

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 9th November, 2006

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

### COMMUNICATION FROM THE CHAIR

PRESENCE OF SUDANESE MEMBER  
OF PARLIAMENT IN SPEAKER'S ROW

**Mr. Speaker:** Order, hon. Members! I wish to introduce to the House, hon. Sarah Nyanath Elijah Yong, Member of Parliament, Upper Nile State, Lungechuk County, Vice-Chair, Health Committee, Southern Sudan.

*(Applause)*

### PAPER LAID

The following Paper was laid on the Table:-

The Report of the Departmental Committee on Finance, Planning and Trade on The Microfinance Bill, 2006

*(By Dr. Oburu)*

**Mr. Speaker:** Next Order!

### NOTICES OF MOTIONS

INTRODUCTION OF ARID AND  
SEMI-ARID LANDS  
DEVELOPMENT BILL

**Dr. Ojiambo:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-  
THAT, cognizant of the fact that arid and semi-arid lands constitute about 80 per cent of Kenya's land mass; aware that arid and semi-arid lands are inhabited by about 10 million people; further aware that these arid and semi-arid lands contribute about 90 per cent of the country's meat production and have enormous potential for minerals; this House do grant leave to introduce an Arid and Semi-Arid Lands Development Bill which will guarantee channelling of investment capital in arid and semi-arid lands to increase Kenya's land productivity by involving residents of arid and semi-arid lands in Kenya's wealth creation.

## INTRODUCTION OF PRIVATISATION (AMENDMENT) BILL

**Dr. Awiti:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-  
 THAT, being aware that most State corporations are the economic mainstay of our country; aware that the privatisation process should be preceded by a policy Sessional Paper outlining merits and demerits of each State corporation proposed for privatisation; this House do grant leave to introduce a Bill entitled: Privatisation (Amendment) Bill to amend the Privatisation Act to provide that Parliament shall, by resolution, approve the disposal of parastatal assets.

*(Applause)*

**Mr. Speaker:** Dr. Oburu, is it correct that you tabled a Paper on microfinance?

**Dr. Oburu:** Yes, Mr. Speaker, Sir.

**Mr. Speaker:** Very well. Next Order!

## ORAL ANSWERS TO QUESTIONS

*Question No.550*

TABLING OF AUDITED ACCOUNTS OF  
NATIONAL FUND FOR DISABLED

**Mr. Muriithi** asked the Minister for Gender, Sports, Culture and Social Services:-

(a) whether he could table the audited accounts of the National Fund for the Disabled for the last three years; and,

(b) how many disabled people or groups have benefitted from the Fund in Nyeri Town Constituency for the same period.

**The Assistant Minister for Gender, Sports, Culture and Social Services** (Mr. Onyancha): Mr. Speaker, Sir, I beg to reply.

(a) Available audited accounts for the National Fund for the Disabled which I hereby table are those of 2001/2002, 2002/2003 and 2003/2004 Financial Years.

While the accounts for the 2004/2005 Financial Year are yet to be approved by the board of the organisation, auditing of accounts for the 2005/2006 Financial Year is yet to commence.

(b) During the period between 2001 and 2003, the National Fund for the Disabled assisted two beneficiaries. The organisation accorded Ms. Lucy Wangechi Mugiri of P.O. 1615, Nyeri a knitting machine in 2001/2002. In 2003/2004, Mr. James G. Mwaniki of Mukaro Location received a carpentry tool kit from the Fund.

Mr. Speaker, Sir, the following institutions will also be accorded assistance as from November, 2006:- Kiamuiru Special Unit, Kshs70,000 to construct a kitchen and Tetu Disabled Self-Help Group, Kshs60,000 to cater for transport and port clearance charges for some donated computers.

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

**Mr. Muriithi:** Mr. Speaker, Sir, I thank the Assistant Minister for that answer. However, I would like him to tell me whether he knows the difference between Nyeri Town Constituency and Tetu Constituency.

**Mr. Speaker:** Between where and where?

**Mr. Muriithi:** Mr. Speaker, Sir, according to my research, the institution allegedly benefiting from the Fund is Tetu Disabled Self-help Group, which is situated at a place called Igururu in Tetu Constituency.

So, I wonder whether the answers are wrong or right.

**Mr. Onyancha:** Mr. Speaker, Sir, the National Fund for the Disabled is a Trust that has members who are honourable. Some of the members of that trustee are Members of Parliament. When they get money in form of donations, they generate income and ensure that, that income benefits people from the whole country.

Mr. Speaker, Sir, also, with regard to what Mr. Muriithi is asking, these people, whose addresses I have, come from his own constituency.

**Capt. Nakitare:** Mr. Speaker, Sir, the issue of disabled persons is of national concern. The audit report that the Assistant Minister has just laid on the Table here raises questions. Disabled persons struggle so much in their day-to-day life, with some students writing using their legs. The International Labour Organisation has given out money. The ILO has constructed training schools and even given out donations for the purchase of equipment to enable disabled persons in Kenya benefit.

What tangible evidence does this House have, indicating the investments in which money of the National Fund for the Disabled has been put, not just in Nyeri Town Constituency but countrywide?

**Mr. Onyancha:** Mr. Speaker, Sir, the National Fund for the Disabled continues to manage two very renowned properties, namely, Rehema and New Rehema House, besides other donations that it receives. The Question before the House is with regard to what has been given to Nyeri Town Constituency.

Mr. Speaker, Sir, if Capt. Nakitare is interested, we will want to give him a list of other beneficiaries of finances from this Fund nationally.

**Maj. Madoka:** Mr. Speaker, Sir, obviously, there are very many disabled people in the country. We do not know the criteria that is used in giving money to those people. Many people in my constituency have applied for assistance, but they have not received any. So, what criteria is used in disbursing the money?

**Mr. Onyancha:** Mr. Speaker, Sir, as I said, this is a Fund managed by a Trust. The list I have here shows that there are beneficiaries from Turkana, Rachuonyo, Machakos, Wajir and other districts. I am sure that the trustees must have a set criteria. Obviously, those who have received assistance from the Fund must be persons who are disabled.

**Mr. Speaker:** Are you happy, Mr. Muriithi?

**Mr. Muriithi:** Mr. Speaker, Sir, from the list of institutions that the Assistant Minister has read out, there are two institutions in Thika District, namely, Joy Town Primary and Joy Town Secondary School, which look after disabled children in this country. Has the Trust managing the National Fund for the Disabled ever thought of giving those institutions some assistance?

**Mr. Onyancha:** Mr. Speaker, Sir, as of now, I have no details to confirm or deny that Joy Town Primary School and Joy Town Secondary School have received any assistance.

However, I am sure that if the names of these institutions are forwarded to the trustees managing the Fund, consideration will be duly given.

**Mr. Speaker:** Next Question, Mr. Rotino!

HIGH DROP-OUT RATE OF COLLEGE/SECONDARY SCHOOL  
STUDENTS IN WEST POKOT

**Mr. Rotino** asked the Minister for Education:-

(a) whether he is aware that most secondary school and college students from West Pokot District have dropped out of school for lack of fees due to drought and famine; and,

(b) what measures he is taking to ensure that the students continue with their education without interruption.

**The Assistant Minister for Education** (Dr. Mwiria): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that secondary school and college students from West Pokot District have dropped out of school for lack of fees as a result of drought and famine. In fact, as an example, there has been a rise in enrolment in that district between 2005 and 2006.

However, this is not to say that there have not been cases of dropouts but in terms of mass exodus from schools, that has not been found to be the case.

(b) The Ministry has taken the following measures, among others, to address the concerns raised by the hon. Member: There is a drought fund for public secondary schools in the 28 ASAL districts that are affected by drought and benefit from this fund. Twenty-six secondary schools in West Pokot District have received a total of Kshs1,821,739. We also have the common Bursary Fund for all schools in the country, which is disbursed through the bursary committees.

We have also given financial assistance to some secondary schools in the district alongside schools in other parts of the country for improvement and acquisition of school facilities through the Laboratory Equipment Fund, ASAL areas grants, ICT grants, the Infrastructure Development Fund and the Fire Equipment Fund. These are just some examples of what is being done. Obviously, this will not solve the problem completely but it is some initiative by the Ministry.

Thank you, Mr. Speaker, Sir.

**Mr. Rotino:** Mr. Speaker, Sir, I am surprised by the Assistant Minister in saying that he is not aware that many college and secondary school students have dropped out because of the previous and current famines. He has given us, as an example, the improved school enrolment in West Pokot District. However, he has not told us the exact number of students who have dropped out because of the previous famine that ravaged the area.

Mr. Speaker, Sir, is he satisfied that the Kshs1.8 million that the Ministry sent to the 26 secondary schools was sufficient to cater for the children who dropped out of school?

**Dr. Mwiria:** Mr. Speaker, Sir, I gave the example of the improved enrolment as evidence of an increase in the number of students in that district. I agree that there must have been dropout cases but, overall, it is clear that there was no case of large numbers of students dropping out. We know that there was a problem. Obviously, Kshs1.8 million was not enough. I wish we had enough resources. That was just a token to the secondary schools that benefited in that district. These were resources that could help ameliorate the situation. The idea was to come up with a permanent solution. In the meantime, we decided to do what we could. Those were the little resources that were available for those schools in the last one year.

**Mr. Kimeto:** Mr. Speaker, Sir, the Ministry of Education is so far sending children away from school because of lack of fees to the tune of Kshs20,000 for most students. The Kshs20,000 being paid every now and then could be enough to education these students. Why are children sent away from school every now and then, to collect school fees, and yet the Government pays secondary school teachers? What is the money for?

*(Laughter)*

**Dr. Mwiria:** Mr. Speaker, Sir, I think we should have secondary school teachers for the students who are in school. It is not the Ministry that sends away students from school. Sometimes, head teachers do so but we cannot say that we should not pay teachers because, from time to time, there is a certain number of students who are not in school.

**Mr. Poghiso:** Mr. Speaker, Sir, the Assistant Minister has no concept of how West Pokot looks like. I do not think he understands the difficulties which children and parents face in accessing fees. Many children in the area cannot go to school because of lack of fees.

Could the Assistant Minister take it upon himself to identify the children who are on relief food and protect them from being sent home until such as time as they will not be relying on relief food because that is the issue? This will enable them to continue with their studies without being interrupted.

**Dr. Mwiria:** Mr. Speaker, Sir, I do not think that it would be difficult to do because the headmasters have to run schools. There will also be cases of parents who would say that they are on relief food and, therefore, that will be an excuse. Relief food is supposed to support parents out of the difficulties. It will not resolve them. Unfortunately, it will not be possible to say that because the parents of these students are receiving relief food, therefore, we will not insist on school fees. We had better find other ways of supporting such cases rather than using that as an excuse to keep them in school. We do not like having these children sent away from school.

**Mr. Karaba:** Mr. Speaker, Sir, most children who come from such areas really have problems. I expected the Assistant Minister to tell us that he is thinking of making sure that all students in such areas become boarders. What steps is the Ministry taking to make sure that those students who cannot access secondary schools are made boarders so that facilities can be rendered to them equally?

**Dr. Mwiria:** Mr. Speaker, Sir, quite a number of schools in the arid and semi-arid areas are getting some money for boarding facilities, but that does not solve the problem completely. I think the real solution is to come up with financial resources to subsidise education there. We are doing a little bit but let us commit ourselves to looking for more resources so that we make the situation better than it is.

**Mr. Rotino:** Mr. Speaker, Sir, it is good that the Ministry has sent money to ASAL areas. The Assistant Minister has said that they have disbursed money to seven districts in the country.

Could he consider channelling this money through the constituency bursary fund and not directly to the secondary schools? There is a lot of misappropriation in these schools.

**Dr. Mwiria:** Mr. Speaker, Sir, it might not be possible to channel the money through the constituency bursary fund because this is a different grant and there is a lot of objection to the bursary money going through bursary committees. We will consider this. We will discuss the matter in a *Kamukunji* like we discussed the system of allocating bursary funds.

*Question No.628*

ACQUISITION OF LAND FOR  
SETTLEMENT OF SQUATTERS

**Mr. Midiwo** asked the Minister for Lands:-

- (a) which areas the Government has identified as having squatter problems since 2003; and,
- (b) where the new settlement areas are located, who the beneficiaries are and how the land was acquired.

**The Assistant Minister for Lands** (Mr. Kamama): Mr. Speaker, Sir, I beg to reply.

(a) The Government has identified six provinces having squatter problems of varying degrees of severity since 2003. These provinces are Coast Province, Rift Valley, Nyanza Province, Eastern Province, Central Province and Western Province.

(b) The new schemes are situated in various districts as indicated in the schedule which I will table before the House. This land belongs to the Government and some was acquired from the Agricultural Development Corporation (ADC).

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

**Mr. Midiwo:** Mr. Speaker, Sir, last month, there was a Question about the Government acquiring land from private individuals. When I asked why this was the case, this Assistant Minister told me to put in a substantive Question if I wanted to question the issue of land acquisition in the name of squatters. The Assistant Minister has indicated on this list all the land which they are allocating to squatters. Is this Government land or ADC land? Last month, Mr. Karume confessed in this House that he had sold land fairly to the Government. Why is his name and his land missing and how many private Kenyans or foreigners has this Government clandestinely acquired land from in the name of settling squatters?

**Mr. Kamama:** Mr. Speaker, Sir, I think my answer was very clear. In addition to acquiring land from the ADC or the Government, the Government has come up with a policy of acquiring land from private citizens. This land will be used to settle squatters. We acquired some land from a private company and the process is still on. We have not settled these squatters. The process will take about five months and when we are through we will be ready to clarify appropriately.

**Mr. Arungah:** Mr. Speaker, Sir, technically speaking, millions of Kenyans are squatters. This is because they cannot prove ownership of the pieces of land on which they live. This is because the cost involved in regularising ownership from their parents is very high.

Mr. Speaker, Sir, what is the Ministry doing to make it easier for us to make transfers from grandfathers and fathers to the children because that is the only way they can prove ownership of those parcels of land. What is the Ministry doing to make these costs slightly lower so that many people can rightfully own land?

**Mr. Kamama:** Mr. Speaker, Sir, that is a valid question. This problem is rampant in the whole country. The House will bear me witness that we are coming up with a new land policy which is yet to be brought before the House. When we organised a seminar at the Safari Park Hotel, only a handful of hon. Members came to give their input.

Mr. Speaker, Sir, we have an elaborate policy that is contained in that policy paper. We will have a national symposium very soon and I will invite my friend, hon. Arungah, and the entire House, to attend so that they can get acquainted with the reforms that are contained therein.

**Rev. Nyagudi:** Mr. Speaker, Sir, Mr. Midiwo asked why Mr. Karume's name is not in that list and the Assistant Minister conveniently avoided that question. Could he address that question?

**Mr. Kamama:** Mr. Speaker, Sir, the name of Mr. Njenga Karume is not an issue here. The land was bought from a company which might be associated with Mr. Karume. The process is still on---

**Mr. Muiruri:** On a point of order, Mr. Speaker, Sir. Is it in order for the two hon. Members to keep on referring to another hon. Member of this House without bringing a substantive Motion? It appears these hon. Members have a hidden agenda to tarnish Mr. Karume's name. This Question is not about Mr. Karume!

**Mr. Speaker:** I think the issue should be about the accountability of the Ministry, to tell

Parliament how many pieces of land they have acquired. It does not matter from who that land was acquired. In fact, you should keep the name of the hon. Member out of this matter. The Assistant Minister says that the land did not belong to the Minister. It belongs to a private company and that is what you need to know.

**Mr. Kamama:** Mr. Speaker, Sir, if the hon. Member really wants to get to the bottom of this matter, I think he should go to the Ministry of Lands headquarters and carry out a search. He will establish that this is a private company which is a separate entity from the Member of Parliament. A company is separate from an individual.

**Mr. Midiwo:** Mr. Speaker, Sir, sometimes our actions are shameful. The Minister in question came before the House and issued a statement that, that was his land which he had acquired from the [Mr. Midiwo] Government and that he gave it to the Government. The HANSARD will bear me witness.

**Mr. Speaker:** Order, Mr. Midiwo! Are you interested in the land the Government has acquired or do you have a personal vendetta against the Minister?

**Mr. Midiwo:** No, Mr. Speaker, Sir. The opposite is true. I am interested in the truth and accountability. Part of the Question I asked is: "What method the Government is using to acquire land?" The issue here is that one of single-sourcing.

Mr. Speaker, Sir, people who had grabbed land earlier in this country are now selling this land to the Government as a bribe. We need to be told the truth!

**Mr. Speaker:** Order, Mr. Midiwo! I think you had better revisit the Constitution. The Constitution guarantees the right of ownership of property until it is otherwise lawfully annulled. That is the law. The question of single-sourcing requires the Assistant Minister's response.

I do not know whether you want the Ministry to tender and ask who wants to sell some land to the Government.

**Mr. Kamama:** Mr. Speaker, Sir, I do not know how you tender for land. In Government financial regulations we have a provision for competitive bidding or single-sourcing.

**Mr. Billow:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to say what he has said when last year we passed the Procurement Bill? The Procurement Act clearly specifies the procedures the Government must use in procuring land, which is also part of property, goods or any services. Single-sourcing can only be used when there is an emergency.

Mr. Speaker, Sir, is he in order to mislead the House that you can actually acquire land through an emergency and this is not an emergency?

**Mr. Kamama:** Mr. Speaker, Sir, I do not know what an emergency is. The situation in Likia is an emergency so they deserve the land.

*Question No.545*

AMOUNT OF MONEY RAISED  
FROM SALE OF KNAC

**Mr. Ahenda** asked the Minister for Finance:-

(a) how much money was raised from the sale of Kenya National Assurance Company Limited assets; and,

(b) whether he could give a breakdown of payments by the receiver manager to former employees and those insured by the company.

**The Assistant Minister for Finance** (Mr. Kenneth): Mr. Speaker, Sir, I beg to reply.

(a) A total of Kshs870,810 has been raised from the sale of Kenya National Assurance

Company Limited assets.

(b) The receiver manager has not paid any claims due to insufficient funds. However, the KNAC (2001) Limited has paid surrender value of the pension benefits to the former employees of the KNAC Limited. The company has also paid institutional claimants and individual policy holders.

The breakdown of the claims paid is as follows:-

	<u>KShs.</u>
(a) Former staff of Kenya National Assurance Limited	- 230,927,470.00
(b) Other policy holders	- 2,384,074,759.54
Total	- 2,615,002,229.45

**Mr. Ahenda:** Mr. Speaker, Sir, could the Assistant Minister tell us how much money was in the account before the sale of these assets and where it went? There are also some assets which have still [**Mr. Ahenda**]

not been sold and a number of people who had insured with the company, particularly motor vehicles and who have still not been paid to date. Could he inform the House when they will be paid?

**Mr. Kenneth:** Mr. Speaker, Sir, there was a court order on 22nd March, 2002, shifting the closed Life Fund of Kenya National Assurance Company (KNAC), which was in liquidation, to the Kenya National Assurance Company 2001, together with all its assets and actuarial liabilities. Following the said transfers, the new company took assets amounting to Kshs2.2 billion and actuarial liabilities of Kshs3.9 billion.

Mr. Speaker, Sir, there was a deficit of Kshs1.699 billion in the Fund, which was dealt with by the infusion of funds by the Government to the company. The assets of the company have not been sold. The assets that had been sold that fetched the figure of Kshs836 million included the sale of Bima House, Kenya National Building in Kisumu, Eldoret Stall Complex and the Nakuru manager's house.

**Mr. Muiruri:** Thank you, Mr. Speaker, Sir. The assets of the KNAC are well known. They are very many and are worth a lot of money. You only have to look at the Corner House, Bima House in Nairobi, Salama House, Bima House in Mombasa, the one in Kisumu and the others. Who bought the KNAC? Were they Kenyans or foreigners?

Could the Assistant Minister be kind enough to lay on the Table the names of those who purchased the KNAC so that we can know their identities?

**Mr. Kenneth:** Mr. Speaker, Sir, the KNAC 2000 is a parastatal and is not owned by anybody. It is owned by a guarantee by the Treasury, and it is where the life funds were transferred to. That is why I said that there are actuarial liabilities amounting to Kshs3.9 billion that were taken over to ensure that all life policy holders are paid when these assets are sold.

**Mr. Muiruri:** On a point of order, Mr. Speaker, Sir. I know for sure that the top management of the KNAC 2000 are Zimbabweans. It is only that I do not have their names here, but they are foreigners! That is the truth of the matter.

**Mr. Kenneth:** Mr. Speaker, Sir, the hon. Member does not know for sure, because the Managing Director of the company is Mrs. Agnes Ndirangu, who is the Deputy Commissioner of Insurance.

**Mr. Muiruri:** Ndirangu is a director!

**Mr. Kenneth:** The directors are Kenyans. Maybe the hon. Member is alluding to the first Manager of the KNAC 2001, who was a Zimbabwean and who has since left.

**Mr. Muiruri:** Then say so!

**An hon. Member:** But he has said it!



**Mr. Speaker:** Order! Ask the last question, Mr. Ahenda or are you happy with the answer? Should I give this opportunity to somebody else?

**Mr. Ahenda:** Mr. Speaker, Sir, I asked a question about the vehicles that had been insured by the KNAC.

Mr. Speaker, Sir, secondly, if KNAC 2001 is a Kenyan company, why did they sell the assets? Why did they not just transfer them to another company?

**Mr. Kenneth:** Mr. Speaker, Sir, first of all, the issue of liquidating a company that does both general and life insurance is separate from normal liquidation. The general assets of the company, where motor vehicles are left in, were left with the official receiver, who was Mr. Omondi Mbagu at that time. What was transferred, because that is where the money is and the assets were for life business, were the life policies and pensions. That is what was transferred to a new company to make a clear separation of what was under the general account and what was under the life liability.

**Mr. Speaker:** Very well. Next Question!

*Question No.154*

NON-REPORTING OF CHILD ABUSE/  
DOMESTIC VIOLENCE CASES IN BUTULA

**Prof. Mango** asked the Minister of State for Administration and National Security:-

(a) whether he is aware that the girlchild and women victims of child abuse and domestic violence in Butula Constituency do not report their complaints to the police; and,

(b) whether he could consider posting to each police station and administration police lines, a female police officer to attend to female victims of abuse and domestic violence.

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

(a) I am not aware that the girlchild and women victims of child abuse and domestic violence in Butula Constituency do not report their complaints to the police.

(b) Every police station in the country has a female police officer who is charged with the responsibility of matters relating to women affairs in addition to other duties. We would like to request hon. Members to encourage their constituents to report such matters to the police for action to be taken. It is difficult to have a female officer at every administration police lines because their numbers are not sufficient.

Thank you.

**Prof. Mango:** Thank you, Mr. Speaker, Sir. The Assistant Minister is misleading the House. In Butula Constituency, there is one police post and an administration police lines, but there is no female officer at any of those places.

Could the Assistant Minister assure this House that he is going to post female police officers to each police post and the Administration Police lines?

**Mr. Kingi:** Mr. Speaker, Sir, I have said that we have female police officers in every regular police station.

**Prof. Mango:** They are not there!

**Mr. Kingi:** However, as far as the administration police officers are concerned, we do not have enough female administration police officers. In fact, the programme to recruit female

administration police officers only started the other day. So, we do not have enough female officers to post to each of our stations in the country. But for the regular police officers, we have them there.

**Mr. Weya:** Thank you very much, Mr. Speaker, Sir. The issue of beating women is a very serious one. Recently, in my constituency, an assistant chief beat up a woman and molested her badly, and the administration has been covering up this issue. What is the Ministry doing to ensure that the harassment and beating of women is not covered up by the Government officials?

**Mr. Kingi:** Mr. Speaker, Sir, I have said that such matters should be reported to the police. If these matters are reported to the police station and nothing is done, of course, hon. Members are free to report this matter even to ourselves and we will ensure that something is done. We also have suggestion boxes which you can use to pass information to us and we will take the necessary action.

I am sure there are several channels that are open; where such information can be brought to us and we will take the necessary action.

**Mr. Gachagua:** Mr. Speaker, Sir, the issue of violence, rape and harassment of children is rampant in this country. One wonders why it is so difficult or why the Office of the President or the Police Department is not able to post female police officers to every police station. Statistics show that the number of female police officers who have been recruited and are already in operation. What is so difficult about the Police Department ensuring that every police station has a female officer to attend to these issues? Could the Assistant Minister tell us what is so difficult about posting female police officers to the various police stations and Administration Police lines?

**Mr. Kingi:** Mr. Speaker, Sir, I have already said that in every police station that we have in the country, we have women police officers serving there. But if there is any particular example to show that we have a police station in this country that does not have women police officers, let me be informed and we will take the necessary action.

**Mr. Gachagua:** On a point of order, Mr. Speaker, Sir. The Assistant Minister says every police station in this country has a female police officer. He then went on to ask us if we are aware of any police station that does not have a female police officer. Are we here to run the police force, or to get information from him?

*(Applause)*

**Mr. Kingi:** Mr. Speaker, Sir, from my records, every police station in this country has a female police officer. In the case of administration police officers, we do not have enough female officers to post to all police posts in the country. This is because the programme for recruitment of female administration police officers started recently. But for the regular police officers, we have enough female police officers and we have posted them to every police station.

**Prof. Oniang'o:** Mr. Speaker, Sir, it appears that the more we raise awareness about this issue, the more cases of rape and child abuse we get in this country. Kenya has an extremely bad reputation when it comes to this. Could the Assistant Minister tell us what they are doing as a Ministry to make sure that they actually focus on this issue?

**Mr. Kingi:** Mr. Speaker, Sir, as I said, we have posted a female police officer to every regular police station, to be in charge of receiving information about such cases. We have also talked to our provincial administration officers on the ground to hold sensitization meetings all the time, to sensitize Kenyans about the dangers of doing these things. The fact that we are receiving many cases from the public means that people are becoming aware. Of course, when criminals are reported, we take charge and jail them.

**Prof. Oniang'o:** On a point of order, Mr. Speaker, Sir. Most of the women who have been

abused are afraid to go to the police stations. This is because the police stations are not a friendly environment for them to talk about these very traumatizing and sad situations. Could the Assistant Minister tell us what new strategies they are putting in place to deal with these matters?

**Mr. Speaker:** Technically, that is not a point of order. But because of the importance of the question, I would like the Assistant Minister to respond.

**Mr. Kingi:** Mr. Speaker, Sir, as I have already said, if those women are afraid to go to the police station to report, we need to encourage them. If they are not be able to do so, they can report these issues to our provincial administration officers. We have also started the suggestion boxes. We can receive information through them. We are also customer-care-based. We are open. Therefore, anybody who has information about these matters should not be afraid to let us know. It is also our responsibility to keep on encouraging these people, so that they can come forward. It is only by them coming forward that we will be able to help them.

**Mr. Speaker:** Last question, Prof. Mango!

**Prof. Mango:** Mr. Speaker, Sir, the Assistant Minister should not continue to mislead the House that every police station has got a female police officer. The abuse of women by policemen at police stations is rampant in this country. He should not pretend not to be aware of it. Could he help to curb such incidents by posting more female police officers to police stations, so that they can be female-friendly?

**Mr. Kingi:** Mr. Speaker, Sir, on one hand, we are saying our women are afraid of going to the police stations to report criminal cases. On the other hand, we are saying that we want more female police officers posted to police stations. I think the issue here is that we have mechanisms that allow victims to report to our police stations. If they do so, and action is not taken, there are other avenues, including this information being brought to our office directly. We will ensure that action is taken.

**Mr. Speaker:** Next Question by Mr. Mwanacha!

*Question No.079*

TOWING OF IMPOUNDED VEHICLES  
BY POLICE

**Mr. Manoti**, on behalf of **Mr. Mwanacha**, asked he Minister of State, Office of the President:-

- (a) whether he is aware that vehicles impounded for traffic offences are towed to police stations occasioning the owners unnecessary towing expenses; and,
- (b) what action he is taking to ensure that the breakdowns are not owned by law enforcement agents to avoid conflict of interest?

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

(a) I am aware that vehicles committing traffic offences are impounded and towed at the owners' expense, as provided for in the Traffic Act, Sections 106(1) and 106(2).

(b) The Police Act, Section 9, Chapter 84, Laws of Kenya, prohibits officers from engaging in business outside the scope of their duties.

If any hon. Member or anyone, for that matter, can provide evidence on ownership of breakdowns, then action shall be taken accordingly if the same is found to be owned by the police officers who serve in our force.

**Mr. Manoti:** Mr. Speaker, Sir, this a very lucrative business, because we can see very many breakdowns on the streets of Nairobi and other towns in Kenya. Could the Assistant Minister

tell us how much money the Government has received in Nairobi from towing of vehicles?

**Mr. Kingi:** Mr. Speaker, Sir, I think that is a very different Question. The hon. Member should file it and I will answer it accordingly.

**Mr. Maore:** Mr. Speaker, Sir, the contents of this Question are very accurate. Could the Assistant Minister tell this House under which arrangement the police contact the private owners of these breakdowns, if they actually do not own them? Why is the Police Department not able to acquire a few breakdowns for the traffic police, so that they do not own them privately?

**Mr. Kingi:** Mr. Speaker, Sir, the second question by the hon. Member is a good suggestion. But we cannot implement it immediately due to financial constraints.

On the other question, I think when there is a problem, the owners of the vehicles are supposed to report this matter to the police and they jointly look for towing vehicles. Once the vehicles are towed, the owners should take charge.

**Prof. Olweny:** Mr. Speaker, Sir, why are the drivers who commit traffic offences not given bonds to appear in court, instead of their vehicles being towed and damaged in the process?

**Mr. Kingi:** Mr. Speaker, Sir, I am not sure if I got the hon. Member's question right. But I think both things happen. First and foremost, the vehicle has to be towed off the road so that it does not obstruct other road users. Secondly, the other procedures follow much later.

**Mr. Speaker:** Last Question, Mr. Manoti!

**Mr. Manoti:** Mr. Speaker, Sir, sometimes these breakdowns damage people's vehicles. Could the police use the system which is applied by the Nairobi City Council, to clamp these vehicles wherever they are, instead of towing them to the police stations?

**Mr. Kingi:** Mr. Speaker, Sir, the City Council of Nairobi *askaris* lock vehicles so that they are not moved. I do not know whether this is what the hon. Member wants us to do in the middle of the road. I think it is only reasonable that we tow vehicles to police stations. If, in the process, they are damaged, the owners can always sue the owners of breakdown vehicles and make them pay the cost of repair.

### *Question No.432*

#### FREQUENT BREAKDOWNS AT LIKONI FERRY

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

(a) whether he is aware that tourists and *wananchi* commuting from the South Coast have experienced transport problems due to frequent breakdowns at Likoni Ferry; and,

(b) whether he could consider constructing an alternative route through Mazaras in order to ease congestion occasioned by the ferry.

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

(a) I am aware that tourists and *wananchi* commuting from the South Coast have experienced transport problems due to frequent breakdowns at Likoni Ferry.

(b) My Ministry is considering constructing an alternative route through Mazaras to ease congestion occasioned by the ferry. The World Bank will fund the design of the project under the Northern Corridor Transport Infrastructure Programme. The alternative route will be called the Mombasa Bypass to South Coast. It is envisaged that the bypass will go along way in easing the traffic congestion which is currently being experienced.

**Mr. Rai:** Mr. Speaker, Sir, I appreciate the answer given by the Assistant Minister. He has

conceded to the inconveniences suffered by commuters to the South Coast occasioned by breakdowns of the Likoni Ferry. Could he tell this House when this programme will start?

**Eng. Toro:** Mr. Speaker, Sir, the programme is going on well. At the moment, the Ministry has already short-listed six consultants, who are going to bid for the consultancy work. They are expected to return their bids by 26th of this month. Once we select the consultant to do the work, it will take about 18 months. After this, we will enter into an agreement for financing with the World Bank. We will then go to tender and get the contractor to carry out the construction work.

**Mr. ole Metito:** Mr. Speaker, Sir, one way of easing congestion on the Nairobi-Mombasa Highway is by tarmacking the Emali-Loitokitok-Taveta Road through Mazeras to provide an alternative route from Mombasa. When is the Government going to tarmack this road?

**Eng. Toro:** Mr. Speaker, Sir, although that is not part of this Question, the Emali-Loitokitok Road project is going on very well. We have already assigned GIB-Africa to do the design review and supervision of the project.

Mr. Speaker, Sir, it is already programmed that design review and construction work will take 30 months. Work will commence from around February next year.

**Mr. Speaker:** Very well. Last question, Mr. Rai!

**Mr. Rai:** Mr. Speaker, Sir, while still appreciating the concerns by the Assistant Minister, considering the plight of commuters at the Likoni Ferry, and recalling the accident at Mtongwe Ferry, we do not want to wait until another mishap happens.

Considering the relationship of this country and the World Bank, could the Assistant Minister tell this House how much money is expected to be spent on this programme?

**Eng. Toro:** Mr. Speaker, Sir, with due respect to the hon. Member, it is not possible to say now how much will be spent. It will depend on what the consultants come up with in their designs.

I am saying this because the scope of work for Dongokundu-Miritini Bypass also includes some other work, because it is a package. Construction work will cover Mbaraki-Mnazi Road, Archbishop Makarios Road, Mwakiringo Street and a flyover over the railway line connecting Mwakiringo Street and Lumumba Road. There will also be the widening of the access to Moi International Airport.

So, this will be a package project, which will cover the Dongokundu-Miritini Bypass. It is not easy to say now how much it will cost.

**Mr. Speaker:** Very well! Question Time is up!

Is Mr. Bahari here? He is not here! Anyway, *bahati yake*. I will defer his Question because time is up!

*Question No.592*

SUPPLY OF ELECTRICITY TO  
GARBA-TULA TOWNSHIP

*(Question deferred)*

Mr. Odoyo, I will defer your Question to Tuesday! You will have priority on Tuesday.

*Question No.063*

ERRATIC RISE IN COST OF WATER  
SUPPLIED BY NYAKACH WATER SCHEME

*(Question deferred)*

Mr. Muiruri, you will also have priority on Tuesday!

*Question No.573*

NON-REFUND OF CASH BAIL  
BY KIAMBU COURT

**The Minister for Planning and National Development** (Mr. Obwocha): On a point of order Mr. Speaker, Sir. I have only one Assistant Minister. We are both going to be out of the country. Therefore, we would have liked this Question answered today, if possible.

**Mr. Speaker:** Why not on Tuesday?

**The Minister for Planning and National Development** (Mr. Obwocha): Mr. Speaker, Sir, both the Minister and the Assistant Minister will not be present here.

**Mr. Speaker:** Okay; let us have the Question the week after next week!

*(Question deferred)*

Hon. Members, I am sorry, we have to be on time because we have a lot of pending work. We need to reach all the Bills.

#### **POINT OF ORDER**

MINISTERIAL STATEMENT ON INSECURITY  
TO BE ISSUED ON TUESDAY

**Mr. Ojode:** On a point of order, Mr. Speaker, Sir. Yesterday, we requested a Ministerial Statement on the insecurity in the country. The Minister agreed to give the Statement today. The Assistant Minister is here but he is not standing to give the Statement!

*(Applause)*

Although, he is an Assistant Minister, he can still be given the chance to tell us---

**Mr. Speaker:** What then are you saying?

*(Laughter)*

Mr. Kingi, are you ready?

**The Assistant Minister, Office of the President** (Mr. Kingi): Mr. Speaker, Sir, I have a copy of the HANSARD with me here. I said that I would give a Ministerial Statement on Thursday next week.

*(Mr. Kingi laid the HANSARD  
on the Table)*

**Mr. Speaker:** Mr. Assistant Minister, this issue should be addressed!

**The Assistant Minister, Office of the President** (Mr. Kingi): Mr. Speaker, Sir, we are, of course, addressing the issue. However, I undertook to issue a Ministerial Statement on Thursday

next week. I have tabled a copy of the HANSARD, and I do not appear to have been misquoted.

**Mr. Ojode:** On a point of order, Mr. Speaker, Sir. You will bear me witness that it was the Chair that gave an order as a result of the problem we were facing at that time. As we speak now, two people have been shot dead in Mombasa. We cannot wait up to Thursday for the Statement to be issued by the Assistant Minister. If the substantive Minister is not here, the Vice-President and Minister for Home Affairs is here!

*(Applause)*

**Mr. Speaker:** What about issuing the Statement on Tuesday, Mr. Kingi?

**The Assistant Minister, Office of the President** (Mr. Kingi): Mr. Speaker, Sir, the issues that were raised by hon. Members are many. We need to get information from all over the place.

Mr. Speaker, Sir, of course, there is urgency, but we need to give the correct information. We also undertook to make sure that we take action on these issues even as we wait for the Ministerial Statement.

**Mr. Speaker:** Hon. Members, let me arbitrate! You are asking for a Statement today; there is a suggestion for it on Tuesday; the Assistant Minister is asking to be allowed to give it on Thursday. I will settle for Wednesday. He has said that, in the meantime, they are addressing the problem.

**Mr. Odoyo:** On a point of order, Mr. Speaker, Sir. People are dying by the minute. May I appeal to your discretionary powers to, at least, to ask the Assistant Minister to issue the Statement on Tuesday?

**Mr. Speaker:** Okay. You all know my general inclination towards ensuring that ordinary Kenyans are secure. That is the role of everybody. I think hon. Odoyo is not asking for too much by asking the Minister to issue the Statement on Tuesday. I think he will do it. That ends that issue. There should be no more haggling. That is the end of it!

**The Assistant Minister, Office of the President** (Mr. Kingi): Mr. Speaker, Sir, you have made a ruling and we will undertake to do that. But I would have wished to be given more time because the issues involved are complex. We need to gather accurate information. These incidents are not related and that is why we need ample time, so that we can bring to this House accurate information. In the meantime, we are taking action to ensure that everything is done in order.

**Mr. Speaker:** Order, hon. Members! There is a difference between a Ministerial Statement involving land and one that involves the lives of Kenyans. This is an urgent issue. I think you have officers on the ground in every part of this country. Hon. Kingi, please, do that. I am confident that you will do it.

**The Assistant Minister, Office of the President** (Mr. Kingi): Mr. Speaker, Sir, I oblige.

**Mr. Kajembe:** Mr. Speaker, Sir, I have a terrible cold. However, my Committee is charged with the responsibility of national security. The Committee is not getting adequate co-operation from the Ministry of State for Administration and National Security. The security of this country is now like a tomato, such that when you try to take care of one side, the other side is getting rotten.

Mr. Speaker, Sir, there is need for the Assistant Minister to respond to the issue right away. My Committee is getting tired with the state of insecurity in this country.

**Mr. Speaker:** I have already made a decision.

Next Order!

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[Mr. Speaker left the Chair]*

IN THE COMMITTEE

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

THE FINANCE BILL

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! Those who want to leave the Chamber, please, do so quietly. We are now in the Committee of the whole House to consider the Finance Bill.

*(Clauses 2 and 3  
agreed to)*

*Clause 4*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 4 be amended in Paragraph (a) by adding the following sub-paragraph immediately after item (ii)-(iii) in item 3 of the First Schedule.

Mr. Temporary Deputy Chairman, Sir, this amendment seeks to align the First Schedule to the Bill with the Legal Notice that we issued on 11th July, 2006, which was basically to bring in tariff line 22071000, which was inadvertently omitted during the drafting stage of the Finance Bill.

*(Question of the amendment  
proposed)*

**Mr. Billow:** Mr. Temporary Deputy Chairman, Sir, there is an amendment to Clause 4 which has been proposed by the Finance, Planning and Trade Committee.

**The Temporary Deputy Chairman** (Mr. Khamasi): Hon. Members, I suggest that we first dispose of the Minister's amendment and then we can go to hon. Oparanya's amendment.

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

**The Temporary Deputy Chairman** (Mr. Khamasi): Now we can go to hon. Oparanya's amendment.

**Mr. Billow:** Mr. Temporary Deputy Chairman, Sir, the amendment by the Finance, Planning and Trade Committee reads as follows:-

THAT, Clause 4 be amended in paragraph (a) by inserting the following sub-paragraph immediately after sub-paragraph (iA) in item 1A of the First Schedule.



**The Temporary Deputy Chairman** (Mr. Khamasi): Order! I have been advised by the Clerk-at-the-Table that hon. Oparanya had advised that all his amendments be moved by Dr. Oburu. So, I would like to ask Dr. Oburu to do that.

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, my Committee is proposing the following:-

THAT, Clause 4 be amended in paragraph (a) by inserting the following sub-paragraph immediately after sub-paragraph (iA) in item 1A of the First Schedule.

*(Question of the amendment proposed)*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I would like to oppose the amendment by the Committee on the basis that this is an issue that we discussed with the Committee at length. The amendment is seeking to lower the tax rate from 65 per cent on wines to 45 per cent. The effect of that would be a reduction of Kshs25 million from the Budget, which we have already factored in for the financing of projects in this country.

I would like to point out that the effect of that is that we will appear to be looking at one specific manufacturer in order to accommodate his wishes. This manufacturer is not actually producing wine, but a fortified wine after mixing wine with spirit. That falls under a different category. If we were to do that, we would be compromising on taxes that we get from the entire wine industry.

Mr. Temporary Deputy Chairman, Sir, I would like to urge this House to look at other ways of helping that kind of manufacturer, but not to compromise on the wine revenue that will be coming from the entire industry. We should retain the rate at 65 per cent, which is in parity with all the other drinks within the region.

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, the rationale behind that proposal is that the Minister is targeting a particular brand for reduction, almost for zero-rating, and disadvantaging a local industry in favour of a multinational company. That is the reason why the taxation should remain what it has always been.

*(Applause)*

**Mr. Muiruri:** Mr. Temporary Deputy Chairman, Sir, I stand to support the Minister's view on this particular manufacturing company. The company is well known and it is stationed in Naivasha. I have raised a matter before in this House, that its products have been proved to contain methanol which causes people to become blind.

**Mr. Mukiri:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Is it in order for an hon. Member to come here and make allegations without substantiating, about a company which has been licensed by this Government; has been contributing to tax, and whose products have gone through the Kenya Bureau of Standards (KEBS)?

**Mr. Muiruri:** Mr. Temporary Deputy Chairman, Sir, that matter was raised in this House and hon. Miriti responded to it. He told us that KEBS had visited Keroche Industries in Naivasha and confirmed that its products are known to contain methanol. It is in this House's records that any time the company is closed down and the owner is taken to court, he somehow gets himself out of trouble by visiting the District Commissioner and the Provincial Commissioner. He has the muscle of getting away with the problem. This is something that was known a long time ago.

**Prof. Anyang'-Nyong'o:** Mr. Temporary Deputy Chairman, Sir, are we debating standards in industry or about taxation in industries? If we are debating about standards in industries, then the

hon. Member for Gatundu North is right. However, if we are debating about taxation, then the issue of standards does not arise.

*(Applause)*

**Mr. Midiwo:** Thank you, Mr. Temporary Deputy Chairman, Sir. I rise to support the amendment proposed by the Finance, Planning and Trade Committee. It would be interesting if the hon. Member, Mr. Muiruri, declared his interest. This House cannot be dragged into any other issues apart from taxation issues. This is a local industry which employs Kenyans. We cannot increase tax on it while we support a multinational company.

Mr. Temporary Deputy Chairman, Sir, my opposition to this amendment is occasioned by the fact that there are hon. Members in this House who are distributors for East African Breweries Ltd., who are fighting their own wars. In fact, the hon. Member who has just spoken is a brewer.

*(Applause)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Midiwo! The Chair will not allow such kind of talk. We still have a long way to go.

**Mr. Muiruri:** On a point of order, Mr. Temporary Deputy Chairman, Sir. The hon. Member has made a very serious allegation against me, by saying that I am a brewer. He should apologise because I am not a brewer.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, I have already ruled that the hon. Member is out of order. I now want the Minister to respond to the amendment, I put it to vote, then we can dispose of it.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I would like, for the record of this House, to clarify one of the things that have come out. The tax measures on this tariff code is on all wines across the board; it is not only on a wine that is produced by a specific industry. If the problem is the difference between wine and beer, I would have expected the amendment to have a tax increase on beer and not on wine. The impact of this is reduction of revenue across the board for all wines.

I would also like to clarify to this House that the amendment will not help the industry that hon. Members are thinking about because what it produces is a spirit and not a wine. I believe that we are probably targeting the wrong code, with our own perceptions for the wrong reasons. Since this is an issue that will go on public record, it might help this House if the Chairman of the Finance, Planning and Trade Committee would declare his interest in this matter.

**The Temporary Deputy Chairman** (Mr. Khamasi): Dr. Oburu, you have been asked to declare your interest.

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, I did not expect the Minister to spread rumours. What he is alleging is that a company, where I am the Chairman, Spectre International, is a client of Keroche Industries.

Mr. Temporary Deputy Chairman, Sir, I would like to inform him that the molasses plant produces what is called extra neutral alcohol which Keroche cannot buy because it is very expensive. Keroche buys its products from Muhoroni Sugar Company, a Government-owned company. Keroche Industries has never bought a litre from Spectre International. Therefore, that is just a rumour. In fact, if he

made it outside this House, I would take appropriate action against him.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! There are many amendments we have to tackle here. We must be careful on how we will do it. We have to be attentive. We have already passed the amendment by the Minister. We will put to vote the amendment proposed by hon. Oparanya.

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

*(Clause 4 as amended agreed to)*

*(Clauses 5, 6, 7, 8, 9 and 10 agreed to)*

*Clause 11*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 11 of the Bill be amended by deleting subclause (c) and substituting therefor the following new subclause:-

(c) in paragraph 17:-

(i) by inserting the following new sub-paragraph immediately after sub-paragraph (d):-

(e) entertainment performed wholly by artistes who are resident in Kenya;

(ii) by re-numbering the existing paragraph as sub-paragraph (1) and inserting a new sub-paragraph as follows:-

(2) For the purposes of this paragraph, "resident" means a person who:-

(a) has a permanent home in Kenya; or

(b) has no permanent home in Kenya, but- (A) is present in Kenya for a period or periods amounting, in the aggregate, to 183 days or more in each calendar year; or

(B) was present in Kenya in the calendar year of the performance and in each of the two immediately preceding calendar years, for periods amounting, in the aggregate, to more than 122 days in each calendar year.

Within within the Finance Bill of 2006, we did insert a new paragraph, 17, the Third Schedule to the VAT Act to make entertainment performed by our wholly local resident artistes exempt. The import of this was to promote our youth. What has happened is that we did not define who is a local artiste, and this amendment is actually to define who is a local artiste.

*(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 11 as amended agreed to)*

*Clause 12*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended-

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

(b) In part B-

(i) in the manner specified in paragraph (a) of Part I of the Fourth Schedule to this Act;

(ii) in the manner specified in paragraph (b) of the Fourth Schedule to this Act;

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

(c) in part C-

(i) in the manner set out in paragraph (a) of the Fourth Schedule to this Act;

(ii) in the manner set out in paragraph (b) of the Fourth Schedule to this Act.

The amendment seeks to zero-rate the welding machines and fishing equipment accessories in order to make them affordable to *wananchi* and our youth, as I explained while moving the Finance 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 12 as amended agreed to)*

*(Clauses 13, 14 and 15 agreed to)*

*Clause 16*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 16 be amended in subclause (a) by inserting the words "or such other amount as the Commissioner may prescribe" immediately after the words "per

day" appearing in the proposed subparagraph (iii).

Mr. Temporary Deputy Chairman, Sir, when I was moving the Finance Bill, we allowed for expenditure for out of pocket or subsistence up to Kshs2,000 to be deemed as reimbursement for tax purposes. But as we did that, an issue came up as to what happens if somebody spends Kshs2,100. This amendment is seeking to give leeway to the Commissioner of the Kenya Revenue Authority to prescribe amounts other than the Kshs2,400, where the amount is not necessarily wavering, rather than having to come back to the House every time there is an excess of that. So, it is just to give leeway to the Commissioner-General for purposes of ease of administration of the Act.

*(Question of the amendment  
proposed)*

**Mr. Billow:** Mr. Temporary Deputy Chairman, Sir, my problem is that Clause 16 as proposed in the amendment does not allow for discretion by the Commissioner. What the Minister is trying to do is to give the Commissioner a discretion to prescribe, and I think that is where the trouble is. We have always had a problem of discretions being misused by the Commissioner or the Minister. So, I oppose that proposal to amend Clause 16.

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, I also rise to oppose that amendment. When we are making law, we ought to be very specific. We cannot delegate our law-making power to a Commissioner who may use it for his own purposes.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I think it is important for the House to appreciate the cadre of people we are catering for with this amendment. When we said that professionals and any businessman who goes out there and has lunch, for purposes of claiming that amount for tax deductibility, they can only be allowed up to Kshs2,400. We are saying, supposing the cost of food goes up in the course of the year; are we going to say that you will only be allowed up to Kshs2,400? We are saying it will be Kshs2,400 or such other amount as may be prescribed by the Commissioner in the course of the year.

Mr. Temporary Deputy Chairman, Sir, we are giving the Commissioner that leeway until we come back to the House. The import of the amendment is to make it easier for businesses to operate, and not to give powers to the Commissioner.

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, but the clause---

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Sungu! Who has told you to address me?

Yes, Mr. Samoei!

**Mr. Samoei:** Mr. Temporary Deputy Chairman, Sir, while we appreciate the argument by the Minister, I do not know why there is a hurry to allow the Commissioner to come up with laws on behalf of Kenyans when we can do so. A year is not too long.

Mr. Temporary Deputy Chairman, Sir, in fact, we, as a country, should be working towards making food affordable and not anticipating incidents where Kenyans will be paying more to eat.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, perhaps this issue is not very clear to hon. Members. We are not asking the Commissioner to prescribe rules for people to pay more. What we are saying is that if we spend, for example, Kshs2,400, we can claim that amount as a tax deductible. If we spend Kshs2,401, we may be told that does not qualify. However, in that situation, the Commissioner will have the discretion of saying: "Even this is allowed." In any case, we must remember that the Commissioner has discretion to waive penalties of up to Kshs500,000. So, Kshs2,400 compared to Kshs500,000 is really a negligible amount. However, we want to make it easier for the purposes of administration of the Act that we do not

have a lot of claims being disallowed because the cost of food went up.

We do not want to see a situation where someone puts in a claim for Kshs2,400 and is told: "Sorry, that does not qualify."

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

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! You will have a chance to vote for or against this amendment!

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

*(Clause 16 agreed to)*

*Clause 17*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 17 be amended in the proposed subsection (2) by inserting the words "or outside" immediately after the words "established in."

Mr. Temporary Deputy Chairman, Sir, we amended Section 9 of the Income Tax Act basically to widen the scope of taxation on the apparatus set up in Kenya by non-residents for purposes of transmission of messages to include optical fibre, television broadcasting, VSAT, internet, satellite and other methods of communication. What this meant is that gains of profit that accrue to a non-resident person from transmission of messages using these apparatus will be subject to a Withholding Tax of 5 per cent on the gross amounts. We did not define what would happen if these apparatus were set up outside the country.

Basically, we are now bringing it up to include the apparatus both in country and outside, so long as it is business operated by a non-resident.

*(Question of the amendment proposed)*

**Mr. Odoyo:** Mr. Temporary Deputy Chairman, Sir, I fully agree!

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

*(Clause 17 as amended agreed to)*

*(Clause 18 agreed to)*

*Clause 19*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 19 be amended in the proposed section 12(c) by re-numbering the existing provision as subsection (1) and inserting a new subsection as follows-

"(2) The Minister may, by notice in the Gazette, prescribe rules for the better carrying out of the provisions of this section."

Mr. Temporary Deputy Chairman, Sir, this amendment is basically to empower the Minister to make rules for the proper operations of the Turnover Tax. This is something we are introducing to people with small businesses.

We have not provided for the Minister to make all the regulations to define what is turnover, the schedules people need to fill and who can do what. So, it is basically to facilitate the better management of this tax. This is a straight forward amendment.

*(Question of the amendment  
proposed)*

**Mr. Billow:** Mr. Temporary Deputy Chairman, Sir, what I want the Minister to explain is Clause 19 because it has to be read in conjunction with Clause 31. Clause 31 of the Bill clearly sets out that the rate of tax in respect of turnover, which is below Kshs5 million, shall be 3 per cent of the gross receipts. When the Minister inserts the words, "that he may, by notice in the Gazette, prescribe rules..." What I am concerned about here is that he can vary that rate any time he wants. That is the concern that I want him to address.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I would like to confirm to this House that the rules are not envisaging to change the rate. The rate will be set by the House. However, the question that has been arising is in terms of hon. Members saying: "Can I opt to be on the VAT or the Turnover Tax or do I pay Turnover Tax and that will be final?" We need to prescribe some rules that will be followed. We need also to include forms that will be filled by business people. This is because we did not provide them at the point of introducing Turnover Tax. This is a simplified tax for our people, especially at the local level. It has nothing to do with the change of rates.

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

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! I have said if you are in agreement, you will vote for the amendment; if not, you vote against it.

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

*(Clause 19 as amended agreed to)*

#### *Clause 20*

**The Temporary Deputy Chairman** (Mr. Khamasi): Hon. Members, on Clause 20, we have got two amendments. One by the Minister and the other by Mr. Omingo, which has been approved by the Chairman. I would like us to take the amendment by the Minister first.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 20 be amended by deleting subclause (c) and substituting therefor the following new subclause-

(c) by deleting subsection 8 and substituting therefor the following new subsection-(8) In this section, where the Minister is required to give his approval regarding any matter, he may make rules relating to the granting of such approval.

Mr. Temporary Deputy Chairman, Sir, within the Bill, we made some amendments to facilitate philanthropic contribution by members of the public - what they call chess- including contributions to charitable organisations, schools, hospitals and building roads to be tax deductible. What we did not do at that point was to basically make the rules that will govern how the exemptions by the Minister will be given, how people will prescribe, apply and so on. What we are asking here is that we empower the Minister to make the rules for granting tax deductions, so that everyone is in the clear picture as to how to get the exemptions or not.

Mr. Temporary Deputy Chairman, Sir, we do not want to leave it to the wishes of the Minister to grant this or that. There has to be some very clear-cut rules that everyone understands. Everyone needs to see that: "If I fill these forms, I am likely to do this or that." We are basically looking at ways of removing the discretion. As it is now, it gives the Minister discretion to either say: "This one can qualify and this other one cannot." However, by making the rules, which will then be gazetted for public debate, we will have removed that discretion and made it more transparent in terms of how one can qualify.

**Mr. Billow:** Mr. Temporary Deputy Chairman, Sir, transparency in governance is---

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Billow! I have not even proposed the amendment! Relax!

*(Question of the amendment  
proposed)*

**Mr. Billow:** Mr. Temporary Deputy Chairman, Sir, I just want to seek some clarification. Where the Minister would be required to make approvals, he would make some rules. Will those rules be submitted to Parliament for approval? There are concerns that rules are sometimes made to favour certain industries.

Could the Minister undertake that these rules will be tabled before this House?

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, that is actually the procedure. All rules are tabled in this House for 14 days before they become effective.

**Mr. Ochilo-Ayacko:** Thank you, Mr. Temporary Deputy Chairman, Sir. The reason the Minister is advancing for seeking discretion to make rules is denial of himself of the discretion to give approvals. But if you look at how rules are made by Ministers and Government agents, you will find that they are purely discretionary.

Mr. Temporary Deputy Chairman, Sir, so, what the Minister is asking for is to give by the right hand and take away using the left hand.

**Mr. Gachagua:** Mr. Temporary Deputy Chairman, Sir, I do not know why the Minister wants to make these particular rules, because in granting whatever is requested, he uses his discretion. He looks at the particular circumstances of every case. So, by making rules, he is actually tying his hands. He will not be able to look at a particular case that may merit his consideration. The power is always there for the Minister to make rules. So, I argue that we leave this matter the way it is.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I would like to comment on this issue. These are innovations that we are bringing into our statutes. People can donate money and it would be up to the Minister to use his discretion as to who qualifies for



tax rebate. We owe it to posterity, that whatever we do here should be consistently used in the future. What we are doing is to allow this good gesture so that people can make donations, but then we should have rules that would be used now and in the future.

Mr. Temporary Deputy Chairman, Sir, so, what we are doing is completing the picture for making of donations to be applied consistently regardless of which Minister is in office. I thought that was what the House has been looking for today.

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

**The Temporary Deputy Chairman** (Mr. Khamasi): We will now move to the amendment by Mr. Omingo.

**Mr. Omingo:** Mr. Temporary Deputy Chairman, Sir, I rise to---

*(Loud consultations)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order!, Order, hon. Members lets us listen to Mr. Omingo.

**Mr. Omingo:** Mr. Temporary Deputy Chairman, I rise to propose an amendment to the amendment by the Minister.

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

THAT, Clause 20(a)(y) be deleted.

Mr. Temporary Deputy Chairman, Sir, my reason for doing so is this, we require a political parties Bill. There is no way the Executive can extend its hand through the taxman to fund political parties. What that would mean is that the people in power would be able to tilt the balance and receive money.

Mr. Temporary Deputy Chairman, Sir, we are going to fund political parties using taxpayers' money. As a former taxman, I know that this would mean that a person who donates Kshs1 million would get a tax rebate of the tax payable. This amendment is not reducing the Minister's tax but increasing it.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! If you refer to the Finance Bill, 2006, page 971, you will see that what hon. Omingo is doing is to actually delete 20(a)(y).

*(Question of the amendment  
proposed)*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, the whole purpose is to allow contributions by individuals, specifically to political parties. This is to help the emergence of democracy and ensure transparency in the way people can make donations.

Now, what the hon. Member is seeking to do is to block that gesture and say nobody can make a donation to a political party. As our democracy evolves and we go deeper into transparency what we are actually trying to do in this House is to kill the very avenue that is being created to further democracy in this country. We are telling the corporate world out there that it is free to

make a donation to a political party and get a tax rebate on it. This will be done as a way of perpetuating democracy in this country.

Let me also say that this is in line with what happens in all other jurisdictions. It happens in the United States of America and in other countries. People are encouraged to make donations transparently and get a tax rebate rather than trying to give it under the table and claiming it as expenses later. It is for you people to decide, and one day you will remember me for this one.

**Mr. Marende:** Mr. Temporary Deputy Chairman, Sir, I have heard the Minister. But our position is this, much as we would like to see political parties supported, we want this support to come when the playing ground is level.

Mr. Temporary Deputy Chairman, Sir, the answer to this is to bring the Political Parties Bill here, so that we can debate this matter exhaustively and properly legislate on it. The answer is not to sneak in provisions like this Clause 20(a)(y). So, for that reason I support the amendment by hon. Omingo.

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

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Order, hon. Members! I will now put the Question; so, all of you, sit down.

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

*(Loud consultations)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Order, hon. Members!

*(Clause 20 as amended agreed to)*

*(Clauses 21, 22, 23 and  
24 agreed to)*

*Clause 25*

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

THAT, the Bill be amended by deleting Clause 25.

I am proposing this because it is in relation to the Capital Gains Tax. This tax, even though the Minister says that it is going to apply to the rich, our Committee believes that it is going to harm the poor. This is because it is the poor who rent houses. Once the price of houses goes up the poor will have to pay higher rents, because the rich will not absorb the higher cost of houses. Therefore, I propose that this particular Clause be deleted.

*(Question of the amendment  
proposed)*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, much as I follow the debate on Capital Gains Tax, I would also like to draw the attention of the House that

Clause 25 is not about the rates of Capital Gains Tax. It actually states the following:

"(h) tax upon the Capital Gains of a person charged under Section 3(2)(f) shall be charged at the rates provided for under Paragraph 6 of the Third Schedule."

The same Clause states the Turnover Tax shall be charged at the resident rate for the tax year. So, Clause 25 is not only on Capital Gains Tax alone; rather, it also refers us to where the rates can be found. If we talked of removing the Capital Gains Tax, then we shall be effectively removing the rates that define it and that falls in another clause different from Clause 25.

Mr. Temporary Deputy Chairman, Sir, I would, therefore, wish to ask hon. Members that even as we delete Clause 25, we must remember that we shall not only be affecting Capital Gains Tax, but also the Turnover Tax which will now make the very poor people we are talking of pay more VAT.

It is important that I inform the House that Clause 25 has two parts namely (a) and (b). Clause 25 (a) refers to Capital Gains Tax while Clause 25 (b) refers to Turnover Tax. If we delete the two parts, then we shall have effectively done away with the Turnover Tax and VAT, which is actually not the intention of the hon. Member.

So, I would rather that we address the issue of Capital Gains Tax as it appears in the subsequent Clause 34. It specifically deals with Capital Gains Tax as opposed to Clause 25 which only states where the rates will be. It does not state categorically that there shall be Capital Gains Tax. All it states is where the rates for Turnover Tax, Capital Gains Tax and so on will be.

**Mr. Weya:** Mr. Temporary Deputy Chairman, Sir, with regard to the Turnover Tax, you will realise that most multinationals increase their rates whenever the Minister increases the rate of taxation. For instance, when the Minister for Finance increase VAT by a certain percentage, a company, say, Safaricom reflects that on the consumer price and thus making their service costly to the consumer. Therefore, I propose that this clause should be deleted.

**Mr. Billow:** Mr. Temporary Deputy Chairman, Sir, the Departmental Committee on Finance, Planning and Trade is very clear about what it is doing.

Mr. Temporary Deputy Chairman, Sir, when he read the Budget Speech, the Minister said that he was introducing Capital Gains Tax. He said that when property is being sold it will have to attract Capital Gains Tax. So, whether or not there is a provision of a rate in a schedule somewhere, that is irrelevant.

Mr. Temporary Deputy Chairman, Sir, if Clause 25 is removed, the whole concept of Capital Gains Tax on sale of property will be removed. So, I support the proposal.

*(Applause)*

**The Minister for Finance (Mr. Kimunya):** Mr. Temporary Deputy Chairman, Sir, may I just draw the attention of the House to the fact that it had approved Clause 19 which was on Turnover Tax. Already, we had approved that there shall be Turnover Tax, but now we want to delete a clause that says where the rates for Turnover Tax will be. I wish to reiterate that Clause 25 has two parts namely, (a) and (b).

This afternoon, here in this House, we approved that there shall be a Turnover Tax, but that particular tax has not been defined where it will be. The rate of the Turnover Tax is, however, defined in Clause 25. Let us look at it this way: Clause 25 is in between the Turnover Tax and the Capital Gains Tax in terms of stating where the rate will be. Now, the rate is in the schedule which this House can actually amend and put it to zero. The effect of that is that there will be no Capital Gains Tax.

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

*(Clause 25 deleted)*

*Clause 26*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 26 be amended by deleting subclause (b) and substituting therefor the following new subclause-

(b) in subsection (3)-

(i) by deleting the words "consultancy, agency or contractual fee" appearing in paragraph (f) and substituting therefor the words "management or professional fee";

(ii) by adding a new paragraph immediately after paragraph (g) as follows-

(h) rental payments in respect of assets leased under a finance lease as defined in the Income Tax (Leasing) Rules, 2002.

Mr. Temporary Deputy Chairman, Sir, these amendments basically seek to align the amendment in Rule 2 of the Income Tax (Leasing) Rules with the parent law under Section 35 of the Income Tax Act. This is a straightforward amendment that seeks to harmonise the rules and the tax and, therefore, we should not have an issue on it. May I also express my shock at the fact that I am not even sure about the fate of Clause 19 right now. However, let us go through this particular one.

*(Question of the amendment  
proposed)*

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, we support the amendment by the Minister for Finance. However, he ought to be informed by the debate that we had on the Floor of the House when we were talking about Capital Gains Tax. There is no other amendment to Clause 34 which he was talking about. He has been trying to dupe this House and that is not correct.

**Mr. Billow:** Mr. Temporary Deputy Chairman, Sir, with regard to the amendment on Clause 26, if you look at page 461 of the Order Paper it states the following: "(h) rental payments in respect of assets leased under a finance lease as defined in the Income Tax (Leasing) Rules, 2002." I just wanted to seek clarification from the Minister whether or not he is introducing a withholding tax for the asset leased. Could he, please, shed some light on this matter.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, we have already introduced in the Bill the Withholding Tax on the assets leased.

Mr. Temporary Deputy Chairman, Sir, however, we found out that there is a discrepancy between the rules and the Act itself. This amendment is basically meant to harmonise the two. The introduction has already been included and it is not the issue here. This is a straightforward administrative issue for better management of the Act.

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

*(Question, that the words to be*

*inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 26 as amended agreed to)*

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

*Clause 31*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 31 of the Bill be amended in subclause (b)—

(a) by inserting the following new paragraph immediately after paragraph (ii) deleting subparagraph (ii) and substituting therefor the following new subparagraph—

(iiA) In item 5 by inserting a new subparagraph (i) as follows—

(i) In respect of lease rentals paid under rule 3 of the Income Tax (Leasing) Rules, 2002, three per cent of the gross amount payable to the lessor.

(b) by deleting the proposed item 9 appearing in subparagraph (v) and renumbering item 10 as item 9.

(ii) in item 5—

(A) by deleting the expression "consultancy or agency fee" appearing in subparagraph (f) (i) and

substituting therefor the expression "management or professional fee, other than contractual fee;

(B) by inserting a new subparagraph immediately after subparagraph (h) as follows—

(i) in respect of lease rentals paid under rule 3 of the Income Tax (Leasing) Rules, 2002, three per cent of the gross amount payable to the lessor.

(b) in subparagraph (v), by deleting the proposed item 9.

Mr. Temporary Deputy Chairman, Sir, this is also a straightforward issue. When I proposed the Withholding Tax, we had prescribed 15 per cent tax. However, when we realised that the 15 per cent tax on turnover was high, we reduced it to 3 per cent.

Mr. Temporary Deputy Chairman, Sir, therefore, the effect is to reduce the Withholding Tax from 15 per cent to 3 per cent as per the legal notice that we issued on 11th July, 2006.

*(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 Deputy Chairman** (Mr. Khamasi): There is an amendment by hon. Oparanya.

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the Bill be amended by deleting Clause 32.

Mr. Temporary Deputy Chairman, Sir, we had proposed that we delete the whole clause.

**The Temporary Deputy Chairman** (Mr. Khamasi): Why? What are the reasons for that?

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, we are proposing deletion of this clause because just like capital gains it was going to have an effect on housing and the source of any other property. So, for the same reasons we propose deletion of capital gains, we are also proposing deletion of this one.

**The Minister for Livestock and Fisheries Development** (Mr. Munyao): On a point of order, Mr. Temporary Deputy Chairman, Sir. Does Dr. Oburu have the authority to speak on behalf of hon. Oparanya?

**Hon. Members:** Where have you been?

**The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Munyao, that is the problem you have when you come late to the Chamber.

*(Laughter)*

*(Question of the amendment proposed)*

**Mr. Billow:** Mr. Temporary Deputy Chairman, Sir, I want to support the amendment. What Clause 32 is doing is to make the relevant amendment in the Eighth Schedule to give effect to the Capital Gains Tax that has been proposed. So, in that regard, I support the proposal that it should be deleted in its entirety.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, like I said, we regret a mistake we have just made in this House a few minutes ago. We have deleted a tax while this is the clause we should be working on and I did draw the attention of the House to it. So, it has no effect or meaning because we have deleted the clause. So, whether we delete it or not, it is of no use to us.

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

*(Clause 32 deleted)*

*(Clauses 33, 34, 35 and 36 agreed to)*

*Clause 37*

**The Temporary Deputy Chairman** (Mr. Khamasi): Hon. Members, there is an amendment by hon. Oparanya.

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the Bill be amended by deleting Clause 37.

Mr. Temporary Deputy Chairman, Sir, we proposed that this clause be deleted because it is

affecting constitutional offices and in our view, by deducting their allowances, this is going to have an effect of actually reducing their benefits, which in the Constitution is not prudent. It is because of this that we are proposing that this clause be deleted.

*(Question of the amendment  
proposed)*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, in order for us all to be clear on this, the clause proposes to tax certain benefits especially the house and entertainment allowances for the constitutional office holders. Hon. Members are aware of the public desire that every Kenyan should contribute to the running of this country and that nobody should be exempt from any tax. We have looked at it across the board and said constitutional office holders' incomes are ringfenced terms of what cannot be deleted except for house allowance and entertainment allowances. This proposed amendment is consistent with the Constitution. We have double checked that. We have got the legal opinion both from the House and advisors. For the benefit of the hon. Members, the house and entertainment allowances are not considered as salaries when computing the pensions of the constitutional office holders and this position is also supported within Section 104 of the Constitution.

So, basically what we are trying to do is to ensure that every Kenyan has an opportunity to contribute through tax and nobody is barred by the law that you cannot contribute because the law says you should not be taxed. We are doing that for them to feel they are part of society. By contributing a bit of their income or by taxing their house allowance and entertainment they feel they are Kenyans.

I am sure this House will be supporting the current life we have of ensuring that we have our financial independence through raising the taxes and any message we send to the rest of the Kenyans that we want to tax the poor and we favour the rich is the wrong message from this House.

**Mr. Angwenyi:** Mr. Temporary Deputy Chairman, Sir, I do not understand why this Minister wants to open Pandora's box all over the country. We have a battle with the university lecturers. He now wants to open a Pandora's box with all other constitutional offices including Parliament. Let us delete that Clause.

**Mr. Maore:** Mr. Temporary Deputy Chairman, Sir, I also want to agree with the sentiments of hon. Angwenyi and plead with the Minister that next time he presents a Budget here, he should work with the relevant Departmental Committee. That way, we will have some good public relations.

Secondly, if you look at constitutional office holders you will find they are not 300,000 or one million on the payroll. They are just a few Kenyans who actually sacrifice beyond the normal calling of duty and there is nothing wrong in this august House in granting them a tax free allowance. I do not know why the Minister has a problem with that.

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

*(Clause 37 deleted)*

*(Clause 38 agreed to)*

*Clause 39*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 39 and replacing it with the following new clause-

Amendment Schedule to Cap.469.	39. The First Schedule to the <sup>of the first</sup> Revenue Authority Act is amended in Part III-	
	(a) by inserting the following new item immediately after item 10-	
	11. The Government Lands Act (Cap.280)	
	(b) by inserting the following new item immediately after	item
11-	12. The Sugar (Imposition of Levy) Order,	2002

(L.N.385/2002).

Mr. Temporary Deputy Chairman, Sir, the import of the amendment, basically, arises from the consultations we had with the Departmental Committee and hon. Members, during which we refined the issue of the Sugar Development Levy. It was agreed that once we accept that this levy should be charged on the consumer, it becomes a consumer tax, which should be collected by the Kenya Revenue Authority, and not by any other institution. We are now giving legal powers to the Kenya Revenue Authority to collect the Sugar Development Levy and pass it on to the Exchequer. The money collected will then be channelled back to the users, through the Ministry of Agriculture, as an Exchequer Issue rather than the illegality we are now living in.

*(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 39 as amended agreed to)*

*(Clauses 40 and 41 agreed to)*

*Clause 42*

**The Temporary Deputy Chairman** (Mr. Khamasi): Hon. Members, there is a proposal for amendment of Clause 42 by Mr. Oparanya.

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, on behalf of Mr. Oparanya, I beg to move:-

THAT, Clause 42 be deleted.

Mr. Temporary Deputy Chairman, Sir, this is a clause relating to the amendment of the Insurance Act. We are of the view that all proposals for amendment of the Insurance Act should come to this House properly under the Insurance (Amendment) Bill, so that hon. Members can have an opportunity to debate them properly, instead of bringing them here piecemeal by sneaking



them into the Finance Bill, 2006. This is a way of denying hon. Members an opportunity to discuss and scrutinise those proposals.

*(Question of the amendment proposed)*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I would like to draw the attention of hon. Members that Clause 24 is attempting to give Kenyans control over the insurance industry. There is a requirement that 30 per cent of the insurance industry must be owned by Kenyans. What it does not say is who is a Kenyan. Now, this is the power we are giving to the Kenyan people. I would be surprised that this House would like to take away the power we are giving to Kenyans to own shares in the insurance industry.

Mr. Temporary Deputy Chairman, Sir, another point I would like to add is that we would have included this Clause in the Insurance (Amendment) Bill but these amendments were brought in June, 2006. At that time, it was not clear when the Insurance Act would be amended. Even what is before the House right now is an amendment to create an insurance authority, and not to define these things. Therefore, if this House is happy with the concept that Kenyans should own part of the insurance industry, then we should pass this Clause.

When we finally amend the Insurance Act, the two Acts will be amalgamated. Let us not deny Kenyans a chance to own a part of the insurance industry under the guise of delaying this amendment because Kenyans need this provision now.

**Mr. Okemo:** Mr. Temporary Deputy Chairman, Sir, I do not, really, think that we can sympathise with the Minister's incompetence to have not anticipated the urge for the Insurance (Amendment) Bill to have included the clauses he has included in the Finance Bill. If he has not done so, then it must have been an afterthought. Therefore, he must pay the price of his incompetence by making sure that he, quickly, after this, comes up with amendments and include them in the Insurance (Amendment) Bill.

**The Assistant Minister for Finance** (Mr. Kenneth): Mr. Temporary Deputy Chairman, Sir, I just want to clarify that it is not an issue of incompetence. The Insurance (Amendment) Bill that is before the House is purely for two items: One---

**An hon. Member:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! Order!

**An hon. Member:** He should declare his interest!

**The Temporary Deputy Speaker** (Mr. Khamasi): Order! Order, hon. Members! You shall be silent as Mr. Kenneth contributes! He must be heard!

**Mr. Okemo:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I think it would only be fair to this House if the hon. Member could declare his interest before making a contribution to support this amendment.

**The Assistant Minister for Finance** (Mr. Kenneth): Mr. Temporary Deputy Chairman, Sir, if I have to declare my interest, Mr. Okemo is chairman of an insurance brokerage. As the saying goes, those who live in glass houses must not throw stones. So, if he wants to throw stones, he should know where to throw them. All I am telling the House is that---

*(Hon. Members consulted loudly as  
Mr. Odoyo stood up in his place)*

You have ruled that I should be heard.

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! Order, hon. Members! Mr. Odoyo, resume your seat and keep quiet!

*(Mr. Odoyo resumed his seat)*

Mr. Kenneth, could you finish what you were saying?

**The Assistant Minister for Finance** (Mr. Kenneth): Mr. Temporary Deputy Chairman, Sir, I discussed this matter with the Chairman of the Committee on Finance, Planning and Trade. The Bill before the House is for starting an Insurance Regulatory Authority.

As for things to do with the industry, they have to be on-going, especially in creating a Kenyan-owned industry of which Mr. Okemo is a subscriber. I think it is a good thing.

**Prof. Anyang'-Nyongo'**: Mr. Temporary Deputy Chairman, Sir, I have noticed a very dangerous trend in law-making in this House. It does seem to me as if the Finance Bill is not being made as a general regulation, but as something that is particularised, especially when Ministers respond to hon. Members on this side on the basis of who owns what industry. That is a very dangerous trend.

I would plead to the Government to desist from particularising law-making and make law-making what it should be; the rule of law.

*(Applause)*

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

**The Temporary Deputy Chairman** (Mr. Khamasi): Order! Order, all of you! I have heard both sides of the House.

**Mr. Sungu**: Put the Question!

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, Mr. Sungu! I am presiding over this Committee of the whole House!

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, can I respond?

**The Temporary Deputy Chairman** (Mr. Khamasi): No! I will put the Question and hon. Members will vote.

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

*(Clause 42 deleted)*

*Clause 43*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 43.

This is a joint amendment with the Committee on Finance, Planning and Trade. After our discussion on the amendments to the Insurance Act, we agreed unanimously that insurance brokers do not need a guarantee from the Central Bank of Kenya. So, we agreed to have this clause deleted. But as we look at this amendment, may I make a passionate appeal to you---

The future of Kenyans is in your hands now, and what we have just done on the last clause is that we have just denied Kenyans the opportunity of owning shares in the insurance industry. In

all the other clauses, I would like to actually state here that we had agreed with the Committee on Finance, Planning and Trade that the only contentious clause was Clause 43, which basically was raising the issue of the guarantee to the Central Bank of Kenya.

All the other clauses, we had agreed that they need not come. But as of now, we are happy that Clause 43 has been deleted and we will take the others as they come.

*(Question of the amendment  
proposed)*

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

*(Clause 43 deleted)*

#### *Clause 44*

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the Bill be amended by deleting Clause 44.

Mr. Temporary Deputy Chairman, Sir, we are proposing the deletion of this clause for the same reasons we have given for the deletion of clauses 42 and 43.

Mr. Temporary Deputy Chairman, Sir, we want this clause to come appropriately in order to give hon. Members an opportunity to scrutinise and discuss it.

*(Question of the amendment  
proposed)*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, the import of this clause was to help our youth and our agents to fit within a liberalized economy. What the law currently says is that an insurance agent cannot represent more than three underwriters.

We are removing that law to give them an opportunity to represent as many as can appoint them. This amendment is seeking to deny our Kenyan youth that opportunity to excel by being appointed by more than three agents. This will be retrogressive.

Mr. Temporary Deputy Chairman, Sir, I would beg that the House reconsiders that amendment and we go with the spirit of what we promised the Kenyans; that we are going to empower them to give them jobs and to get them to work.

I would not want to think of this House as sitting here to represent the interests of the bigger people and killing the smaller, young agents.

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

*(Clause 44 deleted)*

#### *Clause 45*

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the Bill be amended by deleting Clause 45.

Mr. Temporary Deputy Chairman, Sir, we are proposing the deletion of this particular clause for the same reasons we advanced for the other clauses this evening.

*(Question of the amendment  
proposed)*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, once again, the import of this clause was to introduce cash and carry in the insurance industry.

We have had instances where people pay their insurance premiums, which are retained by the insurance brokers and are not remitted to the insurance companies. The cost of insurance premiums was then kept high because of that risk.

Mr. Temporary Deputy Chairman, Sir, since the introduction of this law during the Budget, we saw insurance companies bringing down their premiums, especially for the *matatus*. This law is already in operation, cash and carry is working very well and both the brokers and insurance companies are saying: "Thank you for having made this amendment".

Mr. Temporary Deputy Chairman, Sir, what this House is trying to do through this amendment or what hon. Oparanya is trying to do through this amendment is to reverse those gains made in the insurance industry; to tell them: "From now on, let us not do cash and carry, go back to brokers keeping the money until they remit it to the insurance companies". This is going to raise the cost of premiums with effect from tonight, and you can be sure of this.

All the insurance premiums whose cost have come down will go up because right now, we are reversing the gains we had just given the insurance industry.

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

*(Clause 45 deleted)*

*Clause 46*

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, the Bill be amended by deleting Clause 46.

Mr. Temporary Deputy Chairman, Sir, we are proposing the deletion of this clause for the same reasons we have given for the other clauses.

*(Question of the amendment  
proposed)*

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

*(Clause 46 deleted)*

*(Clauses 47, 48, 49, 50, 51, 52,*

*53 and 54 agreed to)*

*Clause 55*

**The Temporary Deputy Chairman** (Mr. Khamasi): There are two amendments to Clause 55, one by the Minister, and another one by Mr. Oparanya. We will start with the amendment by the Minister.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 55 of the Bill be amended---

(a) in paragraph (a)(i), by deleting all the words appearing immediately after the word "Chairman" in the proposed subsection (1)(a);

(b) by deleting subclause (b) and inserting the following-

(b) by deleting subsection (2) and substituting the following new subsection-

(2) The Chairman, Governor and the directors referred to in subsection (1)(d) shall be appointed by the President on the recommendations of the Minister and shall hold office for a term of four years each, but shall be eligible for re-appointment for one further term of a period not exceeding four years.

Mr. Temporary Deputy Chairman, Sir, this amendment seeks to clarify the concerns that the Committee on Finance, Planning and Trade and the public had in terms of the introduction of the position of the chairman within the Central Bank of Kenya. What we have done within a series of amendments from this and a whole series of many others is to clarify what the chairman can do, exactly as we agreed with the Committee on Finance, Planning and Trade. In fact, I am surprised that the amendments by the Committee on Finance, Planning and Trade are still there, because we had agreed that once we clarify these issues, then we do not need to delete the clause. We just need to define what the chairman can do. There are a series of new clauses that we have done.

Basically, let me explain here, like I explained before, currently, the Central Bank of Kenya has a Board, which is chaired by the Governor. The board is defined in Section 10 of CAP.491 that says: "There shall be a Board which shall determine the policy of the bank". Section 13 says: "There shall be a Chief Executive who is the Governor and who is answerable to the Board". But the law also says that the Governor will also be chairing the Board. So, we have a convoluted situation where the Governor answers to himself. What we have done is that, we have looked through all the best practices elsewhere and asked ourselves: "How do we disentangle a situation where somebody is reporting to himself?" The safeguards we are putting here is to ensure that all the concerns that the Committee on Finance, Planning and Trade had have been taken care of. Therefore, I would like to really appeal to hon. Members that if we are serious on ensuring that the Board of Directors at the Central Bank of Kenya is empowered as a Board and the Governor is protected and insulated from interference by Ministries and Permanent Secretaries, by virtue of him being subject to the Chairman of the Board, then this is the amendment we are seeking to bring here.

*(Question of the amendment proposed)*

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, the concern of the Committee about the creation of the position of chairman, is because this is a practice which is completely new in Africa. All our neighbouring countries have the Central Bank governors as the chairmen. This being a new

phenomenon, it is something which needs to be scrutinized thoroughly by this Parliament. We need to understand the value that will add. We are trying to move away from the control of the Central Bank of Kenya (CBK) by the Minister. This particular chairman will be appointed at the recommendation of the Minister himself. So, he will appoint his own crony without the sanction of this Parliament. So, we are very apprehensive that such an important issue is being sneaked in the Finance Bill. The Minister can appropriately bring all these amendments to the CBK Act, so that we scrutinise them.

*(Applause)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Hon. Members, you will now vote on this amendment. We must catch up with time!

**Prof. Anyang'-Nyong'o:** On a point of order, Mr. Temporary Deputy Chairman, Sir. The CBK is a very important institution. When a proposal like this is being made, we cannot rush to make decisions. Is the Minister in order to state in this House that practices elsewhere show that there are chairmen and governors of the CBK? Could he explain to us who chairs the Allan Greenspan's Federal Reserve Bank?

**The Temporary Deputy Chairman** (Mr. Khamasi): Those are details. I had already made up my mind to dispose of the amendment. So, I will put the Question.

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

**The Temporary Deputy Chairman** (Mr. Khamasi): There is further amendment to the clause by Mr. Oparanya on page 468.

Dr. Oburu, can we hear you?

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, for the reasons that I have just advanced in respect of this, I beg to move:-

THAT, the Bill be amended by deleting Clause 55.

*(Question of the amendment proposed)*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, again, just for the record, the import of this is to improve the governance of our CBK. Right now, we are having problems because of the Acting Governor not being sure whether she can chair a meeting even to discuss herself. The concerns the Committee had, had been addressed in a series of amendments. I believe we had agreed on that. Just for the record I would like to say that Kenya was joining the nations of the world that have developed, including the latest, New Zealand, where they have exactly the same kind of legislation that we were proposing in this amendment.

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

*(Clause 55 deleted)*

Clause 56

**The Temporary Deputy Chairman** (Mr. Khamasi): There is one amendment by the Minister for Finance and the other by Mr. Oparanya. We will start with the Minister's amendment.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, in the absence of a Chairman of the CBK, then all the other clarifications of what the Chairman can or cannot do have been thrown away by this House.

**The Temporary Deputy Chairman** (Mr. Khamasi): Could we hear the second amendment?

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, this amendment is exactly for the same reason that the Minister has said. This is related. Therefore, after deleting Clause 55, Clause 56, must also suffer the same fate.

*(Question of the amendment  
proposed)*

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

*(Clause 56 deleted)*

*(Clauses 57, 58 and 59 agreed to)*

*(Loud consultations)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! It is difficult even to follow the business in the House. We are passing a very important law in the House. Therefore, we should consult quietly and follow what is going on. Please, pay attention.

Let us proceed!

*Clause 60*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 60.

The import of this is to delete the clause related to the Sugar Development Levy.

*(Question of the amendment proposed)*

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

*(Clause 60 deleted)*

*Clause 61*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by deleting Clause 61.

This clause also has to do with the Sugar Development Levy. This is basically to delete the

provision that the Kenya Sugar Board be restricted in the regulation of importation.

*(Question of the amendment  
proposed)*

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

*(Clause 61 deleted)*

*Clause 62*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 62 be amended by deleting subclause (b) and substituting therefor the following new subsection (1)-

(1A) A person shall be qualified for appointment-

(a) under subsection (1)(a) or (c), if the person is registered as an accountant under the Accountants Act; or,

(b) under subsection (1)(b), if such a person has an advanced degree and professional experience in-

(a) economics;

(b) public finance;

(c) public policy;

(d) management; or,

(e) accounting.

Mr. Temporary Deputy Chairman, Sir, this is an amendment of Section 9 of the Government Financial Management Act. The Bill is proposing to open the scope of qualifications for the Director of Budget Supplies. The amendment combines the sections related to the Accountant-General as well as the Director of Budget Supplies. It basically gives the qualifications for the Director of Budget Supplies and those of the Accountant-General. It is clarifying the specific qualifications of the two people to correct an inadvertent error that was made at the point of drafting. The two were bundled together yet they have different qualifications. It is a straight forward administrative amendment.

*(Question of the amendment proposed)*

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

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

*(Clause 62 as amended agreed to)*

*(Clauses 63, 64 and 65 agreed to)*



**The Temporary Deputy Chairman** (Mr. Khamasi): Hon. Members, look at page 459 of your Order Paper. This is the introduction of new clauses. As per our Standing Orders, we shall be reading them the Second Time.

*New Clause*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting a new clause immediately after Clause 14 as follows-

Amendment of  
the Eighth  
schedule  
to Cap.447

**14A.** The Eighth Schedule to the Value Added Tax Act be amended in Part B by inserting the words "and non-commercial" immediately after the word "commercial" appearing in subparagraph (1) of paragraph 7.

*(Question of the new clause  
proposed)*

*(New clause read  
the First Time)*

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

**Mr. Billow:** Mr. Temporary Deputy Chairman, Sir, because we do not have the Eighth Schedule, could the Minister explain what he intends to do by inserting the words, "and non-commercial" in the clause?

**The Temporary Deputy Chairman** (Mr. Khamasi): Hon. Members, I think procedurally we need to get it right. Once I propose the Question, we need to raise debate on it. Mr. Billow has done the right thing.

Mr. Minister, please, respond!

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, this is an amendment that seeks to zero-rate non-commercial fishing vessels. In the past, the non-commercial fishing vessels were taxable at 16 per cent. We are now zero-rating tax on both the commercial and non-commercial fishing vessels.

*(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)*

*New Clause*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after Clause 46-

Amendment of  
section 2 of  
Cap.488

**46A.** Section 2 of the Banking Act is amended in the definition of "branch" by inserting the words "or outside" immediately after the word "in".

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, this clause is very straight forward. Currently, the Banking Act only regulates the opening of branches inside Kenya. All we are saying is that any bank in Kenya opening a branch in or outside Kenya should be put under the same regulations. Therefore, we are amending the law to cover opening of branches outside Kenya.

**Mr. Midiwo:** Mr. Temporary Deputy Chairman, Sir, I am just curious; why would somebody opening a bank in Uganda, for example, have to seek authority or be regulated by a Minister in Kenya? I fail to understand the logic, because I do not see the mischief the Minister is trying to cure with this amendment.

**The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Minister, would you like to respond to that?

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, we are not regulating a Kenyan opening a bank anywhere. Right now, for a bank to open a branch anywhere in Kenya it requires the authority of the Minister. However, the term "branch" has not been defined to cover branches outside Kenya.

Now, we are defining the term "branch" to mean a branch anywhere in or outside Kenya of a bank that is operating in Kenya. It is not about a Kenyan opening a bank anywhere in the world. That is not what we are looking for. It is about a Kenyan bank opening a branch, whether in or outside Kenya.

**Mr. Ochilo-Ayacko:** Mr. Temporary Deputy Chairman, Sir, the Minister has made this issue more confusing. A Kenyan-registered bank seeking to open a branch in Uganda will now be required to seek approval from Kenya. Now, we do not understand the mischief the Minister is

trying to cure if Kenyans are becoming enterprising.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, with capital now flowing across the globe, it is very easy for a bank to start operations in Nairobi, then open a branch in country X and transfer all its Kenyan money to that country. We would then not have control over country X. That is why we are trying to make sure that a Kenyan bank is known by its branches both in and outside Kenya, and that our Banking Act can extend, in terms of the public money invested, to branches in Kenya and elsewhere. It is really an administrative regulation to help in the better management of our money for public confidence purposes.

**Mr. Syongo:** Mr. Temporary Deputy Chairman, Sir, I can hear what the Minister is saying. However, I think we are moving to a point where we are allowing free movement of labour and capital in the entire region. Secondly, we are subjecting Kenyan-registered banks to two sets of laws. One is that, they have to seek authority from the Kenyan legal jurisdiction. For purposes of opening a branch in another country, they will also be subject to another legal regime.

Mr. Temporary Deputy Chairman, Sir, I think we are subjecting Kenyan-registered banks to double jurisdiction, which is not fair.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, let me explain slowly. A bank that is operating in Kenya receives deposits from Kenyans. When it opens a branch, we need to know where the money is going to be used and who are the people who are going to draw it. If the bank moves outside the Kenyan jurisdiction, it is the Kenyan citizens' money that is going to be used outside the country. If we have no control over that, then we are likely to lose our money because someone might just vanish with it through mischief.

This is something that is already happening. It is not covered by the law and for the avoidance of any doubt, we want to ensure that any Kenyan bank, whether it is based in Kenya or outside, should be registered in Kenya.

*(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)*

*New Clause*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, a new clause be inserted immediately after Clause 55 as follows –

Amendment of  
section 14 of  
Cap.491.

55A. Section 11 of the Central Bank of Kenya Act is amended in sub-section (1)(c) by inserting the words "or his representative" immediately before the words "who shall be a non-voting member".

As of now, the Act says that the Permanent Secretary to the Treasury is a director of the Central Bank. It does not say that if the Permanent Secretary was not there, he could send his representative. We are opening the door, so that a meeting of the Central Bank cannot be invalidated because the Permanent Secretary did not attend or send a representative. This is a straightforward requirement. It is consistent with all the other State bodies where the Permanent Secretary or his representative is a director.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

**Mr. Billow:** Mr. Temporary Deputy Chairman, Sir, the practice in corporate governance is that you must have an alternate director. If that is what the Minister wants to say, then it should be very clear that it should be the Permanent Secretary or his alternate director, but not his representative. This means that he can send his wife, his brother or anybody. It should be very clear that an alternate director has to be appointed through the same procedure that a director is appointed.

**Mr. Maore:** Mr. Temporary Deputy Chairman, Sir, already, there is a problem of the Executive interfering with the Central through the Treasury. It is only fair that we insist on having the Permanent Secretary to the Treasury as a member of the Board. We should also ensure that he attends Board meetings instead of sending any of his junior staff. It is appropriate for us to stick to that.

**The Minister for Finance (Mr. Kimunya):** Mr. Temporary Deputy Chairman, Sir, we are starting from trying to make institutions work. With regard to the issue of who should represent the Permanent Secretary, this should be the official representative. The office of the Permanent Secretary to the Treasury is recognised within the Central Bank Act as a director. We are trying to avoid a situation whereby in the event that the Permanent Secretary is away and a Board meeting is called, the Board cannot meet until the Permanent Secretary comes back. We must also remember that the Permanent Secretary is a non-voting member.

So, his representation is basically meant to provide the linkage between the Central Bank and the Treasury. Let us not make institutions not work because we are not freeing them enough. That is what good governance is all about. This is a very straightforward administrative amendment that is consistent with rules governing all the other State bodies where the Government is represented by either the Permanent Secretary or his representative. This happens in all the other parastatals except the Central Bank.

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

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

*(Question, that the new clause*

*be added to the Bill,  
put and agreed to)*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, unfortunately, Clause 57A is tied to Clause 55, which this House rejected. I believe this is the same case with Clauses 58A, 58B and 58C, which have to do with the Chairman of the Central Bank.

Mr. Temporary Deputy Chairman, Sir, since there will be no Chairman, there is no point in defining his qualifications.

**The Temporary Deputy Chairman** (Mr. Khamasi): So, can you officially withdraw all of them!

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, they are as good as dead! They are irrelevant even if they are passed.

**The Temporary Deputy Chairman** (Mr. Khamasi): Actually, the Minister is withdrawing all these new clauses.

*(The proposed new Clauses 57A,  
58A, 58B and 58C withdrawn)*

*New Clause*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting the following new Clause 62A immediately after Clause 62 as follows-

Amendment of  
section 2 of No. 27  
of 2001.

**62A.** Section 2 of the Sugar Act, 2001 is amended by inserting the following new definition in proper alphabetical order-

"Consolidated Fund" has the meaning assigned to it in section 2 of the Government Financial Management Act, 2004

This new clause is tied to the Sugar Act in terms of requiring that the money that is collected from the Sugar Development Levy be deposited into the Consolidated Fund after being collected by the Kenya Revenue Authority (KRA). Then it should be disbursed through the Exchequer process. We have admitted that this is now a tax and not a levy on the farmers.

*(Question of the new  
clause proposed)*

*(New clause read the  
First Time)*

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

**Mr. Ochillo-Ayacko:** Mr. Temporary Deputy Chairman, Sir, I want to declare my interest as a sugar-cane grower and a representative of the millers. Currently, the KRA collects this levy.

We have just done the right thing by allowing the Minister to gazette the levy. Currently, this levy is taken to the Kenya Sugar Board. All the sugar milling factories which applied for loans for the last years were only able to access the loans this year because of the bureaucracy in the Treasury.

Mr. Temporary Deputy Chairman, Sir, could the Minister now tell us how the farmers, the millers and those who need the money will access it from the Consolidated Fund?

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I think this is coming in the next amendment. Legally, all Exchequer revenues are supposed to go through the Consolidated Fund. This House passed that requirement in 2004, in the Government Financial Management Act, which basically says that all Exchequer revenues must be put into the Consolidated Fund. So, technically, we are just ratifying what this House has passed. In terms of the disbursement of the money, once the money comes in, we will then, through the Budget, vote it as a grant to the Kenya Sugar Board through the parent Ministry. The Board will then continue to disburse the funds as it should. The anomaly that is there now, where a body taxes people in contravention of the Government Financial Management Act, will have been cleared through this amendment.

**Mr. Billow:** Mr. Temporary Deputy Chairman, Sir, I am not a sugar farmer, but I sympathise with the people who are in the sugar industry. There are funds which are collected and not necessarily remitted to the Consolidated Fund. A good example is what the Kenya Airports Authority and several other parastatals are doing. The Kenya Sugar Board needs that levy to finance the out-growers. Why can the Minister not consider making a clear provision to the effect that once that money is accounted for in the Consolidated Fund, it will be allocated onwards? What will happen is that in the Budget, the Kenya Sugar Board may not get the total amount of money that will have been collected from the sugar industry. That is the risk that this amendment is going to bring.

**Prof. Olweny:** Mr. Temporary Deputy Chairman, Sir, I stand to oppose the amendment. Already, sugar-cane farmers who want to invest using Sugar Development Levy (SDL) have a problem accessing that money. What the Minister is proposing will complicate matters further. For that reason, I oppose the amendment.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I would like to remind this House that it just voted for KRA to be legally empowered to collect the money. Having been empowered, where will it take that money? It will take it to the Consolidated Fund.

Mr. Temporary Deputy Chairman, Sir, we are creating a legal channel through which the money will be collected by KRA, which you have voted to collect it. The money will then be voted by this House to go out as grants to the Kenya Sugar Board (KSB). That is a straightforward way of clearing the issue. The amendment is defining the Consolidated Fund within the Sugar Act to make sure that for avoidance of doubt, the Consolidated Fund will have the same meaning as defined in the Government Financial Management Act, for purposes of harmony.

Mr. Temporary Deputy Chairman, Sir, that is a straightforward amendment, having agreed in principle that the Sugar Levy is a tax that will be collected by KRA, through the Exchequer and be released through the Ministry of Agriculture to the KSB. That is basically what we have agreed on. We are now putting the law to effect that mechanism.

**Mr. Ojode:** Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment by the Minister. As we speak, we do not have any problem with the SDL. If we move and accept the bureaucracy, we will never get the money. It is not possible, and the Minister should know that. It is not possible because he is not even a sugar grower. We had agreed that we would retain the status quo. We said that we would let the method we are using now remain, until a time when sugar growers will come forward and complain.

Therefore, I beg to oppose.

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

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Minister! I think I have already heard both sides. Everybody here is clear with that issue.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg your indulgence and that of the House. We are dealing with a very sensitive issue about sugar farmers who are out there. We just passed a law that says that KRA will collect the money and not the KSB. Currently, the KSB collects that money. We have shifted the responsibility to KRA. If we do not define how the money will move back to the farmers, the Government will collect money, keep it at the Treasury, but there will be no linkage on how it can get back to the farmer for development. So, let us create an avenue for that. Having agreed and passed that the KRA will collect the money, we must complete the path. That is what this amendment is trying to do. It is a very straightforward amendment that says that KRA has been allowed to collect the money. Once it collects it, it is put into the Consolidated Fund. That then becomes an Exchequer issue. Appropriation will be done by this House, and the money is passed on to the Board before being disposed to farmers.

**Mr. Ochillo-Ayacko:** Mr. Temporary Deputy Chairman, Sir, the Minister is misleading this House. A couple of years ago, there was an attempt by the KRA to take over the Catering Development Levy Trustees (CDLT).

However, there was no provision for him to do that. Currently, the KRA is the one that collects this money and remits it to the KSB, which is about Kshs120 million. Is the Minister in order to mislead the House?

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I am not in any way misleading the House. It is true that the KRA is collecting the money as an agent of the KSB. We have now given it mandate, under law, to collect the money, not as an agent, but as the Principal. Where will it take this money if the KSB will not have it any more?

I am giving you an opportunity. If you want me to keep the money, I will be happy to do so.

**Mr. Okemo:** Mr. Temporary Deputy Chairman, Sir, what the Minister has said is correct. However, I think he left hanging in the air the fact that once this money is collected, and has gone to the Consolidated Fund, there is absolutely no guarantee that all of it will go to the KSB and what percentage will be given out.

Mr. Temporary Deputy Chairman, Sir, as per now, all of it goes to the Kenya Sugar Board. We can couch this amendment to capture that; that, all the SDL that goes to the Consolidated Fund will find its way to the KSB. That way, we will be satisfied.

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

*Clause 62B*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT be Bill be amended by inserting  
immediately after Clause

62A thereof a new clause as follows:-

Section 18 of the Sugar Act, 2001 is amended-

(a) by deleting subsection (4) and substituting therefor the following-

(4) All monies received in respect of the levy shall be paid to the Consolidated

Fund, and, if not paid on or before the date prescribed by the Minister, the amount due and any sum payable under subsection (5) shall be a civil debt recoverable summarily by the Government.

(b) by deleting subsection (6).

I propose that New Clause 62B be part of the Bill. Section 18 of the Sugar Act is an Exchequer issue. It clarifies what the law says and makes sure that the Sugar Act is in harmony with the Government Financial Management Act, in terms of what happens to the money received or not received at the close of the year. I want to ask the House to pay some attention to what we are doing because we might end up passing laws which might affect our farmers, by looking at the political expediency of things without really considering the effects of knocking down the amendments would have.

*(Question of the new clause  
proposed)*

*(New clause read the First Time)*

**Mr. Billow:** Mr. Temporary Deputy Chairman, Sir, for the same reason we had argued earlier that the sugar farmers will be the losers, since we have many other funds, why can we not bring the SDL to the Consolidated Fund? Unless it is clear that the SDL collected by the KRA will wholly be transmitted to KSB, this is not acceptable, and therefore, I oppose New Clause 62B to be part of the Bill.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I stand here on behalf of the sugar farmers. We just passed an amendment. The Bill had initially proposed that the SDL be charged on the farmers because that is what can be taxed by anyone else, except the Exchequer. Having accepted that it is a tax, and this House, having approved that it be taxed, and collected by the KRA, it becomes money to the Exchequer.

All we are trying to say is that we need to harmonise the Sugar Act to recognise what we have just passed which is now a tax on the consumer to be collected by the KRA. Whether we pass this amendment or not, it will only make it administratively difficult for the Sugar Act, but not for the Exchequer. Let us harmonise this, bearing in mind that the sugar farmer is not here to make his contribution regarding this confusion. We want to make the administration of the fund easier. So, let us not oppose it for the sake of opposing.

**Mr. Sungu:** Mr. Temporary Deputy Chairman, Sir, the Minister must accept that KRA has been collecting this levy on behalf of Kenya Sugar Board as an agent. We also know the law of precedent works. If this money goes to the Consolidated Fund, it is a sinking hole and they have to go and beg for it, yet this is sugar-cane growers' money and it is their right to have it. Therefore, they will have no right of access to this money if it is passed like this.

I think the law of precedent should apply in this case and the sugar-cane farmers should get their money.

Mr. Temporary Deputy Chairman, Sir, on that basis, I oppose this amendment.

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

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



*New Clause*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Bill be amended by inserting a new clause immediately after Clause 62 as follows:-

62C. Section 19 of the Sugar Act, 2001, is amended in subsection (2) by deleting paragraph (a).

Mr. Temporary Deputy Chairman, Sir, the proposed amendment basically seeks to delete the reference to the Sugar Development Levy within Section 19 of the Sugar Act since the money to be paid into the Sugar Development Fund will not be from the Sugar Development Levy but through an allocation by the Exchequer to the Kenya Sugar Board through the Ministry of Agriculture.

I want to draw the attention of Members, especially those from the sugar-growing areas, that we have said that the Sugar Development Levy is now a tax to be collected by KRA as an exchequer issue. This money cannot go to the Kenya Sugar Board as a levy, but as a grant through the Ministry of Agriculture to the Kenya Sugar Board.

The current Section 19 says there will be a levy to be collected by the Kenya Sugar Board, which cannot be done now because we have amended that. So, how do we give the money? It will have to be by amending that so that we can now pass that money through appropriation in this House by a grant through the Ministry of Agriculture. It is as straightforward as that. If you oppose this for the sake of opposing, we will have a Kenya Sugar Board that cannot receive money from the Treasury because the law does not allow it to receive the money.

*(Question of the new clause  
proposed)*

*(New clause read the First Time)*

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

**Prof. Olweny:** Mr. Temporary Deputy Chairman, Sir, I rise to oppose this amendment because if there is need for an amendment in the Sugar Act, get the Minister concerned and the Members from the sugar-growing areas.

It is my feeling that this is still another malicious inclusion in this Bill. So, I wish to oppose.

**Mr. Okemo:** Mr. Temporary Deputy Chairman, Sir, I raised an issue that has been left unsolved. There must be a linkage between the amount of Sugar Development Levy collected and the amount of grants going to Kenya Sugar Board through the Ministry of Agriculture.

In fact, by the time we end up with it, what is going to happen is that the Government is going to collect this money and it will go to the Consolidated Fund, and the matter ends there.

Now, we have to be very careful because then, what will happen is that the Kenya Sugar Board will receive no further money. So, the Minister has the responsibility to make sure he introduces an amendment somehow that closes this gap between collection of the money going to the Consolidated Fund and the money leaving the Consolidated Fund to Kenya Sugar Board through the Ministry of Agriculture.

Mr. Temporary Deputy Chairman, Sir, as it is, we have left it hanging, which is dangerous.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I have

been pleading with the Members to see that linkage. Part of the linkage is what we have just deleted, and from their further arguments, they are about to de-link the vital or umbilical cord within the Kenya Sugar Board through which we can channel money from the Treasury.

Let us look at this amendment in good faith. We negotiated these clauses with the Departmental Committee on Finance, Planning and Trade and agreed to remove the levy from being borne by the farmers and make it a consumer tax. Now, the consumer tax becomes an exchequer issue. But how do we ensure that, that money goes back to the farmer in the development of the industry? Through amending the Act for the Kenya Sugar Board now to receive the grants from the Treasury through the Consolidated Fund. It is as simple as that. The farmers out there are listening and you will explain to them where their money went by your deletions.

**Mr. Angwenyi:** Mr. Temporary Deputy Chairman, Sir, for once, I think the Minister is right. This money is going to be collected by the KRA and so it will be in the hands of the Government. If we do not create an avenue for it to reach the farmers, this money can be used for other purposes.

**Mr. Ochilo-Ayacko:** On a point of order, Mr. Temporary Deputy Chairman, Sir. This House is being misled. If we delete Section 19 as requested by the Minister, Section 19 enjoins the levy to be remitted to the fund that is controlled by the Kenya Sugar Board. It was a law that was enacted earlier, and this is a law that is being enacted today. It is superior if it is taken for interpretation. So, if we delete this, that is the only linkage we have. So, Clause 62C should be deleted, otherwise, there would be no section in the Kenya Sugar Act that enjoins the levy to be taken to the fund.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, Section 19 of the Sugar Act describes the various revenues that can be earned by the Kenya Sugar Board. The first one is the Sugar Development Levy. But we have said the Kenya Sugar Board cannot collect the Sugar Development Levy. So, if you keep it there, it means nothing to me. But what it also means is that it can earn Sugar Development Levy but it has no power to collect. So, for purposes of consistency with the Act, we are saying, if you cannot collect the levy, let it not be part of the sources of income.

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

#### *First Schedule*

**The Temporary Deputy Chairman** (Mr. Khamasi): Hon. Members, we have got three amendments to the First Schedule. One amendment is by the Minister. We have another amendment by Mr. Oparanya, which will be moved by Dr. Oburu. Mr. Chepkitony also intends to move a further amendment. We will start with the Minister's amendment.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the First Schedule to the Bill be amended by adding the following new items as follows:-

3. by inserting the following new tariff number, description and rate of Excise Duty in proper numerical sequence-

<i>Tariff No.</i>	<i>Goods Description</i>	<i>New rate of Excise Duty</i>
2207.10.00	Udenatured ethyl alcohol of an alcohol strength by volume of 80% or higher	Per proof litre Kshs120 or 65%

Mr. Temporary Deputy Chairman, Sir, this amendment is to bring into the Act a line item that was forgotten at the drafting and a tariff was not included. Following the provision and collection order, we brought it subsequently through a Gazette Notice. We are basically formalising it to join all the others on the First Schedule. This again is an administrative issue.

Mr. Temporary Deputy Chairman, Sir, a tariff code had been left out and we are now ensuring that it is brought in. I would really ask that we do not spend much time on this. It is already in operation. We do not want it to pass in the Gazette Notice, while the rest is in the Bill. We want them to be together.

*(Question of the amendment proposed)*

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

**The Temporary Deputy Chairman** (Mr. Khamasi): Hon. Members, we will now move on to the amendment to the same Schedule by Mr. Oparanya. Dr. Oburu will move this amendment on behalf of Mr. Oparanya.

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, there is an a further amendment to the amendment by Mr. Chepkitony.

**The Temporary Deputy Chairman** (Mr. Khamasi): Dr. Oburu, sorry, what are you saying?

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, there is a further amendment to the amendment by Mr. Chepkitony, which I want the Chair to allow before I move mine.

**The Temporary Deputy Chairman** (Mr. Khamasi): Do you want to withdraw yours?

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, I am not withdrawing my amendment. I want to put my amendment as Mr. Chepkitony has proposed to amend it.

**The Temporary Deputy Chairman** (Mr. Khamasi): But you must move yours first! Please, do so!

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, on behalf of Mr. Oparanya, I beg to move:-

THAT, the First Schedule be amended in Item No.1-

(c) by deleting the entry relating to tariff number 2204.21.0

(d) by inserting the following new item immediately after item 1-

1A Delete the existing rate of duty in respect of the Tariff Number specified in the first column and insert the rates of duty specified in the third column hereunder-

<i>Tariff No.</i>	<i>Goods Description</i>	<i>New rate of Excise Duty</i>
2204.21.00	Other wine, grape must with fermentation prevented or arrested by the addition of alcohol, in containers of 2 litres or less	Kshs54 per litre or 45%

The effect of this is what we have just debated in Clause 4 which was about the reduction of the percentage of tax which should be charged on alcohol. This should be reduced from 65 per cent to 45 per cent. This is now actualising it in the First Schedule.

Mr. Chepkitony wants to move a further---

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Dr. Oburu! First, I want to propose your amendment and I will allow Mr. Chepkitony to move his.

*(Question of the further amendment proposed)*

**The Temporary Deputy Chairman** (Mr. Khamasi): That is the proposal, is there support for it?

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment to the tariff by Dr. Oburu. This amendment is seeking to reduce the tax on wines from 65 per cent to 45 per cent. I also drew the attention of the House to the fact that we are on a hybrid system. There is a Kshs54 to the litre, which is fixed or 65 per cent, which is higher.

So, we are trying to make the more expensive wines cheaper because 65 per cent only affects the wines that are beyond what is covered at Kshs54. The low cost wines will not be affected at all by this amendment.

Mr. Temporary Deputy Chairman, Sir, I just want to bring that to the attention of the House, that 65 per cent subject to a minimum of Kshs54 is what affects the low-

cost wines. The 65 per cent was meant to affect the high-cost wines. Those are the ones that we are taxing. The import of this is, we will not be protecting the industry, but we will be losing revenue that will have been paid by the very expensive wines where we will be attracting this.

Mr. Temporary Deputy Chairman, Sir, I want to oppose this amendment. I would like hon. Members to note that there will be a revenue lose of Kshs25 million which will also be reflected in the allocations of the Constituencies Development Fund (CDF).

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

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

**Mr. Maore:** Mr. Temporary Deputy Chairman, Sir, I hope you have heard what the Minister is insinuating. When we are legislating here under Cap.6 of the Powers and Privileges Act, we are not supposed to be under any duress, specifically like that of the CDF allocations being reduced.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, hon. Members! Let us be careful because these amendments are closely related. We do not want to miss out on any of them.

Mr. Chepkitony, we want you to move your further amendment. The new rate of Excise Duty on the amendment Dr. Oburu moved had been left at Kshs54. That is what you are deleting and you want it to remain at Kshs45. Could you move that?

**Mr. Chepkitony:** Mr. Temporary Deputy Chairman, Sir, what I am actually trying to amend is to correct a mistake because when we amended---

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Mr. Chepkitony! The procedure is, first of all, move your amendment!

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

THAT, the First Schedule be further amended by deleting the figures Kshs54 per litre and retaining 45 per cent.

**Hon. Members:** Why is he doing that? Explain! What anomaly are you correcting?

**Mr. Chepkitony:** Mr. Temporary Deputy Chairman, Sir, if you look at Tariff No.2204.21.00, the new rate of Excise Duty is Kshs54 per litre or 65 per cent. The amendment by Dr. Oburu has moved the tax rate from 65 per cent to 45 per cent. He has left Kshs54 to the same. So, in order for this amendment to have an effect, I am further proposing that the Kshs54 be deleted, so that we are left with only 45 per cent.

**The Temporary Deputy Chairman (Mr. Khamasi):** That is a good explanation.

*(Question of the further  
amendment to the amendment  
proposed)*

**The Minister for Finance (Mr. Kimunya):** Mr. Temporary Deputy Chairman, Sir, I hope the hon. Member is aware of the danger of that amendment to the same industries he is trying to protect. Specific industries will benefit from this. The effect of this is that Kshs54 per litre is basically about 20 per cent. So, in essence, we are saying they should not pay 20 per cent, but 45 per cent.

**Mr. Weya:** Mr. Temporary Deputy Chairman, Sir, I beg to support the mover of the amendment. If we reduce the price of wine, this will discourage the locals from drinking *chang'aa* and *busaa*. The Minister should also understand that by reducing the taxes, people will drink more and we will collect more taxes. The locals will divert from drinking *chang'aa*. In the process, we will be a wine-drinking nation as opposed to a nation that drinks some harmful local brews. I would like to inform the Minister that we will be collecting more revenue. In the past, we all know that when taxes are reduced, business people collect more revenue.

**The Temporary Deputy Chairman (Mr. Khamasi):** Let us go on very carefully about these amendments, because they are many. There are no other notices for amendments. First of all, let us start with hon. Dr. Oburu's and then go to Mr. Chepkitony's proposed amendments, because they are on the same Item.

**An. hon. Member:** Mr. Temporary Deputy Chairman, Sir, there is another one by Dr. Oburu, but it is not related to this matter.

**The Temporary Deputy Chairman (Mr. Khamasi):** Dr. Oburu, you have got another which is unrelated to this Item. So, what you were doing was hon. Oparanyas's amendment, which is related to the same Item that hon. Chepkitony is seeking to amend.

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, that is right.

**The Temporary Deputy Chairman (Mr. Khamasi):** So, we will start by---

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

**The Temporary Deputy Chairman (Mr. Khamasi):** Order, Mr. Sungu. Let me have my mind clear. I think I want to do the right thing.

Now, we want to first of all dispose of the amendment by hon. Oparanya, which was moved by Dr. Oburu, that there be a reduction from 65 to 45 per cent.

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

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

**The Temporary Deputy Chairman** (Mr. Khamasi): We will now take a vote on the proposed amendment by Mr. Chepkitony

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

THAT, the First Schedule be amended by deleting the figure Kshs54 per litre.

*(Question of the amendment proposed)*

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

**The Temporary Deputy Chairman** (Mr. Khamasi): Now, we move on to hon. Oburu's amendment.

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

THAT, the First Schedule of the Bill be amended in Item 2 by deleting the expression "780" appearing in the Third Column of the Schedule thereto in respect of Category B and substituting therefor the expression "715".

This is in relation to tobacco which is classified in four categories. All the four categories have been left without an increase except category "b" where one manufacturer, which is M/s Mastermind Limited, is excelling in the market. This is a local industry. We are proposing that the increment be done across the board, so that all the categories are affected. If there is any reduction then it should also affect all the categories.

*(Question of the amendment proposed)*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, let me first of all state clearly that the proposed increase is not on one category as insinuated by the hon. Member. The increase affects Categories B and D. Basically, what we are saying is that within the East African region Kenya, Uganda and Tanzania, it has been agreed that cigarettes should be banded into three bands by their characteristics.

Mr. Temporary Deputy Speaker, Sir, in Kenya we had a situation where our cigarettes were actually categorised into four groups in terms of pricing. Because of the undercutting in the market, we ended up with the four categories and have been moving progressively towards bridging the gap so that we can move to the status agreed upon by the East African countries, where we now group our cigarettes into three categories depending on their characteristics.

This amendment, by raising the tax from the lower limit to the upper one, seeks to bridge the gap between Category C and Categories A and B by raising them to a level where they are in harmony with the rest of the region.

The proposal by the hon. Member has an effect contrary to what he has told the House. The cigarettes in this category are not manufactured by one manufacturer. All those companies manufacturing cigarettes within that price range, be it BAT, Mastermind Tobacco Limited and so on, are affected by this.

Mr. Temporary Deputy Chairman, sir, it is important for this House to note that as we amend this tariff we are bound to lose. In addition to the revenue we are going to lose from our tobacco farmers, we are bound to lose Kshs244 million which has been factored in this year's Budget to be raised from increase in price of cigarettes within that category.

I wish to mention that this House, in approving that amendment, we might think that we are saving one industry which has complained to the Departmental Committee, but the effect of that is

that we shall lose all the revenue that BAT, Mastermind Tobacco Limited and others were going to pay on all the cigarettes in that category which is now estimated at, based on the current collections, Kshs244 million.

I want hon. Members to note the magnitude of the decision they are about to make. The gains are not quite clear because the competition is not because of the tax. I explained to the Committee and we agreed in principle that this amendment should not be proposed. I was surprised to see it appearing on the Order Paper in the last minute.

**Mr. Maore:** Mr. Temporary Deputy Chairman, Sir, this is the only industry that is owned by someone from Mt. Kenya East and we do not understand the hostility being exhibited by the Minister over this taxation. If you can have three categories of cigarettes and there levels of taxation are increased equally, nobody would have complained. We are surprised that the Minister is now becoming the advocate for BAT, that they are going to suffer and yet they never came before the Committee to complain.

We urge the House to ignore the plea by the Minister and go by the proposal to support the amendment by Dr. Oburu.

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

**Hon. Members:** Sit down! Sit down!

**The Temporary Deputy Chairman** (Mr. Khamasi): Mr. Weya, you will sit down! Mr. Weya, sit down!

*(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)*

*(First Schedule as amended  
agreed to)*

*(Second and Third Schedules  
agreed to)*

*Fourth Schedule*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, the Fourth Schedule to the Bill be amended-

(a) In Part I –

(i) by renumbering the proposed amendment to Part B as paragraph (a) and inserting the following new paragraph –

(b) the following new tariff numbers and their corresponding descriptions in proper numerical sequence–

<i>Tariff. No.</i>	<i>Goods Description</i>
3926.90.10	Floats for fishing nets.



8515.21.00	Fully or partly automatic machines and apparatus for resistance welding of metal.
8515.29.00	Other machines and apparatus for resistance welding of metal.
8515.31.00	Fully or partly automatic machines and apparatus for arc (including plasma arc) welding of metals.
8515.39.00	Other machines and apparatus for arc (including plasma arc) welding of metals.
84518.69.10	Other refrigerating or freezing equipment for dairying or fishing.
9507.10.00	Fishing rods.
9507.20.00	Fish-hooks whether or not snelled.
9507.90.00	Other line fishing tackle; fish landing nets, butterfly nets and similar nets; decoy "birds" (other than those of heading 92.08 or 97.05 and similar hunting or shooting requisites.

(b) in PART II, -

(i) by deleting the proposed item 17;

(ii) by renumbering the proposed amendment as paragraph (a);

(iii) by inserting the following new paragraph-

(b) insert the following items in proper numerical sequence-

17. Agricultural tractors, semi-trailers for agricultural tractors and agricultural tractor tyres;

21. Locally assembled water pumps.

Mr. Temporary Deputy Chairman, Sir, please, protect me from the loud consultations.

**The Temporary Deputy Chairman** (Mr. Khamasi): Order, Members! Order!

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, we promised fish farmers, our youth and dairy farmers that we would zero rate their products.

The amendments in the Fourth

Schedule is basically to bring the fishing equipment or apparatus into the VAT net. I think this is also a straightforward amendment.

*(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)*

*(Fourth Schedule as amended agreed to)*

*(Title agreed to)*

#### Clause 1

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 1 of the Bill be amended--

(a) in paragraph (a), by deleting the expression "4(a)" and substituting therefor the expression 4(a)(i) and (ii)";

(b) in paragraph (b) -

(i) by deleting the expression "12" and substituting therefor the expressions "12(a), (b)(i), (c)(i)";

(ii) by deleting the expression "31(b) paragraph (ii) and substituting therefor the expression

- "31(b)(ii)(A)";
- (c) in paragraph (c) by deleting the expression "31(b) paragraph (v) item 9"
- (d) by inserting the following new paragraphs immediately after paragraph (c) –
- (cc) section 4(a)(iii), 31(b)(ii)(B), on the  
12th July 2006;
- (ccA) sections 14A, 12(b)(ii), (c)(iii) and 55A, on the 9th  
November 2006;
- (e) in paragraph (d) –
- (i) by deleting the expression "31(b) paragraph (v) item 10" and substituting therefor "31(b) paragraph (v) item 9";
- (ii) by inserting in proper numerical sequence the expressions "39", "55A", "57A", "58A", "58B" "58C", "62A", "62B", and "62C";
- (iii) by deleting the expressions "60" and "61".
- (f) by deleting paragraph (e).

Mr. Temporary Deputy Chairman, Sir, the amendment in Clause 1 is basically in terms of the rearrangement of the Sections because of the new deletions and other changes.

Mr. Temporary Deputy Chairman, Sir, so, that will also have to be redone at the drafting point to reflect the effect of what the House has passed.

*(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)*

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

THAT, Clause 1 be amended by inserting the following new paragraph in proper sequence-

(cc) Section 4(a)(iA), on the 9th November, 2006

Mr. Temporary Deputy Speaker, Sir, this amendment is just meant to put the sequence right.

*(Question of the amendment  
proposed)*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, the Mover has not told us the effects that this amendment will have by fixing an effective date for these amendments.

Mr. Temporary Deputy Chairman, Sir, I would urge this House not to approve something whose effect we do not know, come 9th November, 2006.

Mr. Temporary Deputy Chairman, Sir, the hon. Member has not even told us what will come into effect on that date. We could be passing a law not knowing its effect come 9th November, 2006. Why this date, in the first place? Unless the hon. Member tells us what they are anticipating on 9th November, 2006, I will be hesitant to urge the House to approve this particular amendment.

**Dr. Oburu:** Mr. Temporary Deputy Chairman, Sir, there are some taxation measures which the Minister had announced which had become effective from midnight and here we are saving him by saying that they become effective on 9th November which is today. So, that is illegal.

**Mr. Midiwo:** Mr. Temporary Deputy Chairman, Sir, there is something the Minister did not get. However, there are some things we have passed into law today that if we do not make these amendments, the Minister will have to return money to those people who have been paying tax.

Mr. Temporary Deputy Chairman, Sir, the effect of all these things that we have passed is that the Government will be giving money to those people who have already been affected and have been paying money as of midnight of the day of the Budget which is to your benefit.

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, if there is an issue on this we will be bringing an amendment to this House. However, like I said, in the absence of knowing what exactly we are referring to, it is very difficult to say we will take it up from today. The provisional tax order is in place. It is recognised by law and that has been working until this is passed by the House.

Mr. Temporary Deputy Chairman, Sir, even if it was not passed, we would have continued with the provisional tax order until it is clarified. So, I am not sure what this amendment is seeking to get and, in the absence of that, whether I approve or amend it, it does not matter to me.

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

*(Clause 1 as amended agreed to)*

**The Minister for Finance** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Finance Bill and its approval thereof with amendments.

**The Assistant Minister for Finance** (Mr. Kenneth) seconded.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[Mr. Deputy Speaker in the Chair]*

## **REPORT, CONSIDERATION OF REPORT AND THIRD READING**

### **THE FINANCE BILL**

**Mr. Khamasi:** Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Finance Bill and approved the same with amendments.

**The Minister for Finance** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Assistant Minister for Finance** (Mr. Kenneth) seconded.

*(Question proposed)*

**Maj. Madoka:** Mr. Deputy Speaker, Sir, listening to the various arguments advanced by the Minister and other hon. Members of this House, it is clear that there has been a breakdown in communication. There is need for us to have proper discussions. A lot of the amendments proposed by the Minister would have passed if there would have been proper discussion. Mr. Deputy Speaker, Sir, so, I suggest that in future, the Minister works more closely with the Committee on Finance, Planning and Trade.

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

**Mr. Deputy Speaker:** Hon. Members, as you can see, time is not on our side. This is a matter that has been dealt with for a long time. I will give the Floor to Mr. Samoei and then I will put the Question.

**Mr. Samoei:** Thank you, Mr. Deputy Speaker, Sir. I also want to reiterate that we would, really, want to pass into law, matters that affect the people of this country positively.

Mr. Deputy Speaker, Sir, therefore, I would like to ask the Minister and the Government to bring back to this House the issues that were rejected by hon. Members this afternoon, particularly the amendments to the Insurance Act, among many other matters.

I hope that the Minister will take it kindly.

I would like the Government to take it positively and bring those matters back to this House, so that we can deal with them conclusively. We want to debate and pass them into law, so that Kenyans can begin to enjoy the fruits of good law.

*(Question put and  
agreed to)*

**The Minister for Finance** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to move that the Finance Bill, 2006, be now read the Third Time.

**The Assistant Minister for Finance** (Mr. Kenneth) seconded.

*(Question proposed)*

*(Question put and agreed to)*

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

## ADJOURNMENT

**Mr. Deputy Speaker:** Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until Tuesday, 14th November, 2006, at 2.30 p.m.

The House rose at 6.30 p.m.