committee is that this appointment is a morale booster for public officers and professionals. In the past, when appointments of this nature occurred, people were poached from outside the public service, causing those who have endeavoured to work for the public service to feel demoralised. We, therefore, support this appointment because it is a morale booster for professionals who have chosen to serve in the public service.

Secondly, Mr. Mulele Ingonga is stationed in Garissa. Public officers have often felt that the North-Eastern Region is an insecure zone. For him to have been stationed there for such a long time, working for the citizens of this country, is in itself an act of patriotism. We wish that this House approves his appointment.

Thirdly, as has been ably stated by the Chairperson, there is currently a dilemma because we do not have a substantive DPP. As you know, the DPP is the apex of our criminal justice system. We have seen petitions in court where prosecutions that officers within the office have approved are being challenged because some people feel that the substantive DPP must approve the prosecutions. To close that gap, we urge that this House approve Mr. Renson Mulele Ingonga to be our next DPP and take over from where Mr. Noordin Haji left and further the war on corruption, just as we have been saying during the debate on the Privatisation Bill.

With those remarks, I second.

Hon. Speaker: Thank you, Hon. Mutuse. Order, Hon Members.

(Question proposed)

Hon. (Dr) Robert Pukose (Endebess, UDA): Put the Question.

(Laughter)

Hon Speaker: Yes, Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon Speaker. Hon. Pukose is eager for us to dispose of this matter. Before we do that, let me rise to support the Committee's Report and commend the Committee because they worked very hard to consider the vetting of Mr. Renson Mulele Ingonga as our nation's next Director of Public Prosecutions. Whenever public officers go through vetting, and they pass, and their integrity is verified by the members of the Committees that vet them, they walk into these offices with their heads high, but what happens when they are in office is a story for another day. I encourage Mr. Renson Mulele that

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if approved by the House today, he walks into the office with his integrity beyond reproach. I ask him to ensure that his integrity remains that way for the time he will serve as our DPP.

Hon. Speaker, we must also caution the next DPP to be cautious of those others who may want to influence his office to settle scores with other Kenyans. In the last regime, we particularly saw the Office of Director of Criminal Investigations (DCI) try to micro-manage the Office of Director of Public Prosecutions. The Office of DPP is an important office that should remain functionally independent. It should be independent of the investigative agencies and all other forces that may exist within the governance structures of our country.

I encourage Mr. Renson to remember that the functional independence of the Office of the DPP remains so. This is so that when people are prosecuted in this country, it is done so purely based on evidence that will be adduced against them in court, not on the whims of officers investigating them. Therefore, he must be cautious and scrutinise all files taken to him by the investigative agencies to ensure that they have adequate evidence to sustain the prosecution of cases in court.

In conclusion, let me ask the incoming DPP, if approved by this House this afternoon, to work not to secure convictions but to secure unguaranteed justice for the people of Kenya so that every Kenyan who is prosecuted in our courts, be it for criminal or civil cases, if convicted, will also feel that indeed justice has been served because they will know that they were guilty. They were convicted out of their guilt. Those who were prosecuted unfairly and are not guilty will feel that justice has been served if they are not prosecuted and convicted.

That is why I ask the incoming DPP, Mr Renson Mulele, that if approved, to work towards securing justice and not convictions so that years after he has served in this office, we will proudly refer to his time in office, as we can proudly speak to the performance of DPP Noordin Haji. Noordin Haji is one of the DPPs who served under one of the most strenuous regimes. DPP Haji served under a regime that wanted to use his office to prosecute political cases, but he was firm. He ensured that justice was served. He ensured that the functional integrity and independence of the Office of DPP remained intact.

Therefore, Renson has shoes to fit into; those of DPP Noordin Haji. He must also work as Noordin Haji worked. Even though we had a rogue DCI then, Noordin Haji remained firm. Director of Criminal Investigation Amin is not like the former DCI Kinoti. Therefore, the incoming DPP will work with the current office bearers at the Ethics and Anti-Corruption Commission (EACC) and the DCI to ensure that they serve justice to Kenyans who will be prosecuted through the Office of the DPP.

With those many remarks, I beg to support and congratulate Mr. Renson Mulele. I urge that Members approve this gentleman who, following the vetting, the Committee, in its Report, has said his integrity is beyond reproach. He is a professional advocate of high standing, and a man who we want to believe will serve our country with integrity and deliver justice to Kenyans.

Hon Speaker, I beg to support.

Hon Speaker: Hon. Farah Maalim.

Hon. Farah Maalim (Dadaab, WDM): Hon. Speaker, I also rise to support the Motion. I am a Member of the Departmental Committee on Justice and Legal Affairs (JLAC). Along with other Members of the Committee, we went to lengths to establish that Mr Renson fits the job. His integrity, to the best of our judgment, is beyond reproach.

I rise not only to support him for this position but also to urge this Parliament, through the JLAC, which I am privileged to be a member of, to try and find out what kind of legislative regimes the DPP will require to make it easier for him to deal with some of the rampant issues we have in this country. Sometimes, a prosecutor would want to do a very good job, but he is constrained in many ways by the very lacklustre and very permissive manner in which we have

approached some of our things, including in the Constitution. There is a need for us to revisit our Constitution.

I was in this Parliament when somebody was accused of capital punishment. For example, for a capital crime, it did not matter who the person was. You could be a Member of Parliament, but you could sit in remand until the matter was resolved. Nowadays, you can kill as many people as you want, and we say that because everybody has a right to bail, you go and work your way through the courts, and you get the bail. There is need for us under these circumstances to be able to assist a gentleman like this one we have right now, who is rearing to go and make a difference in this country's prosecutions for the future, to be given the right tools. When we are constrained by the laws and the Constitution of the country, and we allow people to do whatever they want to do and to come out and influence things, also considering how courts operate in this country, then sometimes even with the best person, we still expect the least to come out of it.

I want us to be ready for the road ahead in which DPP will be fighting corruption and prosecuting people who are guilty of large-scale corruption in this country. And those people can stay behind bars in Kamiti Prison, regardless of their status, until the matter is determined. But if he knows he can come out and still engage with others, then the system will have messed us.

Hon. Speaker, I want us to be a country that observes the rule of law, not to rule by law. We will, as a Parliament, in my humble opinion, also undertake to make legislative provisions in this country that will help the prosecutor to deal with cases of corruption, economic crimes, and many other rampant criminal activities that happen in our country so that these can be reined on in the future.

I wish that Parliament approves the appointment of Mr Renson Mulele as the next DPP. I wish him the best in terms of performance of his job. I hope that this country will have a difference on how we will run our own prosecutions and other things in the future for the benefit of the wider population of Kenya.

With those remarks, I support.

Hon. Speaker: I thought we had agreed ...

(Hon. (Dr) Robert Pukose spoke off the record)

Okay, let me give Hon. John Kiarie two minutes. Hon. Pukose, you are out of order.

Hon. John Kiarie (Dagoretti South, UDA): Hon. Speaker, I know the interest is high and, therefore, I will be brief. Thank you very much for giving me this opportunity. First, I want to congratulate the Chairperson and the Departmental Committee on Justice and Legal Affairs for moving this Motion but, most importantly, for nomination of such a candidate.

Even those of us who do not know Mr. Renson Mulele Ingonga in person are able to understand the character of an individual we are approving this afternoon from the Report that has been presented here. For that, I commend the Committee and the Chairperson.

The office that Mr. Renson is coming into is an office that is of great public interest especially, at a time like this. He is succeeding an individual who has performed extraordinarily well. The former Director of Public Prosecutions, Noordin Haji, had a very illustrious time in this office, at a very difficult time and a time when the criminal justice system was being politicised. He stood his ground, held his head high and worked out of integrity. These are the shoes that Mr. Renson has to fill.

Beyond that, because I would not want to take much more time, I would like to say to Mr. Renson Mulele Ingonga that the criminal space in Kenya and internationally, has really evolved. The criminals are becoming more innovative, they are using newer tools and new technology.

Even as he goes into the Office of the DPP, Mr. Renson will have to keep up with the times. They will have to be a bit more innovative in how they prosecute the people.

Ultimately, he shall not be judged by the number of people that he jails, he shall be judged by the perception of the justice that his office shall be offering this country.

We would ask him to look into the new technologies, to see how that can help in the prosecution of cases. We will ask him to be fair and carry himself with a lot of integrity, but most importantly, for this country, he has an opportunity to move us to the next space in terms of using technology in public prosecution.

I will take the last minute to welcome a school that is in your gallery, known as Lenana Junior, from Dagoretti South Constituency, which happens to be in Parliament today. I would like to welcome them so that they are able to see the job that the man their parents put in office does in the House. They are welcome.

Hon. Speaker: Hon. Johana. Two minutes.

Hon. Johana Kipyegon (Emurua Dikirr, UDA): Ahsante Bwana Spika.

Hiyo ofisi ambayo Bwana Mulele anaenda kupewa ni yenye majukumu mengi sana. Kama walivyosema wenzangu, kesi nyingi nchini zimekuwa na shida. Kesi nyingi zimekaa miaka mingi mahakamani bila kusuluhishwa; aidha kwa sababu DPP hajajipatia ile nafasi ya kuzimaliza.

Zaidi ya hayo, ningependa kumsihi Bwana Mulele kuwa akipata nafasi anayopendekezewa, ahakikishe kwamba amezifanya kesi zote kwa haki kulingana na yale makosa ambayo mtu amefanya. Ofisi yake isiwe ya kutumiwa na wanasiasa wala serikali kuangamiza watu wasio na hatia. Watu wengi nchini Kenya bado wako na kesi kortini licha ya kwamba hawana hatia. Ukiona mashtaka ambayo wamefunguliwa, utaona kwamba hawastahili kuwa mahakamani. Inafaa iwe kesi zimeshasikizwa na uamuzi kutolewa. Namsihi Bwana Mulele kuwa akipata nafasi hii, ahakikishe kwamba kesi ambazo hazina umuhimu wowote zisikizwe na ziamuliwe ndio nchi yetu indelee vizuri.

Ahsante Bwana Spika.

Hon. Speaker: Before we call the Mover to reply, we can lastly have Hon. David Ochieng’.

Hon. David Ochieng’ (Ugenya, MDG): Thank you, Hon. Speaker. I want to support the nomination of Mr. Renson Mulele Ingonga as our next DPP.

In our country today, you would say that crime pays. We got to a level whereby anything got into our criminal justice system. Our criminal justice system has so many leaks and cracks. You can never know how a case can go even where the facts are very clear. Even where someone has done something that is so clear to the public and at least must be punished, they are never punished.

I want to ask Mr. Renson Mulele Ingonga that when confirmed, his job is not only to fight corruption because we have the EACC that deals with corruption. His job is to ensure that the criminal justice system of the country works for everyone equally and fairly. In the villages, where we come from, prosecutors and investigators always collude with criminals to defeat justice. The proceedings of a case can be so clear on what the judgement would be but when the judgement is eventually given, you get contrary results. You will then hear that the investigator was given money to mess up the case so that at the end of the day, what gets to the court would not get a conviction. A prosecutor who cannot get a conviction will not deter crime. A prosecutor who cannot ensure that people who mess up with our laws are punished will not deter crime. We want to ask Mr. Renson Mulele that just like the person you will succeed today, ensure that you are privy to the law. Trust the law. Do not look at who is telling what. The moment you start listening to other quarters, you will not be independent and you will not be protecting this country from criminals.

With those remarks, I support the Motion and wish Mr. Renson Mulele the best in his new appointment.

Hon. Speaker: Hon. Beatrice Elachi.

Hon. Beatrice Elachi (Dagoretti North, ODM): Thank you, Hon. Speaker. I also rise to congratulate Mr. Renson Mulele. I want to inform him that he is entering into an office that will require him to be very clear on how and where he wants to take this country.

This is an institution that has been used so badly. Every person will be picked up by the EACC and the matter is taken up by the Office of DPP, and then you find yourself either with a case or no case. It is now for him to streamline the operations of that office. He should look at all the prosecutors who have been there. If possible, he should ensure that he starts on a new slate by transferring some of the prosecutors who have been so much in Nairobi and outside.

The other thing is to look at the different cases, and especially those involving young people. There are so many cases involving the youth which are just lying in court. You will find a prosecutor in court but he is unable to even get witnesses or even follow through the case. The case does not have any substantive measure to move on and, therefore, they live into all these remands that we have, and you wonder when their cases would end.

As he comes into office, I hope he would look at cases that can be conclusive and without any substantive issue, to be closed, and especially, those of the young people.

Lastly, there is an issue that is very interesting. Today, for instance, you find that there is a case in court and it is the prosecutor who will be asking the parents, especially on issues of land. We are now hoping that we can end this issue of land and widows who are wondering what they would do next with their cases in courts.

With those few remarks, I wish him well and hope that he will cooperate with other institutions to see that Kenya, within the justice system, is working better.

Thank you.

Hon. Speaker: Hon. Sunkuli, please be brief.

Hon. Julius Sunkuli (Kilgoris, JP): Thank you, Hon. Speaker. I will be very brief. I do not know the nominee personally, but the description given by the mover creates an impression of a qualified person. I have only two points. The first one is that when police officers were prosecutors, you would go to court and find they were the first to arrive. Today, if you go to court, you will find the magistrate waiting for the prosecutor to arrive. This is because most of these people consider themselves very qualified, and the magistrate has to wait for them. I am saying this as a practising advocate. I hope Mr. Renson notes this and ensures that he instills punctuality in prosecutors so that advocates and litigants do not have to wait for them in court.

The second point is that Mr. Renson should realise that as a prosecutor, it is his responsibility to collect evidence and table it before court. Sometimes it is unfair when I hear people blaming the court by saying they have released a criminal. A prosecutor must provide the folder for convicting a person. If the prosecutor decides to withhold evidence, that person will go home. This is because our criminal justice system depends on nothing other than evidence. So, he has his job well cut.

With those remarks, I support.

Hon. Speaker: Hon. George.

Hon. George Murugara (Tharaka, UDA): Thank you very much, Hon. Speaker. In reply, I thank all the Members who have contributed to support the Report and the nomination. I also thank the Committee Members for the work they did. I also thank the secretariat that the Clerk of the National Assembly gave us. The work was well done, and that is why we have received overwhelming support.

Mr. Renson must be listening from somewhere. He has heard and received all the accolades. I must inform him that most of us here are potential candidates to visit him in different ways, over a cup of tea, but most likely as suspects to be tried for possibly many

serious offences. Please, do not listen to what Members have said. Just do your work without considering who is who and ensure that the law is followed to the letter, even for some of us.

With those remarks, I move to reply.

Hon. Speaker: Thank you, Hon. Murugara.

(Question put and agreed to)

Next is Order No.11.

APPROVAL OF NOMINEES FOR
APPOINTMENT TO NG-CDF BOARD

Hon. Speaker: Musa Sirma, you can also prosecute as efficiently as Hon. Murugara so that we make good progress.

Hon. Musa Sirma (Eldama Ravine, UDA): Thank you, Hon. Speaker...

Hon. Speaker: Order, Hon. Musa Sirma! Indulge me for a minute and take your seat. Allow me to acknowledge in the Public Gallery students of Gaceraka Secondary School from Tharaka Constituency, Tharaka Nithi County. On my behalf and that of the House, we welcome the students and their teachers to the House of Parliament.

Hon. Musa Sirma proceed.

Hon. Musa Sirma (Eldama Ravine, UDA): Hon. Speaker, I beg to move the following Special Motion:

THAT, taking into consideration the findings of the Select Committee on the National Government Constituencies Development Fund in its Report on the vetting of nominees for appointment as members of the National Government Constituencies Development Fund Board, laid on the Table of the House on Thursday, 14th September 2023, and pursuant to Section 15(1)(e) of the National Government Constituencies Development Fund Act, 2015 and Section 8(1) of the Public Appointments (Parliamentary Approval) Act, 2011, this House approves the appointment of the following persons as members of the National Government Constituencies Development Fund Board –

- (i) Hon. Olago Aluoch, CBS;
- (ii) Hon. Janet Teyiaa; and,
- (iii) Sen. Masitsa Naomi Shiyonga.

Hon. Speaker, when the Cabinet Secretary for the National Treasury sent the names to you, you committed them to the Select Committee on the National Government Constituencies Development Fund for vetting. We met all the required provisions in terms of advertising for anybody who had issues with the three names. When the time for the provision of petitions lapsed, we had no memorandum against the three.

Therefore, we went ahead and vetted the three members. Knowing Hon. Olago Aluoch, a lawyer and a three-term Member of the National Assembly with all his credentials, the Committee agreed that he was fit. He also provided all the necessary documentation from the EACC, DCI and met all other requirements. So, we agreed to approve him.

Hon. Janet Marania Teyiaa has served this House for two terms as the Woman Representative for Kajiado County and as a Nominated Member. She has been in the community circles and has worked in various areas. She has all the knowledge and expertise required to deal with NG-CDF work. We saw her fit to take up the position.

The third one is Senator Masitsa Naomi Shiyonga, who was nominated. She has a Master's Degree in Health Informatics and is qualified to be a member of the board, having

worked at the grassroots in the health sector and many community development projects. Members of the Committee also approved her.

Hon. Speaker, I beg to move and ask Hon. Kassim Tandaza to second.

Hon. Speaker: Mweshimiwa Tandaza.

Hon. Kassim Tandaza (Matuga ANC): Thank you, Hon. Speaker. The NG-CDF Board is important to all of us in this House. It is important that our existence out there depends on it in terms of facilitating disbursement of funds to our constituencies and people. This Board has not been properly constituted for over one year since the terms of the other three members lapsed. One Board member resigned, and we were left with only the civil servants seconded from different line ministries. It is high time that we approved these three members who are qualified to do the job so that the NG-CDF Board is properly constituted. We all know that the NG-CDF Board is facing a myriad of problems, especially the legal battles before it. We also know that we have a number of legislative proposals that will be brought before this House, and some are still undergoing public participation. They will align the Board to the Constitution and other Acts of Parliament. We aim to achieve this through this Board so that the NG-CDF functions for eternity.

With those few remarks, I support.

Hon. Speaker: Do you second or support?

Hon. Kassim Tandaza (Matuga ANC): I second, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Tandaza.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: Is it the desire of the House that I put the Question?

Hon. Members: Yes.

(Hon. Pukose spoke off the record)

Hon. Speaker: Hon. Pukose, there being no debate, there is nothing for the mover to reply to. I can only put the Question.

Hon. Members, I now put the Question to Order No. 11.

(Question put and agreed to)

Hon. Speaker: Hon. Members, as I had directed earlier, we will skip Order No.12 and go to Order No.13. We will come back to Order No.12 thereafter.

MOTION

CONSIDERATION OF MEMORANDUM ON ACTION PLANS TO REVIVE AND COMMERCIALIZE STATE-OWNED SUGAR COMPANIES

Hon. Kuria Kimani (Molo, UDA): Hon. Speaker, I beg to move the following Motion:

THAT, this House adopts the Joint Report of the Departmental Committee on Finance and National Planning and the Departmental Committee on Agriculture and Livestock on its consideration of the Memorandum by the National Treasury and Economic Planning on Action Plans to Revive and Commercialise State-owned Sugar Companies, laid on the Table of the House on Thursday, 14th September 2023.

The Leader of the Majority Party, Hon. Kimani Ichung'wah, tabled the Memorandum by the National Treasury and Economic Planning on Action Plans to Revive and Commercialise State-owned Sugar Companies on 22nd August, 2023. The Speaker of the National Assembly directed that the Memorandum be referred to the Departmental Committees on Finance and National Planning, and Agriculture and Livestock for consideration and reporting back to the House within two weeks.

The National Assembly is requested to consider and approve as per the Treasury Memo:

1. Write-off of loans owed to the public sugar companies to the Government of Kenya and Kenya Sugar Board or Commodities Fund amounting to Kshs65,778,448,646 as of 30th June, 2023 and any other accrued interest at the date of approval.
2. Write off of taxes, penalties, and interest as approved by Parliament amounting to Kshs50,144,801,608 as of 30th June 2023 and any additional interest and penalties that would have accrued since then.
3. The vacation of the privatisation model approved by Parliament in 2015.
4. The leasing model of five public sugar mills, that is Nzoia Sugar Company, Chemelil Sugar Company, Miwani Sugar Company that is in receivership, Muhoroni Sugar Company that is in receivership, and South Nyanza Sugar Company.

The sugar industry plays a significant role in supporting the economy and livelihoods of over eight million Kenyans. It is sad to know that Kenya has been a net sugar importer since the mid-1980s, and the gap between production and demand has been widening. Kenya's annual consumption in 2002 stood at 1.1 billion metric tonnes against a production of only 790 million metric tonnes, leading to an importation of 320 million metric tonnes worth Kshs28 billion. Annual production importers are shown in the annex of the Report that we tabled in the morning.

The objective of the Memorandum is to create a competitive sugar sector with the ability to withstand the withdrawal of the Common Market for Eastern and Southern Africa (COMESA) safeguards with a focus on the modernisation of sugar milling plans, which will improve production and operational efficiency and enhance cane development in both nuclear estates and smallholder farms in addition to improving cane sucrose content to between 13 per cent and 14 per cent.

The Memorandum proposes a leasing model that will bring on board private capital expertise and modernisation of sugar mills for efficient commercial operations, leasing the nucleus estate and factory land to private investors.

When considering the Memorandum, the joint Committee held meetings with stakeholders, most of whom will be affected by the proposals in the Memorandum. The stakeholders include Members of County Assemblies (MCAs), Members of Parliament, Sugarcane farmers, outgrower institutions, management of state-owned sugar companies, the National Treasury, and the Kenya Sugar Authority. The meetings were held in Kisumu County from Tuesday, 5th September to 7th September 2023.

Hon. Speaker, I would like to extend my sincere gratitude to you because you convened a very successful sugar conference that weekend, from which we heavily borrowed the recommendations you made to that sector. I also applaud the Members of Parliament from the sugar-growing areas who came in person and submitted their oral and written memorandum about the revival of this sector. That showed the valour with which Members of Parliament across the sugar belt region hold this sector and their willingness to do their best to protect the interest of sugarcane farmers. Most importantly, we saw a bipartisan approach where Members of Parliament across the political divide had one united stand. They want to revitalise the sugar

sector, the sugar mills to go back to business, and sugarcane farming to be a profitable business across the sugar belt areas.

During the stakeholder's engagement, the joint Committee noted the following: All the public milling companies were on their knees, and the situation had been worsened by lack of sugarcane in the country, which led to a temporary closure of the factories. Due to lack of finances, the factories' plants and machinery have not undergone annual maintenance for years. That has negatively impacted the efficiency of those factories. Public mills are also choking with huge debts. Numerous court cases have halted the operations of these mills. However, after the visit by His Excellency the President, some progress has been made. Miwani Sugar Company still has ongoing court cases. We hope those in court will follow the "*mambo ni matatu*" principle and ensure that the said cases are withdrawn, and the Miwani Sugar Company is leased and operationalised.

The Committee observed that while the management of state-owned sugar companies supported zoning, farmers opposed it because they felt that the practice would tie them to sugar companies that may fail to pay them after the cane was delivered, which would affect the competitiveness and pricing of their sugarcane. However, farmers supported the introduction of five catchment areas, namely, Rift Valley, which will comprise Kericho, Nandi, and Uasin Gishu counties; Upper Western Region, which will comprise Bungoma and Trans Nzoia counties; Lower Western Region, which will comprise Busia, Kakamega, Siaya and Vihiga counties; Southern Region, which will include Homa Bay, Kisumu, Migori and Narok counties; and the Coastal Region, which will have Kwale, Lamu and Tana River counties.

All stakeholders supported the proposal to write off debts and taxes owed to the Government of Kenya, the Kenya Sugar Board (KSB), the Commodities Fund, and the Kenya Revenue Authority (KRA) by sugar companies. They added that the source of funds for payment of farmers' arrears and salary arrears of staff that have been working at sugar mills had not been captured in the leasing model and the Memorandum by the National Treasury. We were treated to employees who came crying that their children had been sent home due to lack of school fees because they had gone without pay, some for up to 52 months. Stakeholders noted that it was imperative for public participation to be done during the leasing process. That would enrich the process and make members of the public more receptive to it. Farmers were categorical that the lessee should not be a company that had already invested in the sugar industry in Kenya to encourage competition in the Authority.

Stakeholders vehemently opposed the proposal to merge Chemelil Sugar Company and Muhoroni Sugar Company because it would negatively impact industry competition and lead to job losses. They averred that besides the nucleus estates, the two companies had contracted farmers who supplied them with sugarcane, and their acreage was more than what they provided in the Memorandum. They disagreed with the thinking of the National Treasury that a sugar mill needed 29,800 hectares of nucleus estate lands to be operational. They noted that although Chemelil and Muhoroni sugar companies had less acreage than that, they had been profitable for many years in the 1990s. Therefore, the requirement that these companies be merged was vehemently rejected.

Stakeholders implored the Committees to expedite consideration of the Sugar Bill. I am happy that you, Hon. Speaker, and the House Business Committee viewed the Bill as important business that will be considered later this afternoon.

Sugarcane poaching was of great interest to this inquiry because private sugar mills from far and wide were engaging in it and disregarding those farmers' existing contracts with other companies. For instance, the South Nyanza Sugar Company (SONY) highlighted that they had lost Ksh4 billion to cane poaching. This practice, which unscrupulous millers perpetrate, has led to the harvesting of young cane, the temporary closure of sugar mills, and

subsequent sugar shortages in the country. It has also negatively impacted cane development by millers because they fear losing their investment.

The Kenya Sugar Research Foundation (KESREF) has no funding. The Managing Director of KESREF demonstrated that they have researched cane varieties that should be grown in sugarcane-growing areas. In addition, they have a cane variety that can mature in less than 12 months. However, sugar mills in sugarcane-growing areas give cane farmers cane seeds that take 24 to 36 months to mature. There is no way that any subsistence sugarcane farmer will wait 24 months for the cane to mature before they get their return on investment. Therefore, one of our recommendations is a bigger budgetary allocation to KESREF so that they continue to develop cane that has a shorter maturity period for uptake by farmers.

All five public sugar mills are faced with financial difficulties. In the absence of a good legislative regulatory environment, their operations have been greatly hindered. Therefore, the joint Committee agreed on the following:

This House approves the leasing model for the five state-owned sugar companies within the provisions of Public Private Partnerships Act No.14 of 2021. The provisions of the leasing model should and must include the following:

1. THAT, the lease shall be for a period not exceeding 30 years pursuant to Section 21(2) of the Public Private Partnerships Act, No.14 of 2021 for the sugar mills and the nucleus estates presently owned by the state-owned sugar companies, whereby the nucleus land shall only be used for cane development and cannot be used for collateral by the lessees.

Farmers expressly said that that was their ancestral land and that there was no way they would give it up to anybody. Therefore, at the end of the lease, that ancestral land has to revert to the communities because it is their birth right.

2. THAT, at the expiry of the lease period, the land will revert to the original owners.
3. The National Treasury will cost the assessment of the lease, and it shall be done every five years to ensure that the lessees have adhered to the terms of the lease so that it can be renewed.

They were concerned that the lessee could lease the farm and not agree to this particular proposition. Considering the long lease period of 30 years, they recommended a review of the lease agreement every five years.

4. THAT, the lessees shall modernise the sugar mills by installing new machines and technologies to revive the companies, improve the financial well-being of farmers, create employment both directly and indirectly, and increase Government revenue.
5. THAT, the lessees shall specify the corporate social responsibility (CSR) activities that they will set up in the local communities as a requirement for the award of the lease.

They remembered with nostalgia how those sugar mills provided health services, schools, and academies. Some even had golf courses and well-maintained roads. They wanted to know whether the lessees would carry out those CSR activities so that they could have what they used to have and even much better.

6. THAT, the lease must contain a clause that will facilitate the fate of current workers in sugar factories. The fate of workers currently working in mills was a great point of consideration.
7. THAT, the leasing process shall be clearly outlined and shall include stakeholders' engagement.
8. THAT, this exercise should be carried out after public participation and with the involvement of farmers.

Hon. Speaker, the joint Committee further recommends as follows: -

THAT, this House vacates the privatisation model that was approved by the National Assembly in 2015, as proposed by the then Minister for Finance, Hon. Njeru, so that we adopt this new model;

THAT, this House approves the Cabinet's decision to write off total taxes amounting to Ksh16,37,998,407 comprising Ksh9,926,209,019 of principal tax and Ksh231,917,718 as interest and Ksh6,221,571,670 as penalties owed by the five state-owned sugar companies;

THAT, this House approves the Cabinet's decision to write off loans owed to the Government of Kenya by sugar companies through the Kenya Sugar Board and the Commodities Fund amounting to a total of Ksh65,778,448,646;

THAT, within 90 days of this House's resolution to adopt this Report, the National Treasury shall cause payment of Ksh1,683,397,053.69 as arrears owed to farmers for those five state-owned companies.

THAT, within 90 days of the House's resolution to adopt this Report, the National Treasury shall cause payment of Ksh5,234,465,033 as salary arrears and other emoluments for the five state-owned sugar companies.

THAT, the House rejects the proposed merger of Chemelil Sugar Company Limited and Muhoroni Sugar Company Limited, and that those two companies be leased separately.

THAT, the House approves the introduction of the five cane catchment areas as I said earlier; and,

THAT, this House approves those five catchment areas apart from where cane supply contracts have been signed between the farmer and the miller.

Hon. Speaker, we want to make sure that sugarcane is available to millers. At the same time, we want to protect millers who will have sugarcane contracts with farmers, so that we do not have a situation where farmers are forced to sell their sugarcane when they do not need to sell. The sugarcane supply contracts should include timelines, a developed sugarcane pricing formula, and that the cane pricing formula should be developed by the Sugar Research and Training Institute and approved by the Sugar Pricing Committee.

Farmers were worried that they were not getting the correct prices for their sugar. That is what we are calling guaranteed minimum price in other areas. Therefore, that cane development contract would include the price of cane. The Sugar Research and Training Institute will propose the price of cane. That is because it is the institute that has done enough research to know how much it costs to develop the cane.

Hon. Speaker, the joint Committee further recommends that the National Treasury and the Ministry of Agriculture and Livestock Development should conduct an audit of the debt portfolio of outgrower companies, including Mumias Outgrowers Companies Limited and Nzoia Outgrowers Company Limited, and establish whether they are solvent and can be utilised for cane development and present a report to this House within 60 days.

I would also like to congratulate Hon. Salasya. He was very particular in his support for Mumias Outgrowers Company Limited in articulating the plight of his farmers.

We recommend that, within 90 days of the adoption of this Report, the National Treasury shall cause allocation of Ksh600 million to the Sugar Research and Training Institute for the multiplication and popularisation of 27 sugarcane varieties already generated through research.

We recommend that, within 60 days of the adoption of this Report, the Ministry of Agriculture and Livestock Development will put in place regulations to protect the recommendations of this Report. The regulations shall be submitted to the National Assembly

within 60 days of the adoption of this Report for consideration as provided in statutory instruments.

We also recommend that, within 60 days of the adoption of this Report, the Auditor-General shall conduct a forensic audit of the further debts of Ksh26,717,029,612.12 to ascertain the authenticity of these debts and others that are in sugar companies and provide a Report to this House to facilitate budgetary allocation and authentication of these debts.

With those remarks, I beg to move and ask my Co-Chairperson, the Chairperson of the Departmental Committee on Agriculture and Livestock Development, Hon. (Dr) Mutunga, to second the Motion.

Hon. Speaker: Hon. (Dr) Mutunga.

Hon. (Dr) John K. Mutunga (Tigania West, UDA): Thank you, Hon. Speaker. I stand to second that the House adopts the Report on the action plans to revive and commercialise the state-owned sugar companies.

As alluded to in the moving notes, these companies have many problems. The problems need to be resolved. The greatest problem is the level of indebtedness. They have many debts. The other issue is the aging nature of processors. The machines are very old. They are inefficient as such. Therefore, they are costly and use very ancient technology. The governance structures of these companies are wanting. The policies and the processes they use also need revisiting, therefore the need for us to call for revitalisation of some of those companies.

Hon. Speaker, my Co-Chair has alluded to the monies required to bail out the five companies. But bailing out the companies is not enough to revive the sector. In order to revive the sector, we need to revisit the major productivity-enhancing options that we need to take as a country in order to revitalise the cane industry. In order to do that, we need to embark on research innovations, technologies, and management practices that need to be developed to accompany the varieties produced from research centres.

Hon. Speaker, we have a cane research institute which has been very poorly funded. Despite that, they clearly indicated to us that they have come up with 27 varieties of sugarcane plants. These varieties have not yet been tried out on farms. The varieties grown on farms now take between 18 and 24 months to mature. They do not have very high sucrose content. They clearly told us that the sucrose content of these varieties is extremely high. So, we need to improve this sector by combining sucrose content and fast-growing varieties. We need to support the research institute to do this work and move out the varieties they have.

Soil health is the other issue that needs to be taken care of. The soil where cane is grown needs to be studied thoroughly. Therefore, we also need to do varietal specificity or matching with the soils of different areas. Some of the varieties produced, especially for the coastal region, have been realised to mature within six to nine months. If we can have a cane variety maturing in six months, especially under enhanced production where we shall use irrigation, we can produce two harvests in a year. If we can have two crops in a year and do 692, sometimes 1,000 metric tonnes of sugar, we shall exceed our national demand for sugar, which is 1.1 million metric tonnes, even to export some sugar.

The other issue that needs to be looked into is the provision of sufficient water. It is time we considered sugarcane under irrigation. This is happening in the coastal region where we have sugar production. Investors in the coastal region have clearly shown the possibility of harnessing water, especially surface runoff and stream water, and dam it and use it for downstream irrigation. This can help a great deal in the production of sugarcane.

We met many stakeholders. I do not need to go into what we agreed with them. However, I would like to highlight two or three points from the stakeholder consultation. One of them is that the withdrawal of the Sugar Development Levy was a major drawback affecting the cane production industry. Cane development and research need to be supported. The actual

application, multiplication, and distribution of these varieties across the country need to be supported.

Technologies must move from the research station and be applied on the farm for us to have the varieties we need. Since we have many of them, it is important for us to put in money. Reinstatement of the levy is important. I would like to report to the House that we have a Bill that is upcoming and, possibly this evening, that is going to the Committee of the whole House. The Bill specifically reintroduces the levy that will be used to enhance the sugar industry.

The other issue that came out was that outgrower institutions are key in production of the cane. Several outgrower institutions consulted us and came out very strongly in terms of their role in bringing farmers together to pass knowledge and for technologies to get to them to enhance production and productivity. Therefore, we needed to have that consideration, especially when it comes to supporting outgrower institutions.

I paused to basically analyse how out grower institutions cannot survive in this country. The only source of income for outgrower institutions is membership fees. The membership fees for a farmer usually is very little, like Ksh100 per farmer. Despite the number of farmers that we enlist, it is not possible for these institutions to support themselves by mere use of membership fees. It is important for us to consider supporting outgrower institutions so that they can help in the production and productivity that is needed to support this sector.

Hon. Speaker, zoning came up. It was supported by a few and opposed by others. As the joint Committee, we had to decide on this issue. We stuck to the cane supply contract and decided that penalties must be made punitive for those who get into the cane supply contract. The cane supply contract will allow millers to engage farmers at very close range and look for money, especially set aside in the Sugar Development Levy for cane development. They can access that money or guarantee farmers to access that money. It can improve cane development, production, and productivity.

In that arrangement, the miller who supports the farmers or cane growers to improve production and productivity should be allowed to harvest their cane.

With those few remarks, I beg to support.

Hon. Speaker: Thank you, Hon. Mutunga.

(Question proposed)

Hon. Justice Kemei.

Hon. Justice Kemei (Sigowet/Soin, UDA): Thank you, Hon. Speaker, for the opportunity you have given me so that I can also add my voice to the Memorandum from the National Treasury.

From the outset, let me say that I have been in the sugar industry for a reasonably long time. When we made visits to the sugar factories in Western Kenya and parts of the Coast region, the mills that we used to consider as economic hubs are a pale shadow of themselves. From the outset, I must mention that cane growing is one of the richest economic activities in the whole world. When you consider all crops, it is macadamia which leads in earnings, followed by avocado, and the third one is sugarcane. However, these riches have not gone to farmers in this country for several reasons.

First, processing facilities in our mills in this country have not been good. The efficiency levels are very low; therefore, the cane-to-sugar conversion ratio has been extremely low. While countries like Brazil convert nine tonnes of cane to one tonne of sugar, in this country, we are doing as much as 20 tonnes of cane for one tonne of sugar. That cannot be an economic activity.

Secondly, the efficiency in the field is equally very poor. The cane we grow ends up in the mills after three, four, or five days. The sucrose content in that cane has gone down, and

we do not expect the mills to process the cane and lead to better recoveries. When we look at the sugar industry in this country, we are one of the highest-cost producers in the whole world. Sugar is produced at about US\$700 per metric tonne in Kenya, while in countries like Brazil, the production cost is US\$300 per metric tonne. When you come to the COMESA region, countries like Zambia and Swaziland produce sugar at about US\$400 per metric.

We must strive to be an efficient producer of sugar as a nation. We consume a million metric tonnes of sugar and produce about 700,000 metric tonnes. That deficit of 300,000 metric tonnes has made this country spend its meager dollar resources on sugar importation. We spoke to the farmers, and we must be true to them. They said they would follow us until we discuss this issue in Parliament. One of the most emotive issues has been land. They said that when the Government implements the lease model, land that initially belonged to people must revert to its original owners.

I believe that the joint Committee has given due regard to this so that at the end of the expiry period of 20 years, the land is reverted to the original owners. As a country, we want to give the private sector the ability to run the cane industry to make it meaningful to our people. As we do that, we need to prepare our farmers so that at the end of the day, they are able to carry on as actual owners of the mills that we have in this country. They gave us the Kenya Tea Development Agency model and said that over time, they should be able to man the mills themselves.

Finally, we have been sitting on knowledge from our research institution, the Kenya Research Institute. The institute has developed varieties with a very high sucrose content and pollen cane that we should get our farmers to grow. In terms of sharing the proceeds between the farmer and the mills, the Kenya Research Institute's formula is the best way to make our farmers adopt better sucrose content cane and earn a better living out of them.

With those few remarks, I support the Memorandum.

Hon. Speaker: Thank you. Hon. Members. I want to give direction as follows: I want to guide the House that we go to the Committee of the whole House at Order No. 12 by 5.30 p.m. I want us to agree on limiting contribution time. Can we do three minutes?

Hon. Members: Yes.

Hon. Speaker: Three minutes. If the Leaders of the Majority Party and the Minority Party want to speak, I will give them five minutes.

(Hon. Opiyo Wandayi spoke off the record)

Pardon? 15? I will not give you 15 minutes. If the Leaders of the Majority Party and the Minority Party wish to speak, I will give them five minutes. For the rest of the Members, you can compress your issues into three minutes each so that we can have as many as we can. By 5.20 p.m., I will call the Mover to reply. Is that agreed?

Hon. Members: Yes.

Hon. Speaker: Hon. Caroli Omondi.

Hon. Caroli Omondi (Suba South, ODM): Thank you very much, Hon. Speaker.

(Hon. Opiyo Wandayi spoke off the record)

Hon. Speaker: Hon. Members, my professor used to tell me that if you cannot make your point in the first two minutes, then you are unlikely to make any point in one hour.

(Laughter)

Hon. Caroli Omondi (Suba South, ODM): I agree with you, Hon. Speaker. I rise to support the Report. However, I would like to draw the Hon. Chairman's and other House Members's attention to about 10,000 acres of land belonging to Miwani Sugar Company. There have been a lot of problems over that land. Somebody claims to have bought it in an auction in December 2007 on the eve of the elections. He claims to have bought it in an auction that did not take place. He has never produced any evidence that he paid for the land. His claims over that land were dismissed by the High Court of Kenya and the Court of Appeal before the Supreme Court was established, reverting that land to the Miwani community. I propose that this Report includes a paragraph on that land, inviting the Auditor-General to do a forensic audit on its ownership and submit it to this House so that we can protect the community around it. I am very sure that Hon. K'oyoo and Hon. Nabii Nabwera are very well-versed. I am sure they can add something to this.

Thank you very much, Hon Speaker.

Hon. Speaker: Thank you. Hon. DK.

Hon. David Kiplagat (Soy, UDA): Thank you.

Hon. Speaker: If we follow the example of Hon. Caroli Omondi, we will have very good contributions.

Hon. David Kiplagat (Soy, UDA): Thank you very much, Hon. Speaker. I support the action plan tabled by the Joint Committee of the Departmental Committee on Agriculture and Livestock and the Departmental Committee on Finance and National Planning.

It is important to note that the sugar sector has a lot of problems. The Departmental Committee on Agriculture and Livestock has taken much time to look at the problems affecting the sugar sector. One of them is the debt that currently affects the public companies. We have Mumias Sugar Company, Nzoia Sugar Company, Miwani Sugar Company, where land is the only remaining thing, Muhoroni Sugar Company, and Chemelil Sugar Company, which have many problems.

This action plan will assist the Government to fix the problem once and for all. When we were doing the stakeholders' engagement recently in Kisumu, the important fact is that sugarcane farmers do not want their companies to be privatised. They believe they can be leased to strategic partners for a duration that is not 99 years. They said that they can only be leased for about 20 years. It should come out very clearly in that lease. The strategic partner should use the company and nuclear farms for sugarcane production. At no time should they start growing beans or potatoes on those farms. It was also clear that the strategic partner should come with new machines. We have seen cases where over Ksh700 million is used for maintenance. The strategic partner should develop new machines for the sugar companies to be productive. They also believe that zoning should not be brought into focus because it undermines productivity and competition.

Thank you very much.

Hon. Speaker: Leader of the Minority Party.

Hon. Opiyo Wandayi (Ugunja, ODM): Thank you very much, Hon. Speaker. I support this Report for the simple reason that it is high time we rescued the sugar sector. Our farmers have faced this problem for too long.

Hon. Justice Kemei said that sugarcane is one of the most lucrative crops in the world. I agree with him. Why is it only in Kenya where sugarcane growing has become a loss-making venture year in, year out? We know of countries, including our neighbours like Sudan and Uganda, where sugarcane farming has remained as lucrative as you want to take it.

This is a good move, even though some grey areas need to be ironed out. One of them is the matter of Mumias Sugar Factory. My colleagues from Western Kenya agree with me that unless and until you address the matter of Mumias Sugar Company, which previously accounted for about 60 per cent of sugar produced in the country, you will not have done justice

to my farmers in Western Kenya. My farmers from Ugunja sell their cane to Mumias Sugar Company. That is why I am talking from a position of authority. We need to be told why Mumias Sugar Company is excluded from this programme. Is it because it is a private company? Even if it were, the public still has substantial shares in that factory. Even as we adopt this Report, I suggest we look at Mumias Sugar Factory.

Secondly, I endorse what was said by Hon. Caroli Omondi. For the first time, I agree with him. We differ substantially on other issues, but I agree with him on this one. You cannot gloss over the 10,000 acres of land belonging to Miwani Sugar Company that well-known persons have grabbed. When you talk about writing off debts, what are you talking about? How do you rescue Miwani Sugar Company without taking back the land that well-known persons have grabbed? We want to see heads rolling, Hon. Speaker. We were told that people must withdraw court cases to allow the sector to move. *Sijui mambo ni mangapi?*

(Laughter)

Hon. Members: *Matatu.*

Hon. Opiyo Wandayi (Ugunja, ODM): What I know is that the same force that was used to force those litigants to withdraw their cases should have been used to force these masqueraders in Miwani Sugar Company to withdraw those cases so that the plant could revert to the public.

(Loud consultations)

Hon. Speaker, you said that what is good for the goose is good for the gander. What is good for Mumias Sugar Company is good for Miwani Sugar Company.

Finally, as we look for these strategic investors, let us ensure that we apply transparency and accountability. We do not want this programme to be a conduit for bringing in already identified people, even as we debate here. I am aware that some people are already angling around the country. Some are in the airports. Some are waiting for this Bill to go through to lay claim on Mumias Sugar Company, Miwani Sugar Company, Muhoroni Sugar Company, and SONY Sugar Company. We shall be very vigilant. If you dare step into our factories to grab them, we shall deal with you.

Thank you. I support the Bill.

Hon. Speaker: Hon Makilap.

Hon. Joseph Makilap (Baringo North, UDA): Thank you, Hon. Speaker. I like the fashion of the people from the sugarcane-growing areas. I am a pastoralist. I witnessed presentations from Kenyans who grow sugarcane. What has been going on in the sugar industry now is banditry. The National Treasury and this Government's objective is to make sugarcane growing a profitable venture for Kenyans. This Report is meant to bring people out of poverty. The five sugar factories owned by the Government have continued to make a lot of losses for a long time.

I want Members to listen to this background because it was a presentation. We asked why there were arrears of people who supplied sugar to the factories. The sugarcane has been milled, the sugar sold, and the farmers are not getting the money. We were shocked by the answers because farmers had brought the sugarcane, the sugar had been sold, and the farmers did not have their money. The answer we were given was shocking. We were told that the people who live in the growing sugar areas must know that the five sugar factories have been captured. They go and look for brokers and cartels to bring money in advance to the factory in the name of helping them take care of their problems, and then they sell the sugar to them at a cheap price. So, when they sell the sugar cheaply, they cannot pay the farmers who brought the

sugarcane. Farmers in western Kenya have suffered for a long time because of the capture of the state-owned factories.

I want to thank this Committee because when the National Treasury gave us penalties, arrears, and principal interest of Ksh50 billion and when we called upon the KRA to bring their data and they brought a figure of Ksh16 billion, our Committee brought forward a write-off. The figure from KRA was Ksh16 billion; you can imagine the difference! This was when we realised that, again, there was no safety net for employees of the sugar factories. We proposed, therefore, that in the write-off, we pay the employees so that whoever is going to lease these lands will start from a clean slate, will not be antagonized, and will run a clean business that will bring money to the farmers. The end product is that people in the lower cadre should benefit from sugar-growing areas and make money from this business. To ensure that the land is not lost, we said that this lease programme needs to be understood by the farmers in those areas so that the land will revert to the people living in those particular areas after the expiry of the lease, which is a good thing other than privatisation which would have the whole land taken.

Lastly, there is a need for research on growing of sugar. I went around and realised that most of the sugarcane in those areas is more like Napier grass.

Hon. Speaker: Hon. Onyango K'oyoo.

Hon. James K'oyoo (Muhoroni, ODM): Thank you very much, Hon. Speaker. I stand here as the biggest beneficiary of this reform.

Hon. Speaker: Take two minutes each to handle this interest.

Hon. James K'oyoo (Muhoroni, ODM): The Report here will be best cured by the impending Sugar Bill that Hon. Wangwe has tabled. I want to talk about the case of Miwani Sugar Company because that is my ancestral land. As Hon. Caroli said, Miwani Sugar Company is the oldest company, and the land on which the raw materials are grown was donated by the locals I represent in Parliament. Sometime in 2008, somebody purportedly bought that land at an auction. Serious investigation was mounted when PLO Lumumba was the Ethics and Anti-Corruption Commission (EACC) Chairperson. It came out from the Report that there was never an auction, no lands board, no money paid. Up to now, you cannot be shown that so many millions of shillings were paid from this point to this point in a bank or via this cheque, but we continue to hear that the land is being transferred to some locals.

Hon. Speaker, you are a serious lawyer. In law, there is a word called "precedence", and one has been set in dealing with the case of Mumias Sugar Company. I am pleading that the Government should move and deal with the case of Miwani faster than Mumias because this is stark fraudulence. There is no proof that land was bought, and this case had been handled up to the Court of Appeal by Justice Mwera when the Court of Appeal was the land's highest court. How did an environmental land court come here to review and reverse the judgment that the Court of Appeal gave in 2008? We are appealing that the best way to cure these ills is for the Government to use the same style done with Mumias. On behalf of my constituents, I appeal that that be done immediately. I plead with my colleagues that when this Sugar Bill is Tabled here...

Hon. Speaker: Hon. Emmanuel Wangwe.

Hon. Emmanuel Wangwe (Navakholo, ODM): Thank you, Hon Speaker. I rise to support this Report by the joint Committee. Mine will be that the National Treasury needs to be aware that they are the originators of corruption. How does it happen? I want to thank the Committee because it picked on a very fundamental issue. When you look at the wording of the Memorandum, it talks of the mills being disposed of as scrap metal within the provisions of the law on public procurement and disposal rules. Where on earth are you going to recommend a scrap already? In this case, the National Treasury was inviting corruption, and I wish the joint Committee recommended proper reprimand of the Treasury officials.

I thank the Committee for ensuring that they have made it mandatory that we have funds for the farmers. Money is also being made available through this Report to employees. Employees have suffered. I want to thank the Chair of Finance and National Planning and the Committee on Agriculture and Livestock for seeing that the employees can finally be paid and that farmers who took their time to invest in this model can be paid their dues. Finally, I appreciate the Committee for adopting this leasing model. The idea of leasing, rather than privatisation, is welcome. However, allow me to express my disappointment that Mumias Sugar Company does not feature in this Report. We say that Mumias Sugar Company is privately owned. Miwani Sugar Company is 49 per cent government-owned and 51 per cent privately-owned. Why is it that issues of Miwani Sugar Company have found their way into this Report, and not those of Mumias Sugar Company, which has 20 per...

Hon Speaker: Hon. Ndindi Nyoro.

Hon. Ndindi Nyoro (Kiharu, UDA): Thank you very much, Hon. Speaker. I rise to support the Memorandum from the National Treasury. It is time we thought about reforming our sugar mills and the sugar sector generally because looking even at our country's data, we need to do much more to spur sugar production. We should look inward at our supply chain even though it will go a long way to bridging the gaps between our exports and imports.

Any effort we put towards sugar production, like in any other agricultural commodity, we do import substitution on the other side. Generally, this is very good for our economy.

Holistically, the issue of having a lean government is one that we must keep on checking as a House. I say so because the Government must do the least in terms of the commercial sector. The Government should be doing what a government should be doing. That is enabling other industries and also checking on them. I am an ardent supporter of the fact that we need to reduce all government-owned entities from the current number, which is over 500. We leave only that which the Government should do. The Government should be lean because when we have a small government, we have big people, figuratively speaking. We must go beyond sugar in what we are doing in terms of leasing. We must go into the commercial sector. There is no reason, for example, why the Government of Kenya should own a bank.

Hon. Speaker: Hon. Peter Salasya.

Hon. Peter Salasya (Mumias East, DAP-K): Thank you, Hon. Speaker. I have some observations to make. Last time when we met as the Departmental Committee on Finance and National Planning and Committee on Agriculture and Livestock, we had a very interactive session with the stakeholders. I thank the National Treasury for the Memorandum that came from them on the listing model. Most of these companies, like Mumias, that are being discussed here they are where they are because of the poor privatisation model that was used. I stand to support, 100 per cent, the model we have used because we have realised that state-owned sugar factories cannot compete with privately owned ones. After all, they do not have the capacity to buy new machines, diversify, add value, and other factors.

I support zoning because there is no way you can allow somebody to travel a long distance to transport cane. After all, it creates extra costs that are then transferred to farmers. I ask Members to support zoning so that millers can focus on the little available land and develop canes so that we increase productivity.

I also want to thank the President for the *maneno matatu*. The words are in the Bible whereby they say that whoever does not respect God and *mfalme wa nchi, mambo ni matatu: ahamishwe...*

We ask the President, on the case of Miwani....

Hon. Speaker: Hon. David Ochieng, remember, I have curtailed your time to two minutes.

Hon. David Ochieng (Ugenya, MDG): Hon. Speaker, I am a very happy person this evening. This is the beginning of the rejuvenation of the sugar sector in this country; this is the

beginning of returning the sugar sector to the farmers themselves, who should be benefitting from sugar farming. Three things that will happen this evening that I will applaud are: We are writing off debts worth Ksh50 billion of farmers' loans. That only happens in the tea and coffee sectors. We are paying farmers' arrears worth almost Ksh7 billion and salary arrears to Nzoia, South Nyanza, Miwani and Chemelil sugar companies.

I am sure that at the end of this evening, our farmers will know how they will own their industries. We should change it to make sure it is 20 years or 30 years. That is almost a lifetime. I ask those who will be charged with running the sugar industries to do so with utmost good faith and trust and ensure that farmers benefit so that our people can also be part of this country's economic rejuvenation. Thank you.

Hon. Speaker: Hon. Naicca, Member for Mumias West.

Hon. Johnson Naicca (Mumias West, ODM): Thank you, Hon. Speaker. I am one of the happiest people today because Mumias Sugar Factory is in my constituency. We have suffered. Mumias Town is just a shell. Although the National Treasury has not brought a report on Mumias Sugar Company here, we trust what the President said when he visited us and removed the cartels in Mumias Sugar Company. I want to say this and want my party leader, Hon. Wandayi, to hear this: *mambo ni matatu*. He has to support that. Let him not meander around things. We have been suffering. *Mambo ni mangapi?*

Hon. Members: *Matatu*.

Hon. Johnson Naicca (Mumias West, ODM): Either *aende* heaven, *aende jela ama arudi kwao lakini* Mumias *iwe* revived. *Hilo ndilo jambo naongea hapa Mhe. Spika*. I am one of the happiest Members—this Report *iingizwe* Mumias Sugar *na* debts *ziwe* written off.

Hon. Opiyo Wandayi (Ugunja, ODM): On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Naicca, there is a point of order from the Leader of the Minority Party.

Hon. Opiyo Wandayi (Ugunja, ODM): Hon. Speaker, I did not want to interrupt my good friend and neighbour, Hon. Naicca. I heard him call for my attention and say that I should listen carefully, but I have not heard what was meant to be directed to me to act upon. I do not know.

Hon. Speaker: Hon. Wandayi, you are just being cheeky. You heard him. Go on. You heard him loud and clear.

Hon. Johnson Naicca (Mumias West, ODM): He supports us halfway. That is what we do not want. That is the difference between us Nyanza and Western. We are telling them openly that Mumias Sugar Company must be revived. We have suffered enough.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Member for Kanduyi, you have three minutes.

Hon. John Makali (Kanduyi, FORD-K): Thank you, Hon. Speaker, for giving me this opportunity. I have three things I would like to highlight.

First, I support wholeheartedly the Government's efforts to write off the debts. I pray that this time round we have a clear balance sheet. These debts were written off in 2012 but still appear in the books.

I wholeheartedly support the payment of farmers and employees of Nzoia Sugar Company. People have failed to send their children because of lack of payment. We cannot have a sector that is not controlled. I, therefore, support establishing the five catchment areas and developing regulations to guide the conduct of the sugar sector. We have chaos in the sugar sector because of poaching and the absence of regulations.

Equally, I support the idea of allocating funds towards supporting the Kenya Sugar Research Institute to enable us develop new early maturing canes for our farmers.

Concerning leasing, I want to be very clear. It must be done above board. I have looked at the recommendation and seen that the leasing will be for 30 years. That is too long. I have

also looked at the recommendation on the nucleus of the land. It is recommended that the land goes back to its original owners. We do not need to return to the original owners because people were displaced, and the Government took over the land. We need to develop a system where farmers consistently begin taking over this particular industry so that they can run it. Any recommendation to empower farmers to run this particular industry is welcome. But we must do away with sugar barons and sugar economic bandits who have brought confusion in this particular sector by importing sugar and doing cane poaching. As Hon. Nicca said, *mambo ni matatu*. We must bring this sector to its senses.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Pukose.

Hon (Dr) Robert Pukose (Endebess, UDA): Thank you, Hon. Speaker. I support this Memorandum by the National Treasury and Economic Planning on action plans to revive and commercialise state-owned sugar companies.

For a long time, state-owned sugar companies have been mismanaged. They have suffered from looting and corruption. Everybody in this House supports the President's position, including my friend, Hon. Opiyo Wandayi, and his team. This is the way to go as a country. When something good is being done to help Kenyans, all of us must appreciate and give it full support. It should not be this one alone, but we have seen the President put in place many other programmes to make this country go in the right direction. We have seen the efforts being put into production to reduce the cost of living. That is laudable and something that is in the right direction. Our country is now taking the right trajectory, and we support it.

With those few remarks, I support the Memorandum.

Hon. Speaker: Thank you Hon. Pukose. Hon. Nabii Nabwera.

Hon. Nabii Nabwera (Lugari, ODM): Thank you, Hon. Speaker.

I rise to support this Report. The Report goes a long way to revive the sugar industry. However, the issue about Miwani must be captured in its right context. I was the joint secretary of the sugar taskforce, and we discovered that the land belongs to the Government.

Secondly, I support this Report by recommending that the debt of Mumias Sugar of Ksh33,654,593 be included. My reasoning is that Mumias Sugar Company is a national and public interest company. Just like the Government bailed out KQ when it was a private company, we should use the same principle to bail out Mumias Sugar Company. Secondly, the Government has a shareholding of 20 per cent in Mumias Sugar Company. This is an interest that can make the Government come on board and save the company.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Wamboka, you have two minutes.

Hon. Wanami Wamboka (Bumula, DAP-K): Hon. Speaker, at the outset I support the Report. I particularly support the fact that farmers and workers of Nzoia Sugar Company, who have been owed money for the longest time, are going to be paid. I also support the '*mambo ni matatu*' slogan. It pains me when foreigners, thieves, and barons take our companies as a battle ground. It is painful when people want to fight for Mumias Sugar Company's land as if the Government and Parliament cannot do anything. That is unacceptable. On that note, Mr Rai should already have faced one of the three things that the President mentioned. For the survival of the sugar industry, he should be a lesson to anybody who would want to dare joke with the sweat of the people and steal money from them. They will stop it. For that reason, I support this Report.

(Hon. Emmanuel Wangwe spoke off the record)

Hon. Wangwe is interfering with me!

I support this Report so that farmers of Nzoia Sugar Company can smile again. They can take their children to school, have weddings and their wives can deliver in a decent way. I support this Report because the Committee has done a good thing.

Thank you so much, Hon. Speaker.

Hon. Speaker: *Omong'ina.*

Hon. Jerusha Momanyi (Nyamira County, JP): Hon. Speaker, thank you for giving me this opportunity. I am Hon. Jerusha Mong'ina not *Omong'ina*. At the outset, I support this Report simply because growing up we understood that Kenya thrived on an economy which was pegged on agriculture. In school, we were taught that agriculture is the backbone of the economy of Kenya. Indeed, the sugar industry was one of those economies which made Kenya known such that people even came from other countries to benchmark. Some countries which have grown economically benchmarked from Kenya because of industries like the sugar industry. Now that the Report has been finalised, the Government should make sure that the debts which have been there for so long, and the people who had worked so hard but not paid shall be paid.

I am also one of those people who support the 'three major issues' which the President talked about. Indeed, our President will fix this country if we go by what he has been proposing. The sugar industry will be revived and most of our people will be rich as a result of that revival. I support.

Thank you, Hon. Speaker.

Hon. Speaker: Members, I will give you one minute each. Let us start with Hon. Malulu Injendi.

Hon. Malulu Injendi (Malava, ANC): Thank you, Hon. Speaker. First of all, I thank the President of this country for his goodwill towards sugarcane farming. It is actually through his initiative that we are where we are. Therefore, I support this Report fully. Debts have to be paid by the Government. I will point out to the Government that there are persons who have caused farmers to suffer. I am aware of some persons who borrowed money from Mumias Sugar Company. Some borrowed Ksh200 million and others Ksh500 million. These people walk around the country freely. As we write off the debts, the persons who have stolen this money must be brought to book.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Kagombe, one minute.

Hon. GG Kagombe (Gatundu South, UDA): Thank you, Hon. Speaker. I stand to support this Report. One of the things that we found in these sugarcane growing areas is the issue of governance. When there is poor governance, the sugar industry will continue to suffer. I think that the privatisation model we have taken is not enough. These millers must revert to the actual farmers just like the tea farmers have taken over tea factories. I would like to persuade Hon. Salasya that the zoning that they want to introduce will kill the industry. This is because you will have a farmer who wants to take his sugarcane to a certain factory but cannot get the proceeds. This will cause them to suffer. What we got from the people on the ground is that they want us to liberalise the industry so that we are able to fetch better markets and kill the monopoly that has been happening.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Ndhiwa, one minute.

Hon. Martin Owino (Ndhiwa, ODM): Thank you, Hon. Speaker. As they say in medicine, you have to stabilise a patient. Point number one, let us pay the workers and farmers so that children can go to school. As we speak, there are so many children who are not going to school. Number two, let us have a good legal framework for the leasing model otherwise, it can be abused and can also evoke the same emotions that land brings. As such, we will not succeed. It is important that Members know of another issue which also came from farmers

about extension workers. That issue is missing in all this debate, but it depresses yields and good sucrose content. Lastly, the issue is about poaching and not zoning. Let us stop poaching. There is a provision in the Bill.

Hon. Speaker: Hon. Rachael Nyamai.

Hon. (Dr) Rachael Nyamai (Kitui South, JP): Thank you, Hon. Speaker, for the opportunity to also put my word to this very important Report.

First of all, I congratulate the two Chairs. They have done a wonderful job and you can tell that they put their time in this. Now that I have one minute, let me be straight and go to the rhetorical question which I want to ask. For how long have we known that we can plant sugarcane that can only last six months and harvest it? Why is it that we have had governments that have been putting farmers in the agony of spending 36 months waiting to harvest sugarcane? I thank the Kenya Kwanza Government and the President. He will take this country very far. I agree with other Members that ‘*mambo ni matatu*’. The sugar sector is one that must be handled very fast because the people who are there are...

Hon. Speaker: Hon. Nabulindo, you have one minute.

Hon. Peter Nabulindo (Matungu, ODM): Thank you, Hon. Speaker. First, I thank you for giving me this chance. I oppose this Report. This is because when I look at the list of the companies listed, Mumias Sugar Company is not there. As long as Mumias Sugar Company is not there yet I represent sugarcane farmers 100 per cent, I will not support this Report. If later on the Committee can introduce an amendment to include Mumias Sugar Company in all these engagements, then I will support the Report, but for now, I oppose it.

Hon. Speaker: Member for Kitutu Chache North.

(Hon. Peter Nabulindo remained upstanding)

Take your seat, Hon. Nabulindo. Give Hon. Japheth the microphone. You have one minute.

Hon. Japheth Nyakundi (Kitutu Chache North, UDA): Thank you, Hon. Speaker. I support this Report because in Nyanza Region sugar is our coffee, tea and gold. I want to support it fully because cartels in this sector have managed to ensure our farmers are not paid well. I support it because from now henceforth, our farmers will get their dues and make sure that their kids go to school and they get back their money. To the cartels, as they say, *mambo ni matatu*: either you go to heaven, jail, or somewhere else.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. Hon. Makokha Odanga.

Hon. Geoffrey Odanga (Matayos, ODM): Thank you, Hon. Speaker. I support this Report.

Hon. Speaker: You have a minute.

Hon. Geoffrey Odanga (Matayos, ODM): It is good that the Government pulls out of business because we know the Government to be a very poor businessman. The lease model is being recommended, and we heard it from stakeholders. Even as we agree to the lease model, proper due diligence must be done because the lease is quickly becoming the new model of land grabbing. Mumias Sugar Company, under receivership, should be included in this Report.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. This is the time we agreed, so I will indulge the Leader of the Majority Party. Hon. Kimani Ichung'wah, how much time do you need to reply?

(Hon. Kimani Ichung'wah spoke off the record)

I will give the Leader of the Majority Party five minutes.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Speaker. I also join other Members supporting this Report, except Hon. Nabulindo, who opposed it.

Hon. Speaker: I will give you a minute.

Hon. Kimani Ichung'wah (Kikuyu, UDA): In supporting this Report, I may begin by informing Hon. Nabulindo, and I am sure other Members from the larger Mumias area in Western Kenya that Mumias is 20 per cent owned by the Government and 80 per cent by private investors. They have very good points that Mumias also needs to be rescued.

I want to assure him that there are measures to ensure that Mumias is also rescued from the abyss that has bedeviled the sugar sector. That way, Hon. Nabulindo will ensure that even the people of the greater Mumias area benefit from the sugar sector reforms and that money gets back to people's pockets in Mumias and the other regions in the sugar-belt.

Hon. Speaker, part of the proposals in this Memorandum by the National Treasury is the write-off of debts, taxes, and penalties owed to the Government of Kenya and the KRA by these sugar companies. Even as we seek to commercialise and privatise them, no private investor will want to put their money in a company or State entity bedeviled with many liabilities, including tax liabilities. I support that measure to write off the debts owed to the Government of Kenya to make them more attractive to investors who bring in their private capital and expertise and make these sugar companies more efficient and, therefore, guaranteeing farmers more money into their pockets.

I have also heard concerns about the period, and I think Hon. (Dr) Makali raised the issue of 30 years. It is also good to appreciate that if you are to lease land and assets, for a private investor to be able to have a bankable proposal, then the period of the lease should be a period during which the investor will be able to recoup their capital investment and make a profit out of the investment. Therefore, I want to encourage those concerned to appreciate that we are bringing in private capital. A private investor will not want to get into a lease agreement of five years. Even people leasing land today to develop petrol stations and all that are not going for a lease of five years but are looking for 20 to 25 years. Therefore, I want to encourage those Members who are concerned that all those issues are issues that the National Treasury has looked into.

Finally, on Mumias Sugar Company, I have heard even Hon. Salasya has now considered that truly *mambo ni matatu* and the cartels that had taken over Mumias Sugar, enjoyed State protection because of state capture. We must today tell them loudly that protection is gone and it shall never come back. Therefore, they must now socialise themselves to the *mambo ni matatu* gospel and get used to it. That includes their sponsors because if they were facilitated through state capture, they had people with access to political power who protected them.

Even as Hon. Nabulindo speaks about Mumias, I know the Wanga people are very keen on Mumias because they surround that area of Mumias. I also know his party leader because he is a Member of the Orange Democratic Movement (ODM) who owes Mumias Sugar Company close to the above Ksh300 million shillings. I want to ask Hon. Nabulindo to ask the party leader of ODM to now pay up the money he owes Mumias Sugar Company so that the company also benefits from this commercialisation.

Hon. Opiyo Wandayi (Ugunja): On a point of order, Hon. Speaker.

Hon. Speaker: Yes, Hon. Wandayi

(Hon. Kimani Ichung'wah spoke off the record)

Order, Leader of the Majority Party. There is a point of order from Hon. Wandayi.

Hon. Opiyo Wandayi (Ugunja): Hon. Speaker, we were doing so well up to the point where Hon. Ichung'wah started to digress in a very fundamental way. It is not right within our

Standing Orders for Hon. Ichung'wah to claim that the Leader of ODM, and there is only one Leader of ODM, owes Mumias Sugar company Ksh300 million shillings. Why would that allegation be allowed to happen on the Floor of this House? Can he table evidence that the Leader of ODM owes Mumias Sugar Company that kind of money or withdraw and apologise? Otherwise, that would be scandalising the name of somebody who cannot defend himself on the Floor of this House. I plead with you, Hon. Speaker.

Hon. Speaker: Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Speaker...

Hon. Speaker: Your time is up.

Hon. Kimani Ichung'wah (Kikuyu, UDA): I was saying it is only right that if you are writing off debts owed to the public by these sugar companies and that is public money, even individuals and private companies that owe the sugar companies should and must pay up. Regarding the Leader of ODM, it is in the public domain, including documents and audit reports tabled in this House previously, that the Leader of ODM owes Mumias Sugar Company *na mambo ni matatu*, which he has to pay.

Hon. Speaker: Your time is up. Order! I will indulge Hon. Nyamita, one minute from the SONY zone.

Hon. Mark Nyamita (Uriri, ODM): Thank you, Hon. Speaker. I rise to support this particular Report. This is the true and most relevant attempt to bring the cost of living down.

When you waive the debts and pay farmers and employees their money, it means that money will go into circulation. We have only seen the tea, coffee, and other sectors, including *miraa*, getting this treatment. This time, the sugar industry has been considered, and this is a great move.

In SONY Sugar, Ksh860 million for farmers and about Ksh1.1 billion for salary arrears will be a big boost. All we want is that before the private sector takes the reins, we want proper public participation.

Hon. Speaker: Chairman, Hon. Kimani. You have two minutes. I am giving you two minutes.

Hon. Kuria Kimani (Molo, UDA): Hon. Speaker, I want to thank Members for this...

Hon. Speaker: I want you also to give the House an assurance on two things: Mumias and Miwani land.

Hon. Kuria Kimani (Molo, UDA): Thank you very much, Hon. Speaker. I want to thank the robust conversation that we have had this afternoon. This is the true spirit of debate. If you check the documents that the National Treasury gave the two Committees and what we presented to this House, we have enriched this Report and made fundamental implications and commitments.

On the two matters that have been quite elusive is the issue of the 30-year lease. I want to indicate or assure this Member that the lease model proposes that the lease will be reviewed every five years. Even if it is a 30-year contract, there will be a five-year review to ensure that it adheres to the interests of the farmers.

The issue of Mumias Sugar Company came out during public participation or from the Sugar Conference, where we also borrowed a lot of recommendations. We have asked the National Treasury that within 60 days, they must bring recommendations that I will table on the Floor of this House on how to help Mumias Sugar Company go back to profitability and support the economy of the Wangari people.

On the issue of the 10,000 acres owned by Miwani Sugar Company, we only faced one legal hurdle because the matter is actively in court. Therefore, the doctrine of *sub judice* and our Standing Order 89 would have barred us from making resolutions with something actively in court. Having said that, we are going to indulge the company. We are going back to Western to ensure that within 60 days, we will bring a report on the solution for Miwani Sugar Limited.

I want to give the commitment of the Departmental Committee on Finance and National Planning in concurrence with my Co-chair of the Departmental Committee on Agriculture and Livestock Development, that we will come back to this House with a solution for those two additional companies.

With that, I beg to reply.

Hon. Speaker: Thank you. Chairman of Committees, you should always prosecute your cases with such clarity and the clarity that Hon. Murugara exhibited this afternoon.

(Question proposed)

(Question put and agreed to)

(Hon. Opiyo Wandayi rose in his seat)

Hon. Wandayi, is it on the same matter?

Hon. Opiyo Wandayi (Ugunja, ODM): Certainly not. Hon. Speaker, kindly indulge me under Standing Order 1. I know we are in a hurry to go to the next Order. Under Article 209 of the Constitution, the Auditor-General is obligated to undertake audits every financial year on Ministries, State Departments, and Government entities. It has been confirmed that Miwani Sugar Factory is a public entity owned by the Government or the public for that matter, yet for the last 10 or more years, the Auditor-General has not undertaken any single audit of that factory. I urge you, Hon. Speaker, to use your Chair and authority to direct the Auditor-General to report to this House why she has not been able to audit Miwani Sugar Factory for more than 10 years. Under which law has she been operating for her to fail to undertake such a primary responsibility under the Constitution? Kindly direct the Leader of the Majority Party to compel the Office of the Auditor-General to bring a report to this House – and very expeditiously, even as we continue these reforms.

Hon. Speaker: Hon. Wandayi, your Member, Hon. Wangwe, is gesturing that he is seized of the matter in his Committee, so what you are saying may not be accurate.

Hon. Emmanuel Wangwe (Navakholo, ODM): Thank you, Hon. Speaker. What the Leader of the Minority party is saying is correct. My Committee, the Public Investments on Social Services, Administration and Agriculture, has invited the Auditor-General next Monday on the same issue to tell the Committee why she has not been able to audit Miwani Sugar Company, yet it is deemed a public company.

Hon. Speaker: Sorry, Hon. Wandayi. I had misunderstood his figurative language. Hon. Members, we will now end there. Leader of the Majority Party, when we resume, you may have to check on the veracity of the allegation by Hon. Wandayi as the Leader of Government Business in the House. You owe a duty to the country that all State entities are properly managed, audited, and run in the interest of the people of Kenya. If Miwani is government-owned, as it is alleged, check your facts, check with the National Treasury and the Auditor-General, and at an appropriate time, you may bring a statement to the House.

Thank you.

Hon. Members, you may be upstanding. Sorry, we have to call the next Order first. I am moving faster than the Clerks-at-the-Table.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Speaker (Hon. Moses Wetang'ula) left the Chair]

IN THE COMMITTEE

[The Temporary Chairlady (Hon. Martha Wangari) in the Chair]

THE PRIVATISATION BILL

(National Assembly Bill No. 22 of 2023)

(Resumption of consideration interrupted on 14.9.2023 – Morning Sitting)

The Temporary Chairlady (Hon. Martha Wangari): Order, Hon. Members. We are now in the Committee of the whole House for the Privatisation Bill.

(Clause 3 agreed to)

Clause 4

The Temporary Chairlady (Hon. Martha Wangari): Let us have the Mover. The Chairperson of Departmental Committee on Finance and National Planning, this is Privatisation Bill and we are on Clause 4. Kindly move your amendments.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 4 of the Bill be amended by deleting subclause (2).

Just to explain to Members what we are doing, this amendment is seeking to delete Sub-clause (2) of the clause of the Bill which provides that the National Treasury may, on its own or through the authority, provide technical support and assistance to county governments with regard to privatisation by county government. It being a National Assembly Bill, we thought that we do not want to delve into the functions of county governments. Therefore, deletion of Clause 2 removes that responsibility or suggestion of that responsibility that the Privatisation Authority could help county governments in privatisation of county programmes.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Chairman, kindly confirm that we are amending Clause 4(2).

Hon. Kuria Kimani (Molo, UDA): I confirm that, but I move that that Clause 4 of the Bill be amended by deleting Sub-clause (2). And as I was explaining, Sub-clause (2) provides on the issue of privatisation of entities in county governments.

The Temporary Chairlady (Hon. Martha Wangari): All right.

(Question of the amendment proposed)

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

(Clause 4 as amended agreed to)

(Clauses 5, 6, 7 and 8 agreed to)

Clause 9

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 9 of the Bill be amended by inserting the following new paragraph immediately after paragraph (e)—

“(ea) prepare long-term divestiture sequence plan;

(eb) monitor and evaluate the implementation of privatization programmes in Kenya;”

The proposed amendment seeks to provide additional functions to the Privatisation Authority. This seeks to strengthen the Authority in achieving its mandate specifically by introducing this new role of preparing long-term divestiture sequence plans. These are plans where an institution may want to privatise part of the entity. With that, I beg to move.

(Question of the amendment proposed)

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

(Clause 9 as amended agreed to)

Clause 10

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 10 of the Bill be amended by in sub-clause (1) by—

(a) inserting the following new paragraph immediately after paragraph (d)—

“(de) the secretary to the State Corporations Advisory Committee or a representative designated in writing;”

(b) deleting paragraph (e) and substituting therefor the following new paragraph—

“(e) four other persons members, not being public officers, nominated by the Cabinet Secretary through a competitive process and approved by the National Assembly, each possessing a degree in either economics, accounting, finance or any other relevant degree from a recognized institution and having ten years of work experience of which five shall be at senior management level in a relevant field;”

I also beg to move that (b) be further amended as follows:

(b) by deleting paragraph (e) and substituting therefor the following new paragraph—

“(e) four other persons members, not being public officers, nominated by the Cabinet Secretary through a competitive process and deleting the words “and approved by the National Assembly”, each possessing a degree in either economics, accounting, finance, or any other relevant degree from a recognized institution and having ten years of work experience of which five shall be at senior management level in a relevant field;”

Hon. Temporary Chairlady, this further amendment removes responsibility of the National Assembly of approving the board. You will realise converting the commission to a board would, therefore, not necessitate the board members to come to the National Assembly for approval.

(Question of the amendment proposed)

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

*(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 10 as amended agreed to)

(Clause 11 agreed to)

Clause 12

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 12 of the Bill be amended in subclause 1(c)—

- (a) by deleting the words “has been absent” appearing in subparagraph (i) and substituting therefor the word “absence”;
- (b) by deleting the words “is unable” appearing in subparagraph (ii) and substituting therefor the word “inability”;
- (c) by inserting the words “or her” immediately after the words “the functions of his” appearing in paragraph (vi);

This is correcting grammatical errors that were in the Bill.

(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)*

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

(Clause 12 as amended agreed to)

(Clauses 13 and 14 agreed to)

Clause 15

Hon. Kuria Kimani (Molo, UDA): Is this a new clause?

The Temporary Chairlady (Hon. Martha Wangari): No. It is not new.

Hon. Kuria Kimani (Molo, UDA): We have not done 13. There is a new clause 13A.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Chairperson, we have already done...

Hon. Kuria Kimani (Molo, UDA): There is a new clause 13A.

The Temporary Chairlady (Hon. Martha Wangari): It will be dealt with later. New clauses will be come later deal with Clause 15.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 15 of the Bill be amended by deleting subclause (3) and substituting therefor the following new subclause—

“(3) A person shall be qualified to be appointed as the Managing Director if the person—

- (a) holds a degree in either economics, accounting, finance or any other relevant degree from a recognized institution;
- (b) has ten years of work experience of which five shall be at senior management level in a relevant field;
- (c) meets the requirements of Chapter Six of the Constitution.”

This was providing for the qualifications of the managing director of the Authority to make sure we have a competent person to lead the Privatisation Authority. With that, I beg to move.

(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 15 as amended agreed to)

(Clauses 16 and 17 agreed to)

Clause 18

The Temporary Chairlady (Hon. Martha Wangari): Mover, move the amendment on Clause 18.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 18 of the Bill be amended in subclause (2) by inserting the following new paragraph immediately after paragraph (a)—

“(ab) be annually audited and reported on;”

We are providing that the Authority will have their programme audited and reported on. This will ensure there is accountability on how the privatisation programme is carried by the Privatisation Authority. With that, I beg to move.

(Question of the amendment proposed)

Hon. (Dr) Makali Mulu (Kitui Central, WDM): Thank you, Hon. Temporary Chairlady. As I support this amendment, I wonder whether it is necessary or a requirement. This Authority will be a Government authority. It is a general requirement that any organisation getting public funding must be audited annually. For ministries and other organisations like this Authority, the Auditor-General audits. Unless you are putting emphasis, this might not be adding value to the amendments. I submit.

The Temporary Chairlady (Hon. Martha Wangari): Member for Emuhaya.

Hon. Omboko Milemba (Emuhaya, ANC): As Hon. Makali has spoken on this, I wonder why we should make a hanging statement like ‘to be audited on’ and stop there. By who? If that is the case, we need to complete it. The Chairperson should explain further.

The Temporary Chairlady (Hon. Martha Wangari): Chairperson, I would like you to respond to a few issues. Member for Emuhaya, please raise your point again for the benefit of the Chairperson.

Hon. Omboko Milemba (Emuhaya, ANC): To ensure we are making a complete law, who do you want to audit this board or organization?

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, in matters of corporate governance, usually the board more or less oversees the policies made by the management or head of institutions, in this case, the managing director. The thinking behind this is you may make a decision to privatise a particular institution, and it takes five years to accomplish that. This necessitated that the board should have an annual report on that privatisation programme. For example, to prioritise an institution that existed five years ago, circumstances may change five years later. Remember that the privatisation programme would have been approved by the National Assembly. As much as the National Assembly has approved that privatisation programme, there is need for an annual review – which is what we call an audit – and a report being made to the necessary authorities. A specific report on the privatisation programme should be made to the Auditor-General if it is a public institution. That information should not necessarily be in their financial statements.

(Question of the amendment proposed)

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

(Clause 18 as amended agreed to)

Clause 19

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:
THAT, Clause 19 of the Bill be amended in subclause (1) by inserting the word “shall” immediately after the words “under subsection (1)”.
Again, this is to correct a grammatical error by inserting the word “shall.”

(Question of the amendment proposed)

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

(Clause 19 as amended agreed to)

(Clause 20 agreed to)

Clause 21

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:
THAT, Clause 21 of the Bill be amended—
(a) in subclause (1) by deleting the word “Parliament” appearing immediately after the words “approved privatisation programme to” and substituting therefor the words “the National Assembly”;
(b) in subclause (3) by deleting the word “Parliament” appearing at the beginning of the subclause and substituting therefor the words “The National Assembly”;

- (c) in subclause (4) by deleting the word “Parliament” appearing immediately after the words “privatisation programme to” and substituting therefor the words “the National Assembly”;
- (d) in subclause (5) by deleting the word “Parliament” and substituting therefor the words “the National Assembly”

This is just to replace the word “Parliament” with the words “National Assembly” so that this does not become a function of Parliament including the Senate. It becomes a function of the National Assembly as contained in other parts of the Bill.

(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 21 as amended agreed to)

(Clauses 22 and 23 agreed to)

Clause 24

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 24 of the Bill be amended—

- (a) by numbering the existing provision as subclause “1”;
- (b) by inserting the following new subclause immediately after the renumbered subclause (1)—

“(2) A privatisation that entails the transfer of a public interest in a public entity shall not be implemented unless it is included in the privatisation programme.”

This amendment implies that any privatisation has to be included in the privatisation programme as approved by the National Assembly.

(Question of the amendment proposed)

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

(Clause 24 as amended agreed to)

(Clauses 25 and 26 agreed to)

Clause 27

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, the Bill be amended by deleting Clause 27 and substituting therefor the following new clause—

Steering Committee.

27. (1) For each privatisation, there shall be a steering committee to implement the privatisation on behalf of the Authority subject to any directions of the Authority.

(2) A steering committee shall comprise the following members—

- (a) the members of the Authority escribed in paragraphs (b) and (c) of section 5(1);
- (b) the Principal Secretary of the ministry with responsibility over the asset or service being privatised; and
- (c) such members of the Authority as the Authority specified.

We realised that implementation of privatisation transactions is part of the internal affairs of the Authority. Therefore, they do not necessarily have to come back to Parliament for approval.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. Martha Wangari): For good order, if you would like to say something, use the intervention button to catch my eye. Hon. Makali Mulu, use the next microphone.

Hon. (Dr) Makali Mulu (Kitui Central, WDM): Thank you, Hon. Temporary Chairlady. Clause 27(1) states that there shall be a steering committee for each privatisation. Would it not be too tedious to form a committee every time? I wish that the Bill stated that there should be a steering committee that can handle three or four privatisations. That would facilitate the process rather than requiring a steering committee for each privatisation. That becomes tricky in terms of implementation.

I submit.

The Temporary Chairlady (Hon. Martha Wangari): Thank you. Before I give an opportunity to the Chairperson, let us have the Member for Seme.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, I was also concerned that if the steering committee implements the privatisation on behalf of the Authority and the privatisation proposal does not come to Parliament, we will seem to be ceding a lot of power to that Authority, which may be abused. How do we take care of that and protect our powers?

The Temporary Chairlady (Hon. Martha Wangari): Before we have the Chairperson, let us indulge the Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Chairlady, let me weigh in on what Hon. Nyikal has said. The understanding is that Parliament has already approved the privatisation programme. Therefore, when it comes to the day-to-day operations of the Privatisation Authority in determining how to privatise, they do not need to keep coming back to Parliament for each transaction. That is what the Chairperson had indicated.

The Temporary Chairlady (Hon. Martha Wangari): Chairperson, do you have anything useful to add?

Hon. Kuria Kimani (Molo, UDA): The Leader of the Majority Party has summarised it well. I agree with what he has said. To make it clear to Dr. Nyikal, suppose you are privatising Kenya Airways. You need professionals with knowledge of aviation. The same will not apply if you are privatising the Kenyatta National Hospital (KNH) because you will need a different skill set for that particular programme.

The Temporary Chairlady (Hon. Martha Wangari): Well said.

*(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 27 as amended agreed to)

Clause 28

The Temporary Chairlady (Hon. Martha Wangari): Mover.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 28 of the Bill be amended by deleting paragraph (d) and substituting therefore the following new paragraph—

“(d) such other method determined by the Cabinet.”

This amendment is essentially deleting the words “Cabinet Secretary” and replacing them with the word “Cabinet” so that the decision to privatise an institution would have to be made by the Cabinet, and not a single Cabinet Secretary.

(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 28 as amended agreed to)

Clause 29

The Temporary Chairlady (Hon. Martha Wangari): Mover.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 29 of the Bill be amended in subclause (2) by deleting paragraph (1).

Paragraph (1) talks about an evaluation of the entity to be privatised. Clauses 29(2)(a) to (n) provide for evaluation. Therefore, that specific requirement on the evaluation of the entity to be privatised would be redundant and that is why we proposed its deletion.

(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 Temporary Chairlady (Hon. Martha Wangari): Mover.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:
THAT, Clause 30 of the Bill be deleted.

Clause 30 provides for public participation, but we realise for the privatisation programme to be approved by the National Assembly, it would have undergone public participation. Therefore, there is no need to provide that the programme again undergoes public participation. That is the purpose of deletion of that clause.

(Question of the amendment proposed)

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

(Clause 30 deleted)

Clause 31

The Temporary Chairlady (Hon. Martha Wangari): Mover.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, the Bill be amended by deleting Clause 31 and substituting therefor the following new clause—

Approval of
privatization proposal.

31. (1) For each privatisation included in the privatisation programme, the Authority shall make a specific proposal for privatisation to the Cabinet Secretary.

(2) The Cabinet Secretary shall present the privatisation proposal specified in subsection (1) to the Cabinet for approval.

This proposed amendment aims at avoiding risks associated with concentrating the decision making of weighty government matters to a Cabinet Secretary and making it to be a decision of the Cabinet.

(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 31 as amended agreed to)

Clause 32

The Temporary Chairlady (Hon. Martha Wangari): Mover.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 32 of the Bill be amended-

(a) by numbering the existing provision as subclause “1”;

(b) by inserting the following new subclause immediately after the renumbered subclause (1)— “

(2) The method of privatisation specified in Section 28(d) shall be effected in the manner determined by the Cabinet.”

The import of the amendment is the same as the other clause that some important decisions need to be made by the Cabinet not just a Cabinet Secretary.

(Question of the amendment proposed)

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

(Clause 32 as amended agreed to)

Clause 33

The Temporary Chairlady (Hon. Martha Wangari): Mover.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 33 of the Bill be amended in subclause (1) by inserting the words “business and assets” immediately after the words “shall undertake a”.

This amendment seeks to bring clarity to Clause 33(1) of the Bill. The use of valuation in a stand-alone form may create ambiguity.

(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 Temporary Chairlady (Hon. Martha Wangari): Mover.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 35 of the Bill be amended-

(a) in the opening statement by deleting the words “A state corporation” and substituting therefor the words “A public entity”;

(b) in paragraph (b) by inserting the words “or procure any assets” immediately after the words “incur any liabilities”

This amendment has two sections (a) and (b). Part (a) is a clean-up replacing the words “state corporation” with “public entity” as contained in the rest of the Bill and (b) is about inserting the words “or procure any assets” after the word “incur any liabilities” because an institution is expected to have both assets and liabilities.

(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)*

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

(Clause 35 as amended agreed to)

Clause 36

The Temporary Chairlady (Hon. Martha Wangari): Mover.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, the Bill be amended by deleting Clause 36 and substituting therefor the following new clause:

Control of investments 36. A public entity undergoing privatisation shall not undertake any new capital investment or disposal, other than those under ordinary course, had been approved prior to the entry into the privatisation programme, or are critical to business continuity, unless approved by the Cabinet and ratified by the National Assembly.

(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

The Temporary Chairlady (Hon. Martha Wangari): Mover.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 37 of the Bill be amended by deleting the words “The National Government or”.

This is a clean-up to have a uniform name from ‘national government entities’ to ‘public entity’

(Question of the amendment proposed)

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

(Clause 37 as amended agreed to)

Clause 38

The Temporary Chairlady (Hon. Martha Wangari): Mover.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 38 of the Bill be amended by inserting the following new paragraph immediately after paragraph (a):

“(aa) continue to operate in its ordinary course of business without prejudice to the Government or potential purchaser.”

This is a protection of the entities being privatised. It is meant to provide additional requirements that they need to operate normally as they were before they got into the privatisation programme. This will make sure that we protect these entities from abuse as usually happens when there is a privatisation programme being mooted.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. Martha Wangari): Leader of the Majority Party.

Hon. Kimani Ichung’wah (Kikuyu, UDA): Hon. Temporary Chair, allow me to support this particular amendment and the amendment to Clause 36. In the past, when State enterprises were earmarked for privatisation, either there was a rush to strip them of assets and dispose of them at a loss or, at times, managers of the entities became very careless in their management. By the time enterprises are privatised, the Government has lost because the entities will have lost value. People become lethargic in managing entities thus losing revenue and end up becoming non-profitable. In the past, this has been a scheme by corrupt cartels in the country. Whenever they knew a State entity was bound to be privatised, they would completely run it down and organise to purchase it at a very low value. Immediately after they purchase it, they get new management, and they immediately become very profitable to the benefit of the private investors and at the expense of the public. I must commend the Chairman of the Committee for ensuring that we use this Bill to protect such entities from either erosion of assets or revenue streams and to ensure that the Government gets real market value of the entities it intends to privatise.

The Temporary Chairlady (Hon. Martha Wangari): Member for Seme.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chair, whereas I support this principle, considering we had passed earlier that we will not take new investments, the Authority will have to get into a lot of internal management due to privatisation. Have we thought about how that can be done? This provision may come in regulations. It is something that needs to be considered ahead of time.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Makali Mulu.

(Hon. (Dr) Makali Mulu adjusted his microphone)

Hon. (Dr) Makali Mulu (Kitui Central, WDM): This thing is dead.

The Temporary Chairlady (Hon. Martha Wangari): Keep moving.

(Laughter)

Hon. (Dr) Makali Mulu (Kitui Central, WDM): Thank you, Hon. Temporary Chairlady. I also support this amendment. Even as I support, it is important to thank this Committee for how they have mainstreamed serious safeguards to this Bill. When you look at what has been done here, it is commendable that we are serious about protecting public entities. I support.

The Temporary Chairlady (Hon. Martha Wangari): Thank you. Hon. Chairman.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, the matter raised by my senior there is quite crucial. Remember, this is not necessarily a responsibility that will be bestowed on the Authority. Because once a public entity has been put into the privatisation programme, and this becomes an Act of Parliament, then the management of that particular public entity would be required to follow this law. Therefore, any actions they may take would

be taken on by the legal recourse, for example, by the Auditor General, Directorate of Criminal Investigations (DCI), or all the other entities that ensure that the laws of this land are followed to the letter.

The Temporary Chairlady (Hon. Martha Wangari): Thank you, Hon. Chairman.

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

(Clause 38 as amended agreed to)

(Clauses 39, 40, 41, 42 and 43 agreed to)

Clause 44

The Temporary Chairlady (Hon. Martha Wangari): Mover.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, the Bill be amended by deleting clause 44 and substituting therefor the following new clause—

Proceeds from the sale of a public entity's shareholding.	44. Any proceeds from the sale of a public entity's shareholding shall be deposited in a special interest-bearing account established for that public entity in order to protect the erosion of the balance sheet of the public entity.
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This is a deletion of this clause, and I want to take my time on this one because it is very important. It says that any proceeds from the sale of a public entity's shareholding shall be deposited in a special interest account established for that public entity to protect the erosion of the balance sheet of that particular public entity.

Hon. Temporary Chairlady, the accounting of this transaction would have meant that that institution could easily find itself reverting to being a public entity. A key point is what, for example, you have seen with Telkom Kenya, where now it has more or less been bought back, and there is not any legal provision that allows a private entity to go back to being a public entity. This proposal is, therefore, the deletion of that clause that was purporting to protect the erosion of the balance sheet of these public entities under the privatisation programme.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. Martha Wangari): I see some interest. Member for Thika Town Constituency.

Hon. Alice Ng'ang'a (Thika Town, UDA): Thank you, Hon. Temporary Chairlady. The question I am asking is: for how long shall it be deposited in a special interest-bearing account?

The Temporary Chairlady (Hon. Martha Wangari): Let us have Hon. Justice Kemei before the Chairman responds.

Hon. Justice Kemei (Sigowet/Soin, UDA): Thank you, Hon. Temporary Chairlady. I would like to support the amendment as proposed by the Chairman. If you remember, we were discussing public enterprises being leased out today. We do not know whether, after 20 years, we would like those enterprises to revert to the Government. If that was the case, those institutions must have some money to keep the balance sheet.

I support. Thank you.

The Temporary Chairlady (Hon. Martha Wangari): Hon. David Bowen.

Hon. Kangogo Bowen (Marakwet East, UDA): Hon. Temporary Chair, as I support the amendment, I want to understand what a special deposit fund is. Where is this? When he says it will be deposited in a special account, is it in a special bank? Is it in the Central Bank? Where is this special place?

The Temporary Chairlady (Hon. Martha Wangari): Hon. Chair, I hope you are taking note. Member for Endebess, Hon. (Dr) Robert Pukose.

Hon. (Dr) Robert Pukose (Endebess, UDA): Thank you, Hon. Temporary Chairlady. I want to support this amendment. We have seen many public entities being wound up, but we have not understood how they have been utilised. They have ended up in people's pockets. By depositing it in a special interest-bearing account, this account can be audited, and we can establish the amount of money that came from the sales and how it can be spent moving forward. If you want to re-invest it in something else, then it is obvious that it is an account that can easily be audited and understood.

I support.

The Temporary Chairlady (Hon. Martha Wangari): Member for Kitui Rural.

Hon. David Mwalika (Kitui Rural, WDM): Hon. Temporary Chair, Clause 44(2) answers all the questions the Members raise.

I support.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Chair, please respond to some of the issues being raised.

Hon. Kuria Kimani (Molo, UDA): The Committee took a lot of time to deliberate on this matter before we came to this conclusion. To take Members through, Clause 44 has two sub-sections. Clause 1 reads as follows as per the Order Paper:

“Any proceeds from the sale of a public entity's shareholding shall be deposited in a special interest-bearing account established for the public entity in order to protect the erosion of the balance sheet of the public entity.”

This protects the proceeds from the sale of a public entity. We are talking about billions of shillings benefiting the bank without necessarily getting interest. That is why we are putting this requirement that it will have to be an interest-bearing account. In the original Bill, Clause 44 had another clause that read:

“Subject to the approval of the Cabinet Secretary, the proceeds under Subsection (1) may be –

(a) used to liquidate the debts of the State corporation;

(b) used to pay the costs of financial organisation in restructuring of the State corporation;

(c) used to pay for capital investments by the State corporation;

(d) used to defray the cost incurred by the Authority in the privatisation, which payment shall not exceed five per cent per annum...”

This proposal is deleting that subsection because this original Bill would have meant we have, for example, sold off Kenya Airways, but we have given the Authority permission to use the proceeds of that sale to pay consultants and all manner of expenses, as is in the original Bill. This would have meant that no money would go to the Consolidated Fund Services account because knowing how these officers would operate, they would spend all the proceeds of that privatisation.

The Temporary Chairlady (Hon. Martha Wangari): Member for Emuhaya.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you. With that explanation from the Chair, it is quite clear, and I support.

One of the reasons we even want to privatise some of these institutions is to get money and save on our balance of payments. Therefore, in the interest of what he has stated in Clause

2, which we are deleting, I support this fully so that that money can be secured for the Consolidated Fund Services.

Thank you.

The Temporary Chairlady (Hon. Martha Wangari): Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Chairlady. I support and just wanted to add to what the Chairman of the Departmental Committee on Finance and Planning is saying.

Indeed, the Committee is right. The moment you privatise a state-owned entity and sell off your shares, it no longer belongs to the public.

If you were to use proceeds of what you have received from a private investor who has bought off your shares to settle debts of that entity, that is now a private entity; it means you are either re-investing public money into a private entity and reversing the privatisation or you are simply using public money to pay private debts. That is state capture. Therefore, the Committee is on the spot, and I support the deletion of this particular clause. The drafter of this Bill must have been a functionary of the past regime's state capture. I must thank the Committee for deleting that provision.

The Temporary Chairlady (Hon. Martha Wangari): Member for Funyula Constituency.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Temporary Chairlady. When I look at the Bill, it is signed by Hon. Kimani Ichung'wah, Leader of the Majority Party, so I imagine he is part of the functionary state capture.

Allow me to prosecute my amendment.

Hon. Kimani Ichung'wah (Kikuyu, UDA): On a point of order, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. Martha Wangari) Hon. Wilberforce Oundo, take a minute. Yes, Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Chairlady. Hon. Wilberforce Oundo must apologise because he knows the Leader of the Majority Party signs Government Bills, not Kimani Ichung'wah, Member for Kikuyu Constituency. Therefore, I am not the drafter of this Bill. That is why I said whoever drafted it must have been a functionary of the previous regime's state capture. Hon. Wilberforce Oundo must apologise and withdraw that statement for linking me to the element of state capture when he knows I have been at the forefront of fighting cartels he was supporting.

(Laughter)

The Temporary Chairlady (Hon. Martha Wangari): Hon. Members, we are in the Committee of the whole House where you make amendments. I am sure you cannot amend the person who signed.

Member for Funyula, take two minutes.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Temporary Chairlady. I want to take the Chairperson back and hope he is listening carefully. I agree it is in order to delete Clause 44, but we are not curing the problem intended to be cured. Let us look at the wording of the amendment. It reads: "Any proceeds from the sale of a public entity's shareholding shall be deposited in a special interest-bearing account established for that public entity in order to protect the erosion of the balance sheet of the public entity."

The Government has divested from the company and has no fiducial responsibility. So, why are we putting money in an interest-bearing account to protect the erosion of the balance sheet of the public entity? Unless we are saying whatever shares they will be left with, if it is partial divestiture, they are only responsible for their share of the debt in the balance sheet. What

are we trying to do here? Are we trying to divest and then put a soft landing so that you can come back to the public in case things do not work? The Chairperson and the guys who sat need to explain clearly. I mean simple...

The Temporary Chairlady (Hon. Martha Wangari): You have made your point, and I hope the Chairperson is listening. I can see the Member for Thika Constituency is still not satisfied because the question she asked has not been responded to. Hold on, Hon. Alice Ng'ang'a

Hon. Alice Ng'ang'a (Thika Town, UDA): I want to add...

The Temporary Chairlady (Hon. Martha Wangari): No, hold on, let me finish. I will give you a minute. Hon. Chairperson, if you read the original Bill, you have already deleted part (2), which was supposed to cure. So, please respond to new clause 44 giving attention to the Order Paper. Member for Thika.

Hon. Alice Ng'ang'a (Thika Town, UDA): Thank you, Hon. Temporary Chairlady. While we are on it, I am asking which bank is this? This is because we have seen private banks where money has been deposited in fixed accounts and one day, we wake up in the morning, and the bank is no more. So, how will we protect the proceeds of privatisation?

The Temporary Chairlady (Hon. Martha Wangari): Kindly respond, Hon. Chairperson.

Hon. Kuria Kimani (Molo, UDA): Thank you, Hon. Temporary Chairlady. I want to thank Members for their contributions. For the comfort of my good friend, the Member for Thika, Clause 64 provides that the Cabinet Secretary will make regulations that will now operationalise this Act of Parliament. It will not be possible to capture everything in an Act of Parliament. We do regulations after that through the Statutory Instruments Act, so that would capture the time aspect. However, considering the debate this proposed amendment has elicited, I will consider an amendment to this clause to have the duration of time that the money will stay in the special bearing account so that proceeds of privatisation do not stay in a private bank for so long without being accessed by Government for other expenditures through the Consolidated Fund Services.

Having said that, Member for Funyula, Dr. Oundo, if I may read the same words: "The special interest-bearing account established..." It would have been established for that particular purpose or privatisation. It is not necessarily an account of that particular entity. It has been established for privatisation.

Allow me to move a further amendment to this entity to read as follows: "Any proceeds from the sale of a public entity's shareholding shall be deposited in a special interest-bearing account established for that public entity to protect the erosion of the balance sheet of the public entity." The same would be credited to the Consolidated Fund. We have said three months after the proceeds have been received.

The Temporary Chairlady (Hon. Martha Wangari): I think that has been made clear. Hon. Chairman, please move the further amendment again for the benefit of Members.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move a further amendment to Clause 4:

THAT, any proceeds from the sale of a public entity's shareholding shall be deposited in a special interest-bearing account established for that public entity's privatisation in order to protect the erosion of the balance sheet of the public entity. The proceeds of this privatisation shall be credited to the Consolidated Fund within 90 days.

(Question of the further 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 44 as amended agreed to)

(Clause 45 agreed to)

Clause 46

The Temporary Chairlady (Hon. Martha Wangari): Mover.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, clause 46 of the Bill be amended in sub-clause (1) by deleting the expression "46" and substituting therefor the expression "45".

This amendment is seeking to correct a reference error where Clause 46(1) was meant to refer to the previous Clause 45 and not Clause 46.

(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 46 as amended agreed to)

(Clauses 47,48, 49, 50, 51, 52 and 53 agreed to)

Clause 54

The Temporary Chairlady (Hon. Martha Wangari): Mover

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady I beg to move:

THAT, Clause 54 of the Bill be amended in paragraph (a) by deleting the words "allocated by Parliament" and substituting therefor the words "appropriated by the National Assembly".

This is to align the Bill with Article 94(b) of the Constitution which provides that the National Assembly shall appropriate funds for expenditure by the National Government and other State organs. The key words are "National Assembly".

(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 54 as amended agreed to)

(Clauses 55, 56, 57, 58, 59 and 60 agreed to)

Clause 61

The Temporary Chairlady (Hon. Martha Wangari): Mover.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady I beg to move:

THAT, Clause 61 of the Bill be amended by inserting the following new subclause immediately after subclause (3)—

“(4) Any person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both”.

This is also very material. I would like to report to this House that Clause 61 in the original Bill provides the following:

“61. (1) In the implementation of this Act, a public entity to which this Act applies shall provide the Authority with such information as may be necessary to effectively implement the privatisation.”

However, it does not provide for what happens if officers in those entities fail to provide the said information. The clause now provides that any person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding Ksh500,000 or to imprisonment for a term not exceeding six months or to both. This ensures that officers who are already running these institutions do not keep away material information, for example, not declaring all their assets in order to take those assets for themselves as has happened before in institutions that have been privatised.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. Martha Wangari): Hon. Wilberforce Oundo.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Hon. Temporary Chairlady, this is a timely and necessary amendment to the Bill. It touches on issues I had raised earlier in the day, although there was not enough time to ventilate or review them. Clause 61(1) talks about a public entity. An office and a board must be responsible for providing that information to any public entity. In the event of contravention, who will be punished or held liable? Is it the Chairperson of the Board? Is it the Managing Director or the Chief Executive Officer? Is it the company secretary, messenger, or the chief financial officer? Who will specifically be held responsible? Holding the entire entity responsible means holding everyone responsible, including the sweeper, cleaner, and tea-girl. If we had had a chance to review the Bill, we would have been very specific on which officer of the public entity is charged with the responsibility of providing information.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Makali Mulu.

Hon. (Dr) Makali Mulu (Kitui Central, WDM): Thank you, Hon. Temporary Chairlady. The clause talks about any person, meaning somebody must be responsible. I am concerned about the kinds of sanctions we are putting in place. Some of these assets are worth billions of shillings. If one had tried to conceal information about assets worth billions, we would be demanding too little from the person if we were to charge them Ksh500,000. The other thing is about being charged in a court of law and facing an imprisonment term of not more than six months. How I wish the Chair could propose some amendments to make it a more serious offence; possibly, a fine of Ksh10 million and a jail term of at least five years.

The Temporary Chairlady (Hon. Martha Wangari): Member for Sigowet/Soin, Hon. Justice Kemei. Are you willing to speak on this? I see your hand.

Hon. Justice Kemei (Sigowet/Soin, UDA): Yes. Thank you, Hon. Temporary Chairlady. I want to support the Chair of the Committee on the aspect of providing sanctions to those who abdicate their responsibilities. Probably, I would want to imagine that the Chair of the Committee would make the accounting officer the person responsible in the event duty is abdicated.

The Temporary Chairlady (Hon. Martha Wangari): The Member for Thika Town.

Hon. Alice Ng'ang'a (Thika Town, UDA): Thank you, Hon. Temporary Chairlady. What I would say on this bit is that we do not know what crime a person has committed. People who have committed minor mistakes cannot be treated the same way as those who have committed bigger mistakes like, say, stealing. Why do we not go according to percentages of what one has done?

The Temporary Chairlady (Hon. Martha Wangari): Okay, Hon. Members. Let us keep it short. Use your cards. Member of Maragwa.

Hon. Mary Njoroge (Maragwa, UDA): Thank you, Hon. Temporary Chairlady. We should be strict whenever it comes to convictions. Whoever will be in charge should stick to the law and operate within his or her mandate. Therefore, there is no small or big mistake. The Chair of the Committee can move an amendment so that we move away from fines of between Ksh500,000 and Ksh600,000. It will make the law stricter so that everyone knows the consequences of going against the law.

The Temporary Chairlady (Hon. Martha Wangari): The Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): I concur with the Chair of the Committee and sentiments of Members. If you read the wording in the Bill, it states that any person who contravenes this section commits an offence and is liable, upon conviction, to a fine of not exceeding Ksh500,000 and to imprisonment for a term not exceeding six months. The keywords are 'not exceeding'. This is the way proper legislation should be done. I agree that the penalty should be as high as possible so that those who are guilty of what would constitute a bigger offence are penalised more. We then leave it to the courts to decide and determine the amount of information that you did not disclose and whether or not it is material as to constitute being penalised to the tune of Ksh5,000,000.

I wanted to propose a further amendment to the words 'not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.'

The Temporary Chairlady (Hon. Martha Wangari): Leader of the Majority Party, if I read "not exceeding", it means this is a maximum. It is not a minimum.

Hon. Kimani Ichung'wah (Kikuyu, UDA): That is a maximum. You leave it to the discretion of a judge.

The Temporary Chairlady (Hon. Martha Wangari): Nobody can be fined more than Ksh500,000. That is what the law is saying from the way it is worded.

Hon. Kimani Ichung'wah (Kikuyu, UDA): That is why I am proposing a further amendment to say "not exceeding Ksh5,000,000" in place of Ksh500,000. Such that if I fail to disclose an immaterial issue that will not constitute a big loss to the entity, I can be penalised between Ksh200,000 and Ksh500,000. However, for a Chief Executive Officer who fails to disclose a material matter, that one should be fined up to a maximum of Ksh5,000,000 and then you leave it to the judges to use discretion to know who to fine Ksh2,000 or Ksh2,000,000.

So, I was proposing a further amendment with the words "not exceeding Ksh5,000,000 and a jail term not exceeding five years".

The Temporary Chairlady (Hon. Martha Wangari): Let us dispose of the Leader of the Majority Party's proposal which is that the fine should not exceed Ksh5,000,000.

(Loud consultations)

Hon. Members, I know you have different figures but what has been proposed by the Leader of the Majority Party is: ‘not exceeding Ksh5,000,000 and imprisonment not exceeding five years.’ That is what is on the table. The graduated fines as has been proposed by some Members will be taken care of by having a bracket of not more than Ksh5,000,000. Therefore, some can be charged Ksh500,000 and others Ksh5,000,000, if I got it right.

Hon. Chairman, is your amendment contrary to what the Leader of the Majority Party has moved?

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I agree with the proposal by the Leader of the Majority Party that this fine be set at not exceeding Ksh5,000,000 and an imprisonment term not exceeding five years. I know there is temptation by most Members to say that we should even have the minimum. It is just that in legal practice, you do not set the minimum. You only set the maximum.

The Temporary Chairlady (Hon. Martha Wangari): Leader of the Majority Party, kindly move the amendment properly on the actual text.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Chairlady, I beg to move: THAT, the Bill be further amended in Clause 61 by deleting the words ‘five hundred thousand shillings’ and ‘six months’ and substituting therefor the words ‘five million shillings’ and ‘five years’ respectively.

(Question of the further 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 61 as amended agreed to)

(Clauses 62, 63, 64, 65, 66 and 67 agreed to)

Clause 68

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move: THAT, Clause 68 of the Bill be amended by deleting subclause (2) and substituting therefor the following new subclause—

“(2) Notwithstanding subsection (1), any ongoing privatisation under the repealed Act shall be determined and finalised in accordance with this Act.”

The Bill provides that any ongoing privatisation under the repealed Act shall be determined and finalised in accordance with this Act. Once this Bill becomes an Act, the current Privatisation Act will be repealed. It was providing that programmes under the current Privatisation Act should be completed within 12 months. The problem with putting a timing to this is that there could arise external factors including judicial proceedings that will render this piece of law redundant.

I beg to move.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. Martha Wangari): Member for Seme.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, whereas I accept and support it, I do not see a very clear distinction between (1) and (2). What is so specific about Clause 68(1) that it cannot fall within the proposal that we have made in Clause 68(2)?

The Temporary Chairlady (Hon. Martha Wangari): Hon. Chairman.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, Clause 68(1) of the Bill says that upon commencement of this Act, privatisation of entities published under Gazette Notice No. 8739 of 14th August 2009 shall lapse. This privatisation is supported by a legal instrument—a Gazette Notice and not an Act of Parliament. This Bill will be implemented by the Privatisation Commission. The two are very different.

Hon. (Dr) James Nyikal (Seme, ODM): It is a specific process. I would like to know what is under this Gazette Notice No. 8739 of 14th August 2009. This looks like a specific issue. We just want to know what it is.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Chairman.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, in very simple terms, these two clauses provide a transition mechanism. For example, on the debate we had earlier on the leasing of the five sugar companies, there was a sessional paper that provided for the leasing of those sugar mills. The legal document that will be used is that sessional paper. That is why even in our resolution in the earlier debate, we had to vacate the resolutions of this House on that sessional paper, so that we could provide the resolutions made today.

It is the same thing that we now have to provide a transitional mechanism for privatisation of those entities that were through that Gazette Notice of 2009, to come through the new Privatisation Act, if this House approves this Bill as amended.

(Hon. (Dr) James Nyikal spoke off the record)

The Temporary Chairlady (Hon. Martha Wangari): Member for Seme, what is it?

Hon. (Dr) James Nyikal (Seme, ODM): There is a difference. Clause 68(1) talks about a specific issue. You can list the entities so that we know them. Do not say that if the privatisation of those entities lapses, it will be done under Clause 68(2). I support Clause 68(2) clearly. However, my concern is there is some information that this House is not privy to that is now being resolved under Clause 68 (1). You can list them. You have given the example of the sugar companies. Can we not list them?

The Temporary Chairlady (Hon. Martha Wangari): Hon. Members, let us give Hon. Chairman a moment.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, Clause 68 (1) of the Bill says that upon commencement of this Act, privatisation of entities published under Gazette Notice No. 8739 of 14th August 2009 shall lapse. We are providing a recourse in Clause 68(2) which says, “Notwithstanding subsection (1), any ongoing privatisation under the repealed Act that may be completed within 12 months from the date of commencement of this Act, shall be determined and finalised in accordance with this Act.” Hon. Nyikal, read Clause 68(2) which says “Notwithstanding subsection (1)”. It provides a recourse for what happens when that Gazette Notice lapses in Clause 68(1).

Hon. Kimani Ichung’wah (Kikuyu, UDA): On a point of order, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. Martha Wangari): Leader of the Majority Party.

Hon. Kimani Ichung’wah (Kikuyu, UDA): Hon. Temporary Chairlady, I want Hon. Nyikal to clarify to us if he is tired or he has a problem with English. What is the problem? Hon. Chairman has explained this amendment so well in very simple English. Dr. Nyikal is a Doctor of Medicine.

The Temporary Chairlady (Hon. Martha Wangari): Leader of the Majority Party, in all fairness, if you will have achieved as much as he has at his age, you will know he is doing very well. He is in order to seek clarification.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Dr Nyikal does not have a problem with English, unless he is tired. It is late in the day and he might be tired. I think it is now clear.

(Laughter)

The Temporary Chairlady (Hon. Martha Wangari): Hon. Nyikal, did you get the clarification?

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairlady, we shall not use gimmicks to overcome this point. There is a Gazette Notice No. 8739 of 14th August 2009 that talks about some process and those things are listed. What I am asking is this: What are they? The problem is I have not read that notice and I know many Members here have not read it. They do not know what is in that gazette notice.

(An Hon. Member spoke off the record)

No! I am not going to *Google* because we cannot put something before the House that we do not know.

(Several Members spoke off the record)

Hon. (Dr) James Nyikal (Seme, ODM): No! No! No!

The Temporary Chairlady (Hon. Martha Wangari): Hon. Nyikal, I want us to be on the same page because I am also looking at the Bill. I see that the proposal from the Chair is that he deletes 68(2) altogether and substitutes with a new (2) which is in the Order Paper.

(Technical hitch)

Chair for Finance and National Planning Committee, maybe, explain to Members because if I hear Hon. Nyikal very well, he is saying by this Act coming into force, it means that, that gazette notice lapses. But, part (2) also talks of notwithstanding that lapsing. Anyway, Chair, please, explain to Hon. Nyikal the import of the amendment.

(Several Members spoke off the record)

Hon. Kuria Kimani (Molo, UDA): Okay, let me attempt again, hopefully, with some more success to my senior.

(Laughter)

This Report and that Gazette Notice are available for public record and can be tabled. I would like to give an example of the debate that we just had. There was a sessional paper that set about a leasing model for those sugar companies. We have a Gazette Notice No.8739 that set out the privatisation programme and if you want me to read, that information is available on the website. For example, there is Kenya Electricity Generating Company (KenGen) where Government of Kenya owns 70 per cent; Kenya Pipeline Company (KPC) where the Government owns 100 per cent; Kenya Ports Authority (KPA) where Government owns 100 per cent; KPA Outsourcing Stevedoring Services where Government owns 100 per cent,

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Chemilil Sugar Company, SONY, Nzoia Sugar Company, Miwani Sugar Company, Muhoroni Sugar Company, Kabarnet Hotel, Golf Hotel Limited and all those other entities. All those entities were on the programme of privatisation through the Gazette Notice No. 8739 of 14th August, 2009. This provision is for two things: One, that, the gazette notice shall lapse. The gazette notice lapsing means that the programme as put by that gazette notice would not continue; and, two, providing a recourse that notwithstanding what has been said, then the privatisation programme would now go as per the Act.

(Laughter)

The Temporary Chairlady (Hon. Martha Wangari): Hon. Nyikal is fine. He has got 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)*

(Clause 68 as amended agreed to)

(Clauses 69, 70 and 71 agreed to)

New Clauses 13A and 13B

The Temporary Chairlady (Hon. Martha Wangari): Hon Kimani, move the amendment.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 13-

Delegation by the Board.

13A. The Board may, by resolution either generally or in a particular case, delegate to a subcommittee of the Board or to a member, officer, employee or agent of the Authority, the exercise of any of the powers or performance of any of the functions of the Board.

Co-option of members.

13B. The Board may, by resolution either generally or in particular case, co-opt an additional member with relevant expertise for purposes of performance of any of the functions of the Board.

After consultations, Hon. Temporary Chairlady, we have found that the provisions of new Clause 13B are not necessary and, therefore, I withdraw it.

(New Clause 13B withdrawn)

New Clause 13A enriches the Bill by providing a legal proviso that the Board can form sub-committees when carrying out their responsibility as a Board.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Chairlady (Hon. Martha Wangari): Hon. Makalu Mulu.

Hon. (Dr) Makali Mulu (Kitui Central, WDM): Thank you Hon. Temporary Chairlady. I have concerns with some of the issues listed in this amendment. The only way a board can work, and this is best practice, is through sub-committees. It does not make much sense to delegate the work of a board to a member or an officer. I wish we retain sub-committees of the Board or an agent of that authority and delete the issue of one member or an officer of the Board. That would be the best practice in terms of issues of governance.

I submit.

The Temporary Chairlady (Hon. Martha Wangari): The Leader of Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Chairlady, I feel what Hon. Makalu Mulu is saying. However, if you read well, you will realise that the import of the amendment is that the Board may by resolution, either generally or in a particular case, delegate to a sub-committee of the Board or to a member, officer or employee or agent of the authority, the exercise of any powers or performance of any of the functions of the Board. In normal governance, a Board sits and resolves to delegate a certain task or function to either a sub-committee of the Board or to the CEO. It is because the function will be done through a resolution made. It therefore means that what is being done is being done by the entire Board. It is not like you give a blank cheque to an officer or authority to do things. It is a specific task which must be reported back to that Board because you do it as a sub-committee or as an appendage of the Board. Therefore, I beg that we pass the amendment as it is, as proposed by the Committee.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Wilberforce. Be fast, please.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Hon. Temporary Chairlady, as much as the amendment may look as harmless as the Chair and the Leader of the Majority Party want to put it, that may not be the case. If you look at the First Schedule that deals with operations of the Board, there is already a provision that allows the Board to make resolutions and a decision of the Board shall be by a majority of the members present and voting. In case of any inequality of a vote, there is already a provision for resolutions. I want to go on record that, that particular amendment is a mischievous one. It is for deal-making and deal-fixers. Time will bear me witness.

Thank you, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. Martha Wangari): Chairman, before I propose the Question, do you have something to add?

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, in as much as I share in the interpretation of my colleagues, the wording 'though' on this particular proposal ties it because for that decision to be made by an officer or member of the Board, there has to be a Board resolution. Therefore, that responsibility is still bestowed on the Board of the Privatisation Authority. In that case, the Board would have approved the particular exercise through a resolution. Therefore, I would urge Members that there is no harm in having this amendment. There is no mischief here because the amendment safeguards the authority of the Board. There would have to be a Board resolution.

The Temporary Chairlady (Hon. Martha Wangari): Thank you, Hon. Members.

(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)

(First Schedule agreed to)

Second Schedule

The Temporary Chairlady (Hon. Martha Wangari): Mover.

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, the Second Schedule be amended in paragraph 2—

(a) in subparagraph (4) by inserting the words “technical” immediately after the words “shall constitute a”;

(b) in subparagraph (6) by inserting the words “within seven days after the evaluation” at the end of the subparagraph;

(c) by deleting subparagraph (7) and substituting therefor the following new subparagraphs—

“(7) Upon approval of the evaluation report by the Board, the Managing Director shall—

(a) issue all shortlisted persons with a request for proposal; and

(b) concurrently notify persons not shortlisted of the outcome of the evaluation indicating the reasons thereof.

(7A) The shortlisted persons referred to under subparagraph 7(a) shall fill and submit their proposal within fourteen days of receipt of the request for proposal.

(7B) The request for proposal referred to subparagraph 7(a) shall set out the following—

(a) instructions for the preparation and submission of the proposal;

(b) evidence of qualifications of the persons submitting the proposal;

(c) an explanation of where and when proposals shall be submitted;

(d) a statement of the period during which proposals shall remain valid; and

(e) the procedures and criteria to be used to evaluate and compare the proposals.”

(d) in subparagraph (8) by inserting the words “technical” immediately after the words “shall constitute a”;

(e) in subparagraph (9) by inserting the words “, within thirty days of opening of the proposals,” immediately after the words “paragraph (8) shall”;

(f) in paragraph (11) by inserting the words “, within twenty-one days,” immediately after the words “Managing Director shall”;

(g) in paragraph (12) by inserting the words “, within seven days,” immediately after the word “shall”;

(h) in paragraph (13) by inserting the words “, within seven days,” immediately after the word “the Managing Director shall”.

Hon. Chairlady, this proposed amendment provides for the methods of privatisation and seeks to provide clarity on the paragraphs. Most importantly, it provides timelines with regard to timely submission of various documents. It ensures that this Bill is in line with the Public Procurement and Assets Disposal Act. I will give an example. On evaluation of expression of interest (EoI) to a privatisation programme that has been advertised in the local dailies as per the Public Procurement and Assets Disposal Act, the evaluation is required to be completed within seven days. That way, the people responsible can make timely decisions.

About Paragraph 9, again, upon closure of the period for submission of the request for proposals, the committee constituted under paragraph 8 shall, within 30 days, evaluate the successfully submitted requests in accordance with the set-out criteria. Paragraph 11 states that upon completion of the evaluation, the Managing Director shall again, within 21 days, submit to the Board a detailed report containing a summary of the evaluation. Paragraph 12 specifies that the recommendation of the Board, together with the draft agreements shall, within seven days, be submitted to the Cabinet for approval. Paragraph 13 states that upon approval by the Cabinet Secretary, the Managing Director shall notify the successful tenderer and concurrently notify the unsuccessful tenderers the outcome of the tender indicating the reasons thereof, again, giving a timeline of seven days.

Important decisions of this Republic take years to accomplish such that by the time the Board reaches a decision, even the purpose for which that particular decision was supposed to be made, circumstances, course, and externalities would have changed. This amendment makes sure that the privatisation programme is on time. It ensures that all those involved are given proper timelines in which they need to accomplish all the tasks bestowed on them as per the provisions of this Act.

I beg to move.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. Martha Wangari): I will indulge Hon. (Dr) Makali Mulu.

Hon. (Dr) Makali Mulu (Kitui Central, WDM): This is important, Hon. Temporary Chairlady. While I agree with all the other timelines, the timeline we are providing under (7A) is quite restrictive, where we are allowing successful or shortlisted persons only 14 days to come up with comprehensive technical proposals. How I wish we pushed that to 21 days. That would help in terms of coming up with very good technical proposals. That, to me, is a very short time bearing in mind the kind of assets we would be privatising. Thank you.

The Temporary Chairlady (Hon. Martha Wangari): Hon. Chairman.

Hon. Kuria Kimani (Molo, UDA): Okay. That is a fair contribution. I would like to agree with Hon. (Dr) Makali Mulu that the 14 days may not be enough.

The Temporary Chairlady (Hon. Martha Wangari): Are you moving a further amendment?

Hon. Kuria Kimani (Molo, UDA): Yes. I beg to move a further amendment to subparagraph 7A, that the days be increased from 14 to 21.

(Question of the further 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)*

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

(Second Schedule as amended agreed to)

(Third Schedule agreed to)

Clause 2

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Chairlady. I beg to move:

THAT, clause 2 of the Bill be amended by deleting the definition “privatisation” and substituting therefor the following new definition—

“privatisation” means a transaction that results in a transfer, other than to a public entity, of the assets of a public entity, including the shares in a public entity.”

Hon. Temporary Chairlady, I beg to move a further amendment to read thus:

“privatisation” means a transaction that results in a transfer, other than to a public entity, of the assets and or liabilities of a public entity, including the shares in a public entity.”

By improving the definition of the word “privatisation”, it allows public entities to off-load their liabilities or their assets in a privatisation programme.

(Question of the further 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)

(Title agreed to)

(Clause 1 agreed to)

Leader of the Majority Party, you are the Mover of the Bill. Kindly, move the reporting.

Hon. Kimani Ichung’wah (Kikuyu, ODM): Hon. Temporary Chairlady, I beg to move that the Committee do report to the House its consideration of the Privatisation Bill, National Assembly Bill No.22 of 2023 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

IN THE HOUSE

[The Temporary Speaker (Hon. Omboko Milemba) in the Chair]

MOTIONTHE PRIVATISATION BILL
(NATIONAL ASSEMBLY BILL NO.22 OF 2023)

The Temporary Speaker (Hon. Omboko Milemba): Very well. Hon. Temporary Chairlady, proceed.

Hon. Martha Wangari (Gilgil, UDA): Hon. Temporary Speaker, I beg to report that the Committee of the whole House has considered the Privatisation Bill, National Assembly Bill No.22 of 2023, and approved the same with amendments.

The Temporary Speaker (Hon. Omboko Milemba): Mover.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Speaker, I beg to move that the House do agree with the Committee in the said Report. I also request the Member for Mwea Constituency, Hon. Mary Maingi, to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Mary Maingi (Mwea, UDA): Hon. Temporary Speaker, I second.

(Question proposed)

(Question put and agreed to)

BILL*Third Reading*THE PRIVATISATION BILL
(National Assembly Bill No.22 of 2023)

The Temporary Speaker (Hon. Omboko Milemba): Mover.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Speaker, I beg to move:

THAT, the Privatisation Bill (National Assembly Bill No.22 of 2023) be now read a Third Time. I also request Hon. Betty Njeri Maina, Member for Murang'a, to second.

Hon. Betty Maina (Murang'a County, UDA): I second.

(Question proposed)

The Temporary Speaker (Hon. Omboko Milemba): I have confirmed that we have the numbers.

(Question put and agreed to)

*(The Bill was accordingly read
the Third Time and passed)*

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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[The Temporary Speaker (Hon. Omboko Milemba) left the Chair]

IN THE COMMITTEE

[The Temporary Chairman (Hon. David Ochieng') in the Chair]

THE SUGAR BILL
(National Assembly Bill No.34 of 2022)

The Temporary Chairman (Hon. David Ochieng'): Hon. Members, resume your seats. Order, Hon. Members! As you are aware, we are now moving to the Committee of the whole House to consider the Sugar Bill. I wish to request Hon. Wangwe, the Chairperson of the Departmental Committee on Agriculture and Livestock, Hon. Innocent Mugabe, Hon. Shakeel Shabbir and Hon. Caroli Omondi to be in the House so that when your amendments are called, you are able to prosecute them. I demand any Member who has an amendment on this Bill to be on the alert. It is so that when we reach you, we are able to execute the duty thereat without much ado.

(Clause 3 agreed to)

Clause 4

The Temporary Chairman (Hon. David Ochieng'): Chairperson of the Departmental Committee on Agriculture and Livestock, Hon. Mutunga.

Hon. (Dr) John K. Mutunga (Tigania West, UDA): Hon. Temporary Chairman...

The Temporary Chairman (Hon. David Ochieng'): Go ahead.

Hon. (Dr) John K. Mutunga (Tigania West, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 4 of the Bill be amended—

(a) in sub-clause (1), by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) co-ordinate the activities of value chain actors within the industry; and”

(b) in sub-clause (2) —

(i) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) establish linkages with other government agencies and research institutions to enhance quality assurance and research and facilitate flow of research findings to the interested parties.”

(ii) by deleting paragraph (d) and substituting therefor the following new paragraph—

“(d) monitor and regulate the domestic market with a view to identifying any distortions in the sugar market and advise the Government and interested parties on any corrective measures to be taken.”

(iii) by inserting the following new paragraph immediately after paragraph (d)—

“(da) advise the national and county governments on agricultural levies for purposes of planning, enhancing harmony and promotion of equity in the sugar industry.”

- (iv) by deleting paragraph (e);
- (v) by deleting paragraph (f) and substituting therefor the following new paragraph—
 - “(f) facilitate the sale, import and export of sugar and sugar products.”
- (vi) by deleting the paragraph (i) and substituting therefor the following new paragraph—
 - “(i) in collaboration with county governments, implement an equitable mechanism for the pricing of sugar crop and appropriation of proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines.”
- (vii) by deleting paragraph (j) and substituting therefor the following new paragraph—
 - “(j) collaborate with national and international trade bodies on sugar related matters.”
- (viii) by deleting paragraph (m) and substituting therefor the following new paragraph—
 - (ix) “(m) register and license sugar and jaggery mills, exporters, importers and dealers.”
- (x) by deleting paragraph (o) and substituting therefor the following new paragraph—
 - “(o) promote and advise on strategies for value addition and product diversification in the sugar industry.”
- (xi) by deleting paragraph (p) and substituting therefor the following new paragraph—
 - “(p) in consultation with the county governments and other stakeholders, formulate a strategic plan for the sugar sub-sector at least once every five years.”
- (xii) by deleting paragraph (q) and substituting therefor the following new paragraph—
 - “(q) in consultation with the county governments, formulate guidelines on an efficient, safe and economical transportation of sugar, sugar crop and disposal of unutilized by-products.”
- (xiii) by deleting paragraph (r) and substituting therefor the following new paragraph—
 - “(r) gather and disseminate market information on regional and global supply chain dynamics for the benefit of stakeholders.”
- (xiv) by deleting paragraph (u) and substituting therefor the following new paragraph—
 - “(u) perform such functions as may be conferred on it by this Act or any other written law”.

The import of this is that we need to cater for the value chain actors within the sugar industry.

(Loud consultations)

Hon. Temporary Chairman, I have said that....

The Temporary Chairman (Hon. David Ochieng’): Just proceed. I am with you.

Hon. (Dr) John K. Mutunga (Tigania West, UDA): I have said Clause 4 of the Bill needs to be amended—

(a) in sub-clause (1), by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) co-ordinate the activities of value chain actors within the industry;

In this case, we are trying to cater for all the value chain actors within the sugar industry.

(b) in sub-clause (2) —

(i) by deleting paragraph (c) and substituting therefor the following new paragraph—

“(c) establish linkages with other government agencies and research institutions to enhance quality assurance and research and facilitate flow of research findings to the interested parties.”

The Temporary Chairman (Hon. David Ochieng’): Hon. Mutunga, just move the amendment as per the Order Paper and do a one-minute explanation. That is all we need.

Hon. (Dr) John K. Mutunga (Tigania West, UDA): Hon. Temporary Chairman, I propose to amend Clause 4.

First of all, we want to involve all the value chain actors. Secondly, we want to recognise other government bodies, including the county governments. We also intend to ensure that the Board regulates the sugar market besides monitoring it. We want to avoid double taxation by the national Government and county governments. We also want to ensure that the Sugar Arbitration Tribunal does its work well. We want to ensure that we facilitate the importation of sugar and sugar products.

We are proposing the amendment in order to include the county governments because waste disposal is their function. We also intend to cause further amendments in order to broaden the scope of the Board to have the mandate of registering and licensing all persons and businesses in the sugar industry.

The Temporary Chairman (Hon. David Ochieng’): Hon. Mutunga, I hate to disrupt you. What you are reading is in the Order Paper already.

Hon. (Dr) John K. Mutunga (Tigania West, UDA): Yes.

The Temporary Chairman (Hon. David Ochieng’): Just explain it in a minute and then you proceed to the next one, please.

Hon. (Dr) John K. Mutunga (Tigania West, UDA): Hon. Temporary Chairman, I beg to move that Clause 4 be amended.

The Temporary Chairman (Hon. David Ochieng’): Thank you.

Hon. (Dr) John K. Mutunga (Tigania West, UDA): I have given the reasons.

The Temporary Chairman (Hon. David Ochieng’): Thank you.

(Question of the amendment proposed)

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Hon. Temporary Chairman, just for guidance, neatness and orderly conduct of this business, Clause 4 has several sub-clauses. Do we take it that what he has moved covers everything? If we have any comment to make, can we cherry-pick any particular one and make a comment on it? We need that clear guidance.

The Temporary Chairman (Hon. David Ochieng’): Hon. Oundo, I agree with you. The Member has moved the amendment as per the Order Paper. So, it covers everything that he proposes to amend in Clause 4. You can comment on any.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): I hope Hon. Chairman is listening keenly and he will not be distracted. I just want to draw his attention to the amendment in Clause 4 (b)(vi).

THAT, Clause 4 of the Bill be amended—

(b) in sub-clause (2) —

(vi) by deleting the paragraph (i) and substituting therefor the following new paragraph—

“(i) in collaboration with county governments, implement an equitable mechanism for the pricing of sugar crop and appropriation of proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines.”

*(Hon. (Dr) John K. Mutunga consulted
the Clerk-at-the-Table)*

I hope Hon. Chairman is listening so that he can give proper guidance. Hon. Temporary Chairman, let him consult and then I proceed because we need his input.

Hon. Temporary Chairman, can I now proceed?

The Temporary Chairman (Hon. David Ochieng’): Go ahead.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): I am looking at sub-clause 2(vi) which states thus:

(vi) by deleting the paragraph (i) and substituting therefor the following new paragraph—

(i) in collaboration with county governments, implement an equitable mechanism for the pricing of sugar crop and appropriation of proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the guidelines.

It is about deleting Paragraph (i) and substituting therefore the new paragraph.

The import and the long-term effect of that particular amendment is that after the Sugar-cane Pricing Committee as provided for in the Third Schedule, Part III has made its own decision or determination, the Board is obligated to, again, go and consult the county governments for any further action after that. The question which he needs to explain is this: After the Sugar-cane Pricing Committee has set the pricing, will the Board be required to go and consult the county governments before they make the final decision? That is what he needs to clarify so that it is very clear to all the farmers.

The Temporary Chairman (Hon. David Ochieng’): Thank you. Let us have Hon. (Dr) Mutunga.

Hon. (Dr) John K. Mutunga (Tigania West, UDA): The amendment we are bringing seeks to establish collaboration with the county governments so that the Sugar-cane Pricing Committee does not work in isolation.

The Temporary Chairman (Hon. David Ochieng’): His question is at what point in time do you consult the county government?

Hon. (Dr) John K. Mutunga (Tigania West, UDA): The Sugar-cane Pricing Committee has the participation of the county government. Some of the members of the Committee have been incorporated by the county government right at the beginning.

The Temporary Chairman (Hon. David Ochieng’): Hon. Oundo, we need to clear this first.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Probably, his could be a case of semantics. Of course, I am pre-empting the debate but it is already in the Bill and probably there is no amendment at the moment. The Committee comprises several members and one of them is one representative from the county government nominated by the Council of Governors. The question I am asking and which I hope you will get an answer is as follows: Does that amount to collaboration or after the nominee of the Council of Governors has participated in setting the price, the Board has to go again and consult the county governments?

Is it collectively? Is it individual county government or what is it we are trying to do here? Then, if that is the case, what is the role of this nominee of the county government?

The Temporary Chairman (Hon. David Ochieng’): Thank you, Hon. Oundo. I am sure Hon. (Dr.) Mutunga has got your point.

Hon. (Dr) John K. Mutunga (Tigania West, UDA): Hon. Temporary Chairman, before the county government nominates a participant into the Sugar-cane Pricing Committee, they have to agree on the extent to which they will be making decisions on what is supposed to be discussed.

The Temporary Chairman (Hon. David Ochieng’): Members, we have to decide this either way. Hon. Oundo, I am sure you have heard what he has said.

*(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)*

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

There is an amendment by Hon. Mugabe, if he is in the House. Hon. Innocent Mugabe, move Second Reading.

Hon. Innocent Mugabe (Likuyani, ODM): Thank you, Hon. Temporary Chairman, I beg to move:

THAT, Clause 4 of the Bill be amended by introducing a new paragraph (fa)—

(fa) import sugar on behalf of the government whenever there is sugar shortage in the country;

Hon. Temporary Chairman, this is because one of the ills facing the sub-sector is importation of sugar by private companies and millers. When millers are allowed to import, they do not focus on cane development because whenever there is a shortage, they will always have a window to import sugar. If we leave sugar importation to millers, we will be killing cane development and the farmer will suffer. Again, if we leave it open to private individuals to import sugar, cartels will fight sugar factories so that they do not produce and create a shortage that will open the window for importation. Sometimes, they even import over and above the required sugar shortage.

The Temporary Chairman (Hon. David Ochieng’): Thank you Hon. Member. Before I give a chance to anybody, we need to follow the procedure.

(Question of the amendment proposed)

I give this chance to the Mover of the Bill, Hon. Wangwe.

Hon. Emmanuel Wangwe (Navakholo, ODM): Thank you, Hon. Temporary Chairman. I beg to oppose that amendment as a matter of principle. The Kenya Sugar Board, according to the Bill, is supposed to be a regulator. They cannot regulate and be a player at the same time. Therefore, I oppose the amendment, Hon. Temporary Chairman.

The Temporary Chairman (Hon. David Ochieng’): Thank you. Hon. Oundo, take one minute please. Do not debate.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Hon. Temporary Chairman, I will for sure not debate. With tremendous respect, sometimes, it is not good to oppose a colleague’s

amendment. I think this is dangerous. The Government should not be in business. Let that remain as it is.

The Temporary Chairman (Hon. David Ochieng’): Hon. Omboko.

Hon. Omboko Milemba (Emuhaya, ANC): The amendment is very good. What is happening currently is that even the new players that we bring on will just compete to import. Unfortunately, it is now the Government that has to do it. I wish the amendment would assign that task to some other player and not the millers.

The Temporary Chairman (Hon. David Ochieng’): Thank you Hon. Members.

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

There is another amendment to Clause 4 by Hon. Shakeel Shabbir and it will be moved by Hon. Nyikal on his behalf based on the letter that I have on my table. A further amendment to Clause 4.

Hon. (Dr) James Nyikal (Seme, ODM): Hon. Temporary Chairman, I beg to move:

THAT, Clause 4 of the Bill be amended in subclause (2) by inserting the following new paragraph immediately after paragraph (s)-

“(sa) ensure that there is adequate public participation and consultation with growers in its decision-making affecting the sugar industry and its stakeholders.”

The purpose of the amendment is to facilitate public participation in future.

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

(Clause 4 as amended agreed to)

Clause 5

The Temporary Chairman (Hon. David Ochieng’): The Chair of the Departmental Committee on Agriculture and Livestock.

Hon. (Dr) John K Mutunga (Tigania West, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 5 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefore the following new paragraph—

“(a) issue certificates and inspect sugar crop nurseries in collaboration with the Kenya Sugar Research and Training Institute.

(b) by deleting paragraph (b) and substituting therefor the following new paragraph—

“(b) offer and coordinate extension services on sugar crop production in the respective county.”

(c) by deleting the word “establish” and substituting therefor the word “maintain” in paragraph (e);

The import of the amendment is basically to moderate the issuance of inspection certificates as well as offer coordination of extension services.

(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 Temporary Chairman (Hon. David Ochieng’): Hon. Chairperson.

Hon. (Dr) John K. Mutunga (Tigania West, UDA): Hon Temporary Chairman, I beg to move:

THAT, Clause 6 (1) of the Bill be amended:

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

“(a) a non-executive chairperson appointed by the President.”

(b) by deleting paragraph (c) and substituting therefor the following new paragraph -

“(c) two representatives each elected by private and public owned sugar mills who are knowledgeable in sugar technology and value addition.”

The appointment of a Chairperson by the President is in line with the Mwongozo Code.

(Question of the amendment proposed)

The Temporary Chairman (Hon. David Ochieng’): Hon. Wandayi.

Hon. Opiyo Wandayi (Ugunja, ODM): Hon. Temporary Chairman, I have an issue with the continuous reference to the Mwongozo Code, which is a subsidiary legislation. If you look at the context and spirit of this Bill, and not just the letter of the Bill, it is drafted in a manner that seeks to empower farmers and primary stakeholders in the sugar sector. I wish that the task of appointing a non-executive Chairperson was placed on the shoulders of the primary stakeholders, who are farmers, rather than allowing the President to meddle in the affairs of the Kenya Sugar Board, and essentially, the sugar sub-sector. That is my view.

Therefore, I oppose the amendment on the basis of that understanding.

The Temporary Chairman (Hon. David Ochieng’): Hon. Kagombe.

Hon. GG Kagombe (Gatundu South, UDA): Hon. Temporary Chairman, as much as I agree with what the Leader of the Minority Party has said, the danger is that we have not started this structure from the grassroots. I know what you mean because it also happens in the tea sub-sector. An elected Chairperson will need to come from the “ground”. Farmers do not currently have proper representation in the sugar mills and so, the election process will not go to the end. I know what you mean. Ultimately, that is the desired position but it is currently difficult to do so because farmers are not properly represented in the mills all the way to the top. We proposed electoral areas in the report, which are yet to be done. Therefore, it is difficult as it is right now.

(Hon. Nabii Nabwera spoke off the record)

The Temporary Chairman (Hon. David Ochieng’): Hon. Nabwera.

Hon. Nabii Nabwera (Lugari, ODM): Hon. Temporary Chairman, I am persuaded by what stakeholders in the sugar sector came up with. We just had a conference over the weekend. The position of stakeholders in the sugar sub-sector is very clear. Because directors are elected sectorally, they can then elect the Chairperson of the Board. That is critical.

The Temporary Chairman (Hon. David Ochieng’): I am listening to you.

Hon. Nabii Nabwera (Lugari, ODM): If we are to get out of the quagmire that the sugar industry has been in, we cannot elect directors and then when it comes to appointing a Chairperson, a person who may have no knowledge of the sugar sector is appointed from outside.

The Temporary Chairman (Hon. David Ochieng’): Hon. Makali.

Hon. John Makali (Kanduyi, FORD-K): During the sugar conference, we resolved to put farmers at the centre of governance in the sugar sub-sector. If directors are elected by farmers, I support the amendment proposed by the Leader of the Minority Party that the Chairperson should be elected by farmers.

The Temporary Chairman (Hon. David Ochieng’): Hon Members, this must go either way.

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

There is a further amendment by Hon. Caroli Omondi.

Hon. Caroli Omondi (Suba South, ODM): Hon. Temporary Chairman, I beg to move:

THAT, the Bill be amended in Clause 6 by inserting the words “fifteen years” immediately before the word “relevant” appearing in subclause (3).

I rise to propose that Clause 6 be amended by inserting at least minimum relevant years of experience for purposes of appointment of the CEO. My proposal is 15 years. As it is currently in the Bill, even somebody who left university yesterday can actually be the CEO. The relevant experience is not quantifiable in terms of the current drafting of the Bill. So, I propose a minimum period of 15 years of relevant experience.

Thank you.

(Question of the amendment proposed)

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

The Temporary Chairman (Hon. David Ochieng’): Clause 6 has a further amendment by Hon. Wilberforce Oundo.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Hon. Temporary Chairman, I beg to move:

THAT, Clause 6 of the Bill be amended by inserting the following new subclause immediately after subclause (3)—

“(4) A person shall not be elected to represent growers under sub-clause 1(b) unless such a person is a grower with a parcel of land of not less than two hectares or produces a sugar producing crop of a quantity not less than that prescribed by the Cabinet Secretary in regulations.”

The purpose of this amendment is to avoid brokers, outsiders and aggregators. Let those people being appointed to represent farmers in the board be farmers so to speak. And for you to be a farmer, you must own or have leased a piece of land, and you must produce some

amount of sugar-cane at any given time. This is to avoid cases where imposter traders come and take up the position of farmers.

Thank you, Hon. Temporary Chairman.

(Question of the amendment proposed)

The Temporary Chairman (Hon. David Ochieng’): Hon. Wangwe.

Hon. Emmanuel Wangwe (Navakholo, ODM): Thank you, Hon. Temporary Chairman. I support that amendment. It is because, as the Hon. Member has said, we cannot entertain a guest on the table yet we are discussing about farmers. So, it is important for us to get someone who is a true farmer who must own land and be practising.

Thank you, Hon. Temporary Chairman.

The Temporary Chairman (Hon. David Ochieng’): Thank you.

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

(Clause 6 as amended agreed to)

Clause 7

The Temporary Chairman (Hon. David Ochieng’): Hon. Caroli, you have an amendment to this.

Hon. Caroli Omondi (Suba South, ODM): Hon. Temporary Chairman, I beg to move: THAT Clause 7 of the Bill be amended —

- (a) by inserting the words “upon election or nomination as the case may be” appearing in subclause (1) immediately after the words “further term”; and,
- (b) by deleting sub clause (2).

Hon. Temporary Chairman, I propose a further amendment to Clause 7 because when I reflected on my initial proposal, I think we need to have some further amendment.

The Temporary Chairman (Hon. David Ochieng’): Do you want to consult the Chairman first before you do that?

Hon. Caroli Omondi (Suba South, ODM): Yes. Let me do so.

The Temporary Chairman (Hon. David Ochieng’): The Chairman or the Mover? Who are you consulting?

Hon. Caroli Omondi (Suba South, ODM): The Chairman. Actually, it is just the drafting technique. If you look at Clause 7, it talks of a person appointed as chairperson. We know the chairperson will be elected. And then if you read the drafting, the renewability seems to be automatic and yet, that should not be the case because those directors have to go back for election after they have served their first term of three years. My proposal is that the renewal is subject to fresh elections by the farmers. That is my proposal.

The Temporary Chairman (Hon. David Ochieng’): Do you want to approach the Mover so that we make this very quick?

Hon. Caroli Omondi (Suba South, ODM): Yes.

The Temporary Chairman (Hon. David Ochieng’): Just approach the Mover in 30 seconds. The Mover is Hon. Wangwe.

(Hon. Caroli Omondi consulted Hon. Emmanuel Wangwe)

(Question of the amendment proposed)

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

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

The Temporary Chairman (Hon. David Ochieng’): Hon. Caroli has another amendment to Clause 2. Did you drop it? The Chairperson of the Departmental Committee on Agriculture and Livestock.

Hon. (Dr) John K. Mutunga (Tigania West, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 7 of the Bill be amended in sub-clause (2), by deleting the expression “under Section 6(1)(b), (c) and (e)” and substituting therefore the following new expression “under section 6 (1) (a), (b), (c) and (e)”.

We are only making a correction.

The Temporary Chairman (Hon. David Ochieng’): Hon. Mutunga, what are you correcting?

Hon. Dr John K. Mutunga (Tigania West, UDA): Hon. Temporary Chairman, if you look at Clause 6(1) you will realise that “(a)” is missing. It is supposed to be 6(1)(a).

(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 7 as amended agreed to)

Clause 8

The Temporary Chairman (Hon. David Ochieng’): Hon. Mutunga.

Hon. (Dr) John K. Mutunga (Tigania West, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 8 of the Bill be amended by deleting the word “of” appearing immediately after the words “of the Board.”

The idea is to correct a typographical error.

(Question of the amendment proposed)

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

The Temporary Chairman (Hon. David Ochieng’): There is a further amendment by the Hon. Oundo.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Hon. Temporary Chairman, I beg to move:

THAT, Clause 8 of the Bill be amended by inserting the following new paragraph immediately after paragraph (g) –

“(h) does not comply with the requirements provided under section 6(4).”

Again, this is a consequential amendment based on the amendments we have done under Clause 6. What we are saying is if somebody who sat in the Board ceases to be a farmer or a grower of sugar-cane or sugar producing crops, that person should cease to sit in the Board. It is a consequence of what we have passed under Clause 6.

Thank you, Hon. Temporary Chairman.

(Question of the amendment proposed)

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

(Clause 8 as amended agreed to)

(Clauses 9,10 and 11 agreed to)

Clause 12

The Temporary Deputy Chairman (Hon. David Ochieng’): Hon. Caroli.

Hon. Caroli Omondi (Suba South, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 12 of the Bill be amended by deleting the words “or to any member, officer, employee or agent of the Board”.

We have just passed a similar clause in the previous Bill, but I think it was a very big mistake because we were not allowed to speak. There are limits to delegation. There is something we call permissible delegation in law and there are limits to it. The way this particular clause is currently drafted, it would mean that the Board is divesting itself of all its core functions. It can do so and divest itself of all powers, functions and confer them on a different entity who is even a stranger, say, somebody called an agent of the Board. There is a reason why boards are created and given that legal identity for decision-making. So, I propose we allow delegation but limit it to board committees. If we have to stretch, it can only be the Chief Executive Officer and not to every stranger or agent. This is a very risky thing.

The Temporary Chairman (Hon. David Ochieng’): Thank you.

(Question of the amendment proposed)

Hon. Wangwe.

Hon. Emmanuel Wangwe (Navakholo, ODM): Thank you Hon. Temporary Chairman. I wish to oppose the amendment by Hon. Caroli. This is because looking at the wording of my Bill, it is very particular. It states as follows: ‘The board may (and not shall), either generally or in any particular case’.

There are particular cases we can cite. For example, should there be an issue to investigate a matter touching on a particular employee, the Board can assign a manager to deal with that circumstance. Should there be a conflict of interest touching on the senior manager, the Board can nominate any other employee to deal with the situation. Therefore, I oppose this amendment.

The Temporary Chairman (Hon. David Ochieng’): This has to go either way. We just started debate on a similar amendment a few minutes ago.

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

(Clause 12 agreed to)

Clause 13

The Temporary Chairman (Hon. David Ochieng’): Hon. Caroli.

Hon. Caroli Omondi (Suba South, ODM): Thank you very much, Hon. Temporary Chairman. I beg to move:

THAT, Clause 13 of the Bill be amended by deleting the word “remuneration” appearing immediately after the word “such”.

This is because the word ‘remuneration’ implies even payment of a basic salary which I do not think is the case with our boards. I think we should limit it to allowances and payment to directors.

(Question of the amendment proposed)

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

(Clause 13 as amended agreed to)

Clause 14

The Temporary Chairman (Hon. David Ochieng’): Hon. Mutunga.

Hon. (Dr) John K. Mutunga (Tigania West, UDA): Hon. Temporary Chairman, I beg to move:

THAT, Clause 14 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause (1) —

“(1) There shall be a Chief Executive Officer of the Board who shall be appointed through a competitive process by the Board and whose terms and conditions of service shall be determined by the Board in consultation with the Public Service Commission in the instrument of appointment or otherwise in writing from time to time.”

This is to provide for competitive recruitment of the CEO in consultation with the Public Service Commission (PSC).

(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 Chairman (Hon. David Ochieng’): There is a further amendment by Hon. Wilberforce Oundo.

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Hon. Temporary Chairperson, I beg to move:

THAT, Clause 14 of the Bill be amended in subclause (1), by inserting the words “in consultation with the Salaries and Remuneration Commission” immediately after the words “in the instrument of appointment.”

This is a very minor amendment and probably we need further guidance. In the amendment proposed by the Chairperson, they have talked about recruitment by the PSC. My amendment lends to the fact that remuneration and terms must be done in consultation with the Salaries and Remuneration Commission (SRC). So, I just added SRC because that is what the Constitution requires. So, it is just a consequential amendment which if Members agree, we can let it pass.

(Question of the amendment proposed)

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

(Clause 14 as amended agreed to)

(Clauses 15, 16 and 17 agreed to)

The Temporary Chairman (Hon. David Ochieng’): Hon. Members, I request for your presence in the House.

Clause 18

The Temporary Chairman (Hon. David Ochieng’): Hon. Caroli.

Hon. Caroli Omondi (Suba South, ODM): Thank you very much, Hon. Temporary Chairman. Actually...

Hon Justice Kemei (Sigowet/Soin, UDA): On a point of order, Hon. Temporary Chairman.

The Temporary Chairman (Hon. David Ochieng’): Hon. Caroli, one minute. What is out of order?

Hon Justice Kemei (Sigowet/Soin, UDA): Hon. Temporary Chairman, I rise under Standing Order 95 and seek your guidance as to whether we have quorum to transact business.

The Temporary Chairman (Hon. David Ochieng’): Hon. Members, can we first ascertain that we have quorum before we go to the next business? Members walking out, you are not allowed to do so once the Chair has said we are ascertaining the numbers in the House. Serjeant-at-Arms, confirm how many Members we have in the House.

I order that the Quorum Bell be rung for 10 minutes.

QUORUM

(The Quorum Bell was rung)

(Several Members stood in their places)

The Temporary Chairman (Hon. David Ochieng’): Order, Members. Resume your seats. Hon. Members, resume your seats. The Quorum Bell has stopped ringing.

Hon. Opiyo Wandayi (Ugunja, ODM): Hon. Temporary Chairman, we are in unprecedented times. It is the first time in the history of this House, for as long as I have been here, that Members deliberately walked out during the Committee of the whole House to deny the House quorum. That cannot go unsaid. It begs the question: What is the motive behind such brazen walkout at a critical moment when we are dealing with a serious Bill that touches on the livelihoods of millions of Kenyans from the Western Sugar Belt?

The Temporary Chairman (Hon. David Ochieng’): Thank you, Hon. Wandayi. The point is made. Hon. Members, pursuant to Standing Order 35, we proceed to report progress on this matter.

(The House resumed)

IN THE HOUSE

[The Temporary Speaker (Hon. Omboko Milemba) in the Chair]

MOTION

THE SUGAR BILL
(National Assembly Bill No.34 of 2022)

The Temporary Speaker (Hon. Omboko Milemba): Order, Members. Resume your seats. The Temporary Chairman.

Hon. David Ochieng’ (Ugenya, MDG): Thank you, Hon. Temporary Speaker. I wish to report that the Committee of the whole House has considered the Sugar Bill (National Assembly Bill No. 22 of 2022) up to Clause 17 upon which it was reported that there was no quorum. Under Standing Order 35(2)(b), I therefore report that there was no quorum and we had to adjourn.

Thank you.

(Hon. Opiyo Wandayi spoke off the record)

The Temporary Speaker (Hon. Omboko Milemba): Order, Hon. Members. The bell was rung for 10 minutes, but there was no quorum.

ADJOURNMENT

The Temporary Speaker (Hon. Omboko Milemba): Hon. Members, the time being 8.13 p.m., this House stands adjourned until Tuesday, 26th September 2023, at 2.30 p.m.

The House rose at 8.13 p.m.

Published by
Clerk of the National Assembly
Parliament Buildings
Nairobi