

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 10th December, 2003

The House met at 9.00 a.m.

*[The Temporary Deputy Speaker
(Mr. Poghisio) in the Chair]*

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.646

GOVERNMENT TREASURY
FOR GARBATULLA

Mr. Bahari asked the Minister for Finance when he will have a treasury in place at Garbatulla to ease the suffering of Isiolo people who have to travel up to 290 kilometres to get services from the District Treasury.

Mr. Wamunyinyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. As you can see, we do not even have a single hon. Member of the Cabinet. If there are no Ministers in the House, how then do we proceed with the Questions?

(Applause)

The Temporary Deputy Speaker (Mr. Poghisio): The Minister for Finance is not here? We will go to the next Question.

Question No.752

COMPLETION OF MARAGUA
IFAC-FUNDED PROJECT

The Temporary Deputy Speaker (Mr. Poghisio): Mr. Mbau also not here?

Next Question!

Question No.642

UTILIZATION OF COFFEE CESS MONEY

The Temporary Deputy Speaker (Mr. Poghisio): Mr. Wambora also not here? Next Question!

*Question No.675*SPECIALIST MEDICAL PERSONNEL FOR
NYAMIRA DISTRICT HOSPITAL

Mr. Mwancha asked the Minister for Health how many medical doctors of the listed specialties are available at Nyamira District Hospital:-

Gynaecologists;
General Doctors;
Surgeons; and,
ENT Specialists

The Temporary Deputy Speaker (Mr. Poghisio): The Minister for Health also not here? We will move on to the next Question.

Question No.787

RETIREMENT BENEFITS FOR MR. MAKALI

Mr. Wamunyinyi: Mr. Temporary Deputy Speaker, Sir, who is going to answer this Question?

The Temporary Deputy Speaker (Mr. Poghisio): Order! Just ask your Question!

Mr. Wamunyinyi: Mr. Temporary Deputy Speaker, Sir, you cannot ask me---

The Temporary Deputy Speaker (Mr. Poghisio): Order! Just ask your Question!

Mr. Wamunyinyi asked the Minister for Education, Science and Technology:-

(a) whether he is aware that Mr. Nicholas Makali TSC No.92550 retired in December, 2000 and has not been paid his terminal benefits to date; and,

(b) what action he is taking to ensure that he is paid his dues without further delay.

Could I have the answer now?

The Temporary Deputy Speaker (Mr. Poghisio): Order, Mr. Wamunyinyi! The Minister for Education, Science and Technology is not here! Next Question!

Question No.732

CLASSIFICATION OF NYANDARUA ROADS

The Temporary Deputy Speaker (Mr. Poghisio): Mr. Muchiri is also not here! Next Question!

(Loud consultations)

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members!

Mr. Kamotho: Mr. Temporary Deputy Speaker, Sir, I apologise for coming late.

*Question No.725*REHABILITATION OF MATHIOYA/
GATANGU WATER SCHEMES

Mr. Kamotho asked the Minister for Water Resources Management and

Development:-

(a) whether she is aware that Mathioya and Gatangu Water Schemes require urgent rehabilitation; and,

(b) what plans she has to ensure that residents of Njumbi, Gitugi, Rwathia, Kiru and Kamacharia locations receive adequate clean water from the two schemes.

The Assistant Minister for Water Resources Management and Development (Mr. Munyes): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) My Ministry is aware that Mathioya and Gatangu Water Schemes require urgent rehabilitation.

(b) Mathioya Water Supply was constructed to serve parts of Rwathia, Njumbi and Gitugi locations. Due to problems arising out of old age of the pipes networks, landslides and increasing population, some of the areas do not receive adequate supplies. My Ministry has allocated Kshs5 million during this financial year for rehabilitation of Mathioya Water Supply. Gatangu Water Project was constructed in 1974 to cover parts of Kiru and Kamacharia. Due to increase in population, the demand has outstripped supply and my Ministry has carried out preliminary studies to determine cost estimates for the rehabilitation and expansion of the scheme.

Mr. Kamotho: Mr. Temporary Deputy Speaker, Sir, I wish to thank the Assistant Minister for the answer. However, could he tell the House how soon the implementation of the programme to rehabilitate the two water projects will be done? A lot of major installations in schools and individuals' homes, which had already been connected, do not enjoy this facility at present.

Mr. Munyes: Mr. Speaker, Sir, I have just said that for Mathioya Water Supply, we have allocated Kshs5 million to during this financial year, and I think that money has been disbursed. But for Gatangu Water Supply, we plan to allocate it Kshs60 million in the next financial year. We have a long list of urgent rehabilitation activities, like improvement and enlargement of intake, rehabilitation of existing pipes, completion of the 4.8 parallel gravity line from Kiru and construction of tanks. We will implement this next year with the allocation of Kshs60 million. For now, Mathioya Water Supply has Kshs5 million which is enough to repair the water scheme.

Mr. Obwocha: Mr. Temporary Deputy Speaker, Sir, the problem we have all over the country is about the rehabilitation of these water projects. Could the Assistant Minister tell us how much money has been set aside this year for the rehabilitation of water projects in the country? Even the water projects in Nyamira District need rehabilitation.

Mr. Munyes: Mr. Temporary Deputy Speaker, Sir, I do not have the figures on my fingertips, but much of the Kshs4.5 billion allocated to this Ministry will definitely go towards rehabilitation work. It is the policy of the Ministry to ensure much of that money is used to rehabilitate projects. We do not intend to start new projects.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, the Assistant Minister says they have set aside money for this very needy purpose. Could he, please, table the list of projects that will benefit from this money?

Mr. Munyes: Mr. Temporary Deputy Speaker, Sir, I think that is a different Question. I require more time to table that list.

Mr. Mwandawiro: Asante sana, Bw. Naibu Spika wa Muda. Je, Wizara ina mipango gani ya kuhakikisha kwamba miradi hiyo imekarabatiwa kwa haraka iwezekanavyo? Hatuna miradi ya maji katika Wundanyi. Je, pesa zilizotengewa miradi ya maji katika Wundanyi zinatumika wapi? Je, Wizara hii itahakikisha vipi kwamba pesa hizi zitatumwiwa kukarabati miradi ya maji hapa nchini?

Mr. Munyes: Mr. Temporary Deputy Speaker, Sir, we have our own machinery of ensuring what we sent to various districts is actually implemented. We have always requested hon. Members of Parliament to investigate for us because this is one of their roles. Everyone must be aware that a specific amount of money has been allocated for a particular constituency. Therefore, the hon.

Member should follow it and ensure that he gets the right information if there is a problem in the constituency.

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Assistant Minister to avoid telling this House when he will table the list I asked for?

Could I request that he be compelled to bring that list so as to save this House time which is wasted in similar Questions being asked?

The Temporary Deputy Speaker (Mr. Poghisio): Dr. Khalwale, the documents that you are asking for are public documents.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, all we need to know is which projects will benefit from this money. It will save the House time. Secondly, if there is any mischief, then we could change and request that the money be given per constituency.

Mr. Munyes: Mr. Temporary Deputy Speaker, Sir, there is no problem with that; we will provide the list next week.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members! At least, some Ministries have made their district allocations so far. I hope that will also be provided by the Ministry of Water Resources Management and Development. The hon. Member wants to get that information, if it is available.

Mr. Obwocha: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Assistant Minister says he will table the list next week, yet Parliament is likely to adjourn tomorrow---

The Temporary Deputy Speaker (Mr. Poghisio): Order! We cannot expect the Assistant Minister to do it now. Can we? He has said it was not part of the Question that was asked. He is, therefore, requesting for time to do that.

Next Question, by Mr. Korir!

Question No.782

LAND DEMARCATION IN KAPLAIMOI

Mr. Korir asked the Minister for Lands and Settlement whether he could confirm when land demarcation in Kaplaimoi within Sirwa Location will commence.

The Temporary Deputy Speaker (Mr. Poghisio): Is the Minister for Lands and settlements not here? Let us move on to the next Question. Mr. Bahari's Question for the second time!

Mr. Bahari: Mr. Temporary Deputy Speaker, Sir, before I ask my Question, and for the record purposes, I want to bring to your attention that I am the hon. Member of Parliament for Isiolo South Constituency and not Isiolo North.

Question No.646

GOVERNMENT TREASURY FOR GARBATULLA

Mr. Bahari asked the Minister for Finance when he will have in place a treasury at Garbatulla to ease the suffering of Isiolo people who have to travel up to 290 kilometres to get services from the District Treasury.

The Temporary Deputy Speaker (Mr. Poghisio): The Minister for Finance still not here? The Question is deferred.

(Question deferred)

The Temporary Deputy Speaker (Mr. Poghisio): For the second time, Question by Mr. Mbau!

Question No.752

COMPLETION OF MARAGUA
IFAC-FUNDED PROJECT

The Temporary Deputy Speaker (Mr. Poghisio): Mr. Mbau still not here? The Question is dropped.

(Question dropped)

For the second time, Question by Mr. Wambora!

Question No.642

UTILIZATION OF COFFEE
CESS MONEY

The Temporary Deputy Speaker (Mr. Poghisio): Mr. Wambora still not here? The Question is dropped!

(Question dropped)

Question No.675

SPECIALIST MEDICAL PERSONNEL FOR
NYAMIRA DISTRICT HOSPITAL

Mr. Mwancha asked the Minister for Health how many medical doctors of the listed specialists are available at Nyamira District Hospital:

Gynaecologists; general doctors; surgeons; and, ENT specialists.

The Minister for Health (Mrs. Ngilu): Mr. Temporary Deputy Speaker, Sir. I would like to ask Mr. Mwancha to give me more time to give him a better answer. I have an answer here which is not very satisfactory because I need to know all the facilities available there, and not only the doctors. I know that we have posted one doctor who is a specialist, but I need to know much more about the hospital before I can give him an answer.

Mr. Mwancha: Mr. Temporary Deputy Speaker, Sir, will she give that answer tomorrow? As I wait for an answer to that Question, I would like to point out that we are dealing with human life. I filed this Question three months ago. Since she has asked for more time, I expect her to give a satisfactory answer tomorrow.

The Temporary Deputy Speaker (Mr. Poghisio): There is no way I can guarantee that. However, out of curiosity, this Question is asking about doctors in one district hospital. What more

information does one need, Mrs. Ngilu?

The Minister for Health (Mrs. Ngilu): Mr. Temporary Deputy Speaker, Sir, I know that we have already posted a surgeon to this hospital. Since we do not have an ENT specialist and a gynaecologist, I would like to know the location of this hospital so that, maybe, I can provide them with a vehicle that could be used to transfer patients from this hospital to the nearest referral hospital.

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. We have been treated to this kind of approach for a long time; where a Minister comes here the last minute and tells us that he or she does not find the answer satisfactory. Could we get some guidance from the Chair as to whether it is in order for Ministers to refuse to address Questions early enough before they come to answer them here?

The Temporary Deputy Speaker (Mr. Poghio): Madam Minister, this is a very straightforward Question. So, could you answer it?

The Minister for Health (Mrs. Ngilu): Mr. Temporary Deputy Speaker, Sir, I can answer the Question.

Mr. Mwanacha: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Poghio): What is it?

Mr. Mwanacha: Mr. Temporary Deputy Speaker, Sir, initially, the Minister declined to answer the Question, saying that the reply she has is unsatisfactory. She now says that the same reply is satisfactory. Is she in order to contradict herself? Am I going to get the information that I want?

The Minister for Health (Mrs. Ngilu): Mr. Temporary Deputy Speaker, Sir, I want to give good services, but I will give the answer as it is. I wish Mr. Mwanacha waited. However, I will answer the Question.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Poghio): Order! Order!

Hon. Members: On a point of order!

The Temporary Deputy Speaker (Mr. Poghio): Order! Order!

The Minister for Health (Mrs. Ngilu): Mr. Temporary Deputy Speaker, Sir, I beg to reply. Nyamira District Hospital does not have a gynaecologist--

Hon. Members: On a point of order!

The Temporary Deputy Speaker (Mr. Poghio): What is wrong with what the Minister has said?

Mr. Khamasi: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Minister has said that she has got an unsatisfactory answer.

Hon. Members: Yes!

Mr. Khamasi: Are you allowing her to give this House an answer which is unsatisfactory?

(Applause)

The Minister for Health (Mrs. Ngilu): Mr. Temporary Deputy Speaker, Sir, because Mr. Mwanacha wants this answer, let me give it to him!

Hon. Members: No!

The Temporary Deputy Speaker (Mr. Poghio): Order! Order! Hon. Members, the Question has been asked. There is an answer. How do we know that it is unsatisfactory?

Hon. Members: She has said it is!

The Temporary Deputy Speaker (Mr. Poghio): Order! Order! Are we going to allow

every Minister to come here and say that he or she does not have the right reply to Questions? You can only say that the answer is unsatisfactory after you hear it.

Proceed, Madam Minister!

Hon. Members: On a point of order!

The Temporary Deputy Speaker (Mr. Poghiso): Order! Order! Hon. Members, the Question says Nyamira District Hospital does not have doctors of certain specialties. If the Minister confirms that position, Mr. Mwacha will have received a correct answer. If she says that she is going to post a doctor to that hospital tomorrow, then that will be a different thing. So, we want to know the state of affairs at Nyamira District Hospital as at the time the Question is asked.

Hon. Members: On a point of order!

The Temporary Deputy Speaker (Mr. Poghiso): Let us hear her answer first.

Mr. Angwenyi:---(Inaudible)

The Temporary Deputy Speaker (Mr. Poghiso): Order! Order!

Mr. Angwenyi:---(Inaudible)

The Temporary Deputy Speaker (Mr. Poghiso): Mr. Angwenyi, I will ask you to leave this Chamber!

Mr. Angwenyi: You had better send me out!

The Temporary Deputy Speaker: Mr. Angwenyi, leave this Chamber now!

Mr. Angwenyi:---(Inaudible)

The Temporary Deputy Speaker: Mr. Angwenyi, if you do not leave, I will order that you be removed!

*(Mr. Angwenyi withdrew
from the Chamber)*

The Temporary Deputy Speaker (Mr. Poghiso): Hon. Members, I think we can agree on this issue. Was the Question asked or not?

An hon. Member: It was asked.

The Temporary Deputy Speaker (Mr. Poghiso): That is enough for me, as the Chair. The Question was asked and the answer was being given. Whether it is satisfactory or not, the Minister stood up to present the answer. So, let us not set a bad precedent. A ruling has to come from the Chair, and not from the Floor of the House. We are going to continue that way. That is the order. Allow the Minister to explain herself.

Proceed, Madam Minister!

The Minister for Health (Mrs. Ngilu): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

Nyamira District Hospital does not have a gynaecologist and an eye, nose and throat (ENT) specialist. It has one surgeon, who serves as the Hospital Superintendent, and two general doctors who serve as medical officers of health. We have a severe shortage of specialised doctors within the Ministry. This has affected staffing in some of our hospitals, including Nyamira District Hospital. Services that are supposed to be rendered by specialised doctors, however, are rendered by general doctors. That will be the case until financial resources become available, and we employ specialised doctors. Patients at Nyamira District Hospital, who require the services of a gynaecologist, are referred to Kisii District Hospital for attention.

Mr. Temporary Deputy Speaker, Sir, I had requested more time, so that I could establish the distance between Nyamira and Kisii District Hospitals. I wanted to see whether we can provide ambulance services between the two hospitals, so that patients requiring the services of specialised doctors can be moved to where such services are available. I said that the answer was not satisfactory,

because I did not know the distance between the two hospitals. I want to assure the hon. Member that I will still ensure that ambulance services are provided between the two hospitals.

Mr. Wamwere: On a point of order, Mr. Temporary Deputy Speaker, Sir. After the Minister said the answer she had was unsatisfactory, was it right for the Chair to force the House to listen to an answer which we knew was unsatisfactory? Is the Chair not forcing the House to take a rebellious position against it?

The Temporary Deputy Speaker (Mr. Poghio): Mr. Wamwere, I think you are out of order. You basically want to put yourself in the position of the Chair, or to challenge it. You heard what I said. You have heard the answer given by the Minister. What is unsatisfactory about it? What is unsatisfactory about telling the House exactly how many doctors have been posted to Nyamira District Hospital? We are not going to entertain a situation where Ministers come here with answers, which they have developed and signed, and then they say that the same answers are unsatisfactory. We must move from that kind of situation.

When the Minister said that the answer was unsatisfactory, she was talking about additional information which can be provided by answering supplementary questions. I made my ruling on the basis of this particular Question, which is very straightforward. It asks: "How many medical doctors of the listed specialties are available---" This is a very straightforward Question, which calls for a direct answer. The Minister has explained why she said that the answer she has given is not satisfactory. I can assure you that the answer she gave is not unsatisfactory. If you want more information, seek it by asking supplementary questions. So, you cannot accuse the Chair of having forced you to take an answer. The Chair does not answer Questions. It facilitates a Questioner and a Minister to proceed in an orderly manner. That is all I do. So, you are out of order, Mr. Wamwere!

(Applause)

Let us proceed to the next Question.

Mr. Mwanicha: No; we have not asked the Minister supplementary questions on my Question.

The Temporary Deputy Speaker (Mr. Poghio): Oh, you now want to ask the Minister supplementary questions?

Hon. Members: Yes!

The Temporary Deputy Speaker (Mr. Poghio): Correct! Proceed, Mr. Mwanicha.

Mr. Mwanicha: Mr. Temporary Deputy Speaker, Sir, the Minister has said that there are two general doctors at Nyamira District Hospital. She said that one of them serves as the Medical Officer of Health, which is basically an administrative position, while the other one serves as the Hospital Superintendent. The Minister wants to know whether the hospital is near Kisii District Hospital.

I am on record as having said that the inpatient wards at Kisii District Hospital are very congested. Patients share beds, while others sleep on the floor. When will the Minister post sufficient doctors to Nyamira District Hospital? Patients at Nyamira District Hospital cannot share doctors with patients at Kisii District Hospital, which is already too congested.

Mrs. Ngilu: Mr. Temporary Deputy Speaker, Sir, I am aware that Nyamira District Hospital is congested; with some people sharing beds and others sleeping on the floor. This is why I am saying I need more budgetary allocation so that we can, at least, try to increase the bed capacity of this hospital.

I also wanted to know how we could use other hospitals nearby by ensuring that Nyamira District Hospital has a vehicle. This is the information I wanted to come here with, but I do not have it. Again, I want to assure the hon. Member that I will take this opportunity to address the issue of congestion in that hospital.

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, the hon. Minister has said that there is no money for employing specialised doctors. Could she consider providing mobile services for such doctors so that they can visit different hospitals on particular occasions and render their services to the patients?

Mrs. Ngilu: Mr. Temporary Deputy Speaker, Sir, we will consider providing ambulances and vehicles that can be used to transfer patients who need specialised treatment to a nearby hospital.

Mr. Bahari: Mr. Temporary Deputy Speaker, Sir, in this country, we have always got our priorities very wrong. The Minister is saying that she would be looking for more funds to expand the facilities. That may be okay, but what is she doing to make sure that the preventive aspect is properly addressed by the Ministry of Health? Normally, Nyamira and Kisii districts experience an outbreak of highland malaria. This needs to be addressed at the source so that the root cause of the problem is addressed.

Mrs. Ngilu: Mr. Temporary Deputy Speaker, Sir, I agree entirely with the hon. Member; that we have had our priorities wrong. This was the case until the NARC Government took over power and we are now having our priorities right. I would like to inform him that we have scaled up prevention activities in the area of malaria, HIV/AIDS and tuberculosis.

Mr. Mwanicha: Mr. Temporary Deputy Speaker, Sir, the Minister in charge of this Ministry is a lady and I believe she has children. If a woman in labour develops complications in hospital and requires the services of a gynaecologist, of what use will the ambulance be to her?

Mrs. Ngilu: Mr. Temporary Deputy Speaker, Sir, indeed, most of our hospitals have surgeons. The surgeons are fully trained and have skills to operate on women when they are delivering. So, we use them for that purpose.

The Temporary Deputy Speaker (Mr. Poghisio): Next Question, Mr. Wamunyinyi!

Question No.787

RETIREMENT BENEFITS
FOR MR. MAKALI

Mr. Wamunyinyi asked the Minister for Education, Science and Technology:-

- (a) whether he is aware that Mr. Nicholas Makali, TSC No.92550, retired in December, 2000, and has not been paid his terminal benefits to date; and, (b) what action he is taking to ensure that he is paid his dues without further delay.

The Temporary Deputy Speaker (Mr. Poghisio): Anyone here from the Ministry of Education, Science and Technology?

The Question is deferred.

(Question deferred)

Next Question, Mr. Bahari!

Question No.646

GOVERNMENT TREASURY
FOR GARBATULLA

Mr. Bahari asked the Minister for Finance when he will have in place a treasury at

Garbatulla to ease the suffering of Isiolo people who have to travel up to 290 kilometres to get services from the District Treasury.

The Temporary Deputy Speaker (Mr. Poghisio): Anyone here from the Ministry of Finance? The Question is deferred.

(Question deferred)

Next Question by Mr. Muchiri!

Question No.732

CLASSIFICATION OF
NYANDARUA ROADS

The Temporary Deputy Speaker: Mr. Muchiri still not here? The Question is dropped.

(Question dropped)

Next Question, Mr. Korir!

Question No.782

LAND DEMARCATION IN KAPLAIMOI

Mr. Korir asked the Minister for Lands and Settlement whether he could confirm when land demarcation in Kaplaimoi within Sirwa Location will commence.

(Mr. Ojode entered the Chamber)

The Assistant Minister for Lands and Settlement (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

The Temporary Deputy Speaker (Mr. Poghisio); Order, Mr. Assistant Minister! You are very late!

The Assistant Minister for Lands and Settlement (Mr. Ojode): Mr. Temporary Deputy Speaker, Sir, I apologise for coming in late.

I beg to reply. Kaplaimoi is part of Sirwa and Kaplaimoi adjudication section which was finalised and registered in 1967. There is a small portion of Kaplaimoi which was left out during land adjudication due to its steep terrain. The Presidential Commission on Soil and Water Conservation declared this portion a conservation area in 1987.

Mr. Korir: Mr. Temporary Deputy Speaker, Sir, while I appreciate the answer from the Assistant Minister, he has said that the area was declared a soil conservation area by the Presidential Commission on Soil and Water Conservation, but he has not given these people an alternative. So where does he expect them to live? He should either demarcate the area, because that is where they have been tilling the land and earning a living, or provide an alternative.

Mr. Ojode: Mr. Temporary Deputy Speaker, Sir, once a portion has been declared a soil conservation area, my hands are tied and I cannot do anything. However, I have just spoken with my colleague, the Minister for Environment, Natural Resources and Wildlife, Dr. Kulundu, and we have agreed that we are going to visit the area and see for ourselves whether it can be conserved. If it had already been declared as a conservation area, then we will have to look for alternative land and resettle those who are living in that steep area.

Mr. Korir: Mr. Temporary Deputy Speaker, Sir, could the Assistant Minister confirm when they will visit the area to see for themselves what is happening there?

Mr. Ojode: Mr. Temporary Deputy Speaker, Sir, we will arrange with both the hon. Questioner and the Minister for Environment, Natural Resources and Wildlife when will visit that area.

QUESTIONS BY PRIVATE NOTICE

EVICTION OF FORMER FOREST WORKERS IN DUNDORI

Mr. Wamwere: Mr. Temporary Deputy Speaker, Sir, I beg to ask the Minister for Environment, Natural Resources and Wildlife, the following Question by Private Notice.

(a) Is the Minister aware that the Provincial Administration has removed livestock belonging to former forest workers from the forest and are now squatting at Dundori Centre?

(b) Could the Minister allow the said livestock to start grazing in the forest once again rather than let them die of starvation at Dundori Centre?

The Assistant Minister for Environment, Natural Resources and Wildlife (Prof. Maathai): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that the Provincial Administration has removed from the forest areas livestock belonging to former forest workers who are now squatters at Dundori Centre. You will recall that I issued a directive to the District Security Committees on 24th October, 2003, to ensure that all forest-related activities, including grazing in forest areas within our borders, are suspended until further notice. This action was meant to facilitate the strengthening of the Forest Inspection and Protection Unit with a view to eliminating the wanton destruction of our forests which has mainly been perpetuated through over-grazing among other illegal activities such as timber poaching, non-residential cultivation and encroachment.

(b) The suspension of all forest-related activities, which I imposed on 24th October, 2003, will remain in force until the re organisation of the Forest Department would have been concluded. It is expected that the reorganisation of the Forest Department will lead to improvement of forest-related activities such as the promotion of farm forestry. In the meantime, the former forest workers, now residing in Dundori, can graze their animals in non-forest areas as is the case in other parts of the country.

Mr. Wamwere: Mr. Temporary Deputy Speaker, Sir, I grew up in Dundori Forest and I know that, from 1974, forest workers had always to graze their animals in the forest without destroying it at all. I am also aware that the forest was destroyed by timber merchants and people who were given forest land by the Government. Given that forest workers and the livestock did not contribute to the destruction of the forest, could the Assistant Minister seriously consider allowing these squatters to graze their animals until the re organisation of the Forest Department is done?

Prof. Maathai: Mr. Temporary Deputy Speaker, Sir, unfortunately, having people grazing in the forest complicates the issue of re-organisation and it also sometimes gives illegal loggers an excuse to be in the forest. That is why it was decided that everybody should get out of the forest until the re-organisation is complete.

Mr. Cheboi: Mr. Temporary Deputy Speaker, Sir, could the Assistant Minister tell the House under what law they issued the directive barring people from grazing in the forest? The Forest Act is very clear; it allows people to fetch water, graze their livestock, collect firewood, conduct traditional ceremonies, pick herbs and dry hides and skins in the forest. Under what law did the Ministry issue that directive because this does not affect the forest? The people who destroy forests are the saw millers and the Pan African Paper Mills Company. Why do you go for the common *mwananchi* and leave the main culprits? Under what law did you do that?

Prof. Maathai: Mr. Temporary Deputy Speaker, Sir, I am not aware that we have left any

people in the forests. What I know is that even though the law allows all those activities to go on in the forest, it also mandates the Government to protect the same for the common good.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members! There is a caucus in front here that is making noise. Order! We are not getting the Assistant Minister well and we would like to hear her answers. So, please consult quietly.

Mr. Karaba: Mr. Temporary Deputy Speaker, Sir, it is important to listen to what the Assistant Minister is telling us, but we should also consider that these people are called squatters because of the state in which they live. These are the same people who went to the forest, cultivated land and planted crops which are almost maturing. Could the Assistant Minister assure us that these people will be around to harvest these crops now that they are ready?

Prof. Maathai: Mr. Temporary Deputy Speaker, Sir, the Minister did promise that although the deadline to vacate the forests is the 31st of December, any people who genuinely feel that their crops will not be ready for harvesting should write to the Minister, maybe through the District Security Committees or through the office of the DC, and he will consider case by case.

Mr. Serut: Mr. Temporary Deputy Speaker, Sir, given that there are people like the Ndorobos of Mount Elgon who have been living and herding animals inside the forest, what is the Government doing to protect such people?

Prof. Maathai: Mr. Temporary Deputy Speaker, Sir, people who graze domestic animals in the forest actually pay for and obtain a licence from the Government in order to be allowed to graze in the forest. So, these animals must be coming from somewhere. They do not belong to the forest. They come to the forest as a result of a contract between the Government and the people who herd them.

Mr. Serut: On a point of order, Mr. Temporary Deputy Speaker, Sir. I have said very clearly that the Ndorobos of Mount Elgon have been living in the forest together with their animals and grazing them there. They do not come from somewhere.

The Temporary Deputy Speaker (Mr. Poghisio): What is your point of order?

Mr. Serut: Mr. Temporary Deputy Speaker, Sir, my point of order is this: Is it in order for the Assistant Minister to mislead this House that these people come from somewhere when I have said very clearly that these people live in the forest?

Prof. Maathai: Mr. Temporary Deputy Speaker, Sir, there are two aspects to the original Question. There was the aspect of people who graze in the forest but they are not forest dwellers. The Ndorobos are the true forest dwellers and they are gatherers and hunters. They do not graze wildlife. If they do, that is a completely different concept of the Ndorobos as we know them.

Capt. Nakitare: Mr. Temporary Deputy Speaker, Sir, could the Assistant Minister tell us the difference between exotic plants and indigenous plants? We all know that where pinnas trees grow, there is no grass. So, could the Assistant Minister tell us why they destroy indigenous trees and plant exotic trees only to promote the external commercial sector? I have asked why they are promoting---

The Temporary Deputy Speaker (Mr. Poghisio): Order, Capt. Nakitare! This is Question Time. Direct one Question to the Assistant Minister which she can answer.

Capt. Nakitare: Mr. Temporary Deputy Speaker, Sir, is the Assistant Minister right to say that---

The Temporary Deputy Speaker (Mr. Poghisio): Order! What is your question?

Capt. Nakitare: Mr. Temporary Deputy Speaker, Sir, our environment has been taken over by exotic trees which are not supporting our animals including cattle grazing in the forests. Is the

Assistant Minister telling us the truth; that by giving the commercial sector monopoly in the environment, it is doing any good to us?

Prof. Maathai: Mr. Temporary Deputy Speaker, Sir, I actually did not say what the hon. Member has said. However, I do agree with him that, indeed, we ought to be protecting our indigenous forests and vegetation. We should actually make grazing of the animals even more possible than when we have the plantations. However, as the hon. Member knows, the growing of plantations was introduced into this country in the early 1950s and has continued to expand. However, at the moment, there is a deliberate effort by the Ministry to increase the indigenous vegetation in our forests while at the same time providing timber for the timber industry.

Mr. Sirma: Mr. Temporary Deputy Speaker, Sir, the Question raised by hon. Wamwere is actually within the laws of this country under the Forest Act. In Tugen-Kamasia Hills Forest, Legal Notices 236 of 1964 and 21 of 1966, give the residents and inhabitants of the district the leeway to graze their cattle. Why is the Assistant Minister defying the law?

Prof. Maathai: Mr. Temporary Deputy Speaker, Sir, to repeat myself, while the law allows people access to forests, it also mandates the Government to protect the same for the common good.

Mr. Kombe: Mr. Temporary Deputy Speaker, Sir, I wonder what difference exists between 100 kilogrammes of grass eaten by a herd of gazelles and 100 kilogrammes of grass eaten by a herd of goats. Is there, really, any difference? If the answer is negative, why can the Government not allow our cows and goats to graze on the same grass?

(Applause)

Prof. Maathai: Mr. Temporary Deputy Speaker, Sir, the law that the Ministry is applying is the same law this Parliament passed.

Hon. Members: No! No!

Prof. Maathai: Mr. Temporary Deputy Speaker, Sir, if Parliament wants to change the law so that people can be allowed to permanently graze their animals in the forest lands even when the forests are under threat, then, we can change the law. We can decide that animals be grazed in the forest lands no matter what will happen to the forests.

Mr. Sirma: On a point of order, Mr. Temporary Deputy Speaker, Sir. Which law is the Assistant Minister talking about? The law is clear here. Does she want to change the laws of Kenya? These are the laws we want.

The Temporary Deputy Speaker (Mr. Phogisio): Order, Mr. Sirma! You stand the risk of being thrown out of the House. Do not rise on a point of order if you know you are not raising one.

(Loud consultations)

Order! You stand the risk of being thrown out of the House! I want all of you to know that.

Prof. Maathai: Mr. Temporary Deputy Speaker, Sir, all I am saying is that the Government is mandated to protect all the forests. We are doing our best at a time when everybody in this country knows that our forests are under threat. At the moment, it has been decided that we shall remove everybody from the forests so that we can re-organize the Forest Department.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Phogisio): Order, Members!

Prof. Maathai: Mr. Temporary Deputy Speaker, Sir, if only the hon. Members could listen, they might understand what I am trying to say.

Mr. Wamwere: Mr. Temporary Deputy Speaker, Sir, clearly, it is not illegal to graze livestock in the forests, especially by former forest officers and people who reside in the forest areas. Given that forests are under threat resulting from illegal loggers and not animals; also, noting that animals cannot be fed on *mandazis* that are sold in market centres, could the Assistant Minister consider allowing animals to graze in the forests? Could she, also, distinguish between animals and loggers? There seems to be no difference between the two, in the mind of the Assistant Minister.

Prof. Maathai: Mr. Temporary Deputy Speaker, Sir, since the Ministry is reviewing the whole situation, all these concerns will be taken into consideration.

Hon. Members: When?

Prof. Maathai: Mr. Temporary Deputy Speaker, Sir, as soon as possible. At the moment, the review is going on. Initially, we thought it would not take more than three weeks, but it is easier said than done.

DEATH OF JANE NJERI KIMANI

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

In view of the findings of the Nakuru Chief Magistrate Inquest No.13/95, regarding the late Jane Njeri Kimani, could the Attorney-General order further investigations to establish the identity of the police officer who shot the deceased?

The Temporary Deputy Speaker (Mr. Phogisio): Order, Members! Concerning the Question by Mr. M. Kariuki, the Attorney-General is busy swearing in new Judges and he requested that this Question be deferred because he will not be here this morning.

Mr. M. Kariuki: Mr. Temporary Deputy Speaker, Sir, I take great exception to the conduct of the Attorney-General.

(Applause)

This Question was due last week and he said that he was going for a seminar. Now, it has come today and he says that he is attending to other business. I am not aware that there is more demanding business in this country than the Business of this House. I, really, appeal to the Chair to call upon the Attorney-General to answer this Question in the course of the day; this afternoon. This is about the life of a citizen whose life has been taken away and whose children are suffering and languishing in poverty. It is time the Attorney-General pulled up his socks and did his work.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Phogisio): Mr. M. Kariuki, I am only transmitting information that the Questioner is here, but the Attorney-General is not present to answer the Question. In any case, let us defer it until tomorrow.

Mr. M. Kariuki: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Chair is in charge of the Business of this House and we are all subject to your ruling. I am, therefore, appealing to you in your capacity as the Chair of this House, to command the Attorney-General to come and answer this Question this afternoon.

(Applause)

The Temporary Deputy Speaker (Mr. Phogisio): Order, Members! The Standing Orders are

very clear on what your roles are as Members of Parliament, including the Ministers. In fact, the times for meeting are provided for in the Standing Orders. The Attorney-General and other Ministers who are not present this morning know very well that today our sitting starts at 9. 00 a.m. I dare say that all the Ministers, except, maybe, one or two, did not honour the time today.

At the start of Business this morning, the whole of the Front Bench was very clean. I need to remind the Ministers that their first priority should be to attend to the Business of this House. They have the Business schedule for today and answers to Questions that hon. Members have come to ask. Therefore, they should take the Business of the House seriously. I want to assure the Ministers that the best place to be during the time when Parliament is sitting is in Parliament to answer Questions from hon. Members.

So, Mr. M. Kariuki, I cannot do more than has been done already. According to the Standing Orders, the Attorney-General is supposed to be here, but he has another commitment. He has asked that the Question be deferred until he is present. So, I am deferring the Question until tomorrow. Of course, he will be informed. It is the business of the Government to ensure that the Question is answered. The leader of Government Business is supposed to handle that. Since one Minister is here, let us hear from the Government side.

The Minister for Agriculture (Mr. Kirwa): Mr. Temporary Deputy Speaker, Sir, I have got the directions from the Chair. The information shall be communicated to the relevant Minister, that is the Attorney-General.

(Question deferred)

POINTS OF ORDER

WITHDRAWAL OF MNAZI VENDORS' LICENCES

Mr. Kombe: Mr. Temporary Deputy Speaker, Sir, I rise to request for a Ministerial Statement, which I had requested for earlier on *Mnazi*, and it has never been brought forth. I would like to know when I will get that Statement.

The Temporary Deputy Speaker (Mr. Poghio): From which Minister are you requesting that Statement from?

Mr. Kombe: I had asked it from the Minister of Trade and Industry, but then it was referred to the Office of the President.

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Temporary Deputy Speaker, Sir, I will get back to our records and find out why the Statement has delayed for so long and bring it forth.

Hon. Members: When?

The Assistant Minister, Office of the President (Mr. Tarus): I will bring it as soon as possible.

The Temporary Deputy Speaker (Mr. Poghio): Order! Order, Members!
Proceed, Dr. Galgalo!

DUMPING OF CONDOMS INTO THE COUNTRY

Dr. Galgalo: Mr. Temporary Deputy Speaker, Sir, I rise on a point of order to seek a Ministerial Statement from the Minister for Health, although I do not see the Minister or her assistant

here. All right, hon. Kirwa is present.

Recently, the Departmental Committee on Health, Housing, Labour and Social Welfare visited Kenya Medical Supplies Agency (KEMSA) on a routine inspection of our facilities, and we found that their stores were in a mess. A few years ago, the Government negotiated with the donors to purchase some 300 million condoms. Those condoms were supposed to have been supplied to this country over a five-year period, beginning this year. But the Ministry recklessly accepted that all the 300 million condoms be dumped in our country in one lot. So, KEMSA stores are overwhelmed with those supplies, which should have come over a five-year period. We want an explanation from the Minister why they allowed the dumping of condoms in our country, disregarding the tender agreement that they should be supplied over a five-year period which will be consistent with our requirement for condoms.

URGENT PROCUREMENT OF DRUGS

Secondly, Mr. Temporary Deputy Speaker, Sir, after a decision was made to sack procurement officers, the Ministry of Health has been unable to procure drugs, even the emergency supplies to handle any emergency cases. We are approaching a holiday season, and we know that our country is prone to several emergencies during this holiday period. Last night we saw a lot of fanfare when the Minister of Health was receiving---

The Temporary Deputy Speaker (Mr. Poghisio): Dr. Galgalo, what is your question?

Dr. Galgalo: What urgent measures is the Ministry taking to ensure that we get emergency supplies while we wait for the normal tendering process, which I am sure will take maybe another four or five months. I want those issues to be addressed by the Minister, if possible tomorrow.

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Temporary Deputy Speaker, Sir, once again, I will undertake to tell my colleague about the two Statements requested by hon. Galgalo.

COMPENSATION FOR MR. GICHERE

Mr. Mwandawiro: Jambo la nidhamu, Bw. Naibu Spika wa Muda. Naomba taarifa kutoka kwa Waziri wa Haki na Maswala ya Katiba kuhusu Bw. Wallace Gichere, aliyepata madhara baada ya kuteswa na Serikali, na sasa yupo katika mgomo nje ya Ofisi ya Waziri wa Haki na Maswala ya Katiba na ofisi ya Rais, na maisha yake yako hatarini. Tunataka kujua kama atalipwa fidia kutokana na madhara aliyopata, jambo ambalo lilikuwa limepitishwa kortini na ikakubaliwa. Je, ni lini Waziri wa Haki na Maswala ya Katiba atayazungumza mambo hayo ili amhakikishie Bw. Gichere anayeteseka kuwa atalipwa anachokidai ambacho ni cha haki kutokana na majeraha aliyoyapata kwa kuteswa. Naomba tuharakishe jambo hili kwa kuwa anaweza kufa.

(Applause)

The Assistant Minister, Office of the President (Mr. Tarus): Bw. Naibu Spika wa Muda, natoa hakikisho kwamba nitawakilisha ujumbe huu wa Mbunge mwenzangu kwa Waziri anayehusika.

The Temporary Deputy Speaker (Mr. Poghisio): Very well. Are you giving a Ministerial Statement?

MINISTERIAL STATEMENTS

INSPECTION OF NAKUMATT

GOODS BY KEBS

The Assistant Minister for Trade and Industry (Mr. Miriti): Yes, Mr. Temporary Deputy Speaker, Sir. Last week, hon. Prof. Olweny demanded a Ministerial Statement on the inspection status of Nakumatt by the Kenya Bureau of Standards (KEBS). I rise to make the Statement.

The KEBS purchased samples of honey on 22nd August, 2001, from Nakumatt Holdings Limited Supermarket, Uhuru Highway Branch. The honey, when tested, failed to meet the requirements of Kenyan standards of honey. Arising from the above results, KEBS informed Ms. Nakumatt in writing in a letter dated 15th January, 2002, and instructed the supermarket to desist from the sale of its brands of honey. However, on 28th February, 2002, KEBS Inspectors found the brands of honey still being sold at their supermarket godowns along Uhuru Highway and Nanyuki Roads respectively. The KEBS Inspectors duly requested V.J. Shah to have the honey removed from the shelves, but he refused, even after it was explained to him that failure to do so would result in a court action.

Mr. Temporary Deputy Speaker, Sir, on 24th April, 2002, KEBS Inspectors visited Nakumatt at Ukay Centre, Westlands, and found the brands of honey on sale. They requested for their removal, but the supermarket declined. On subsequent visits to their godowns on Nanyuki Road, KEBS Inspectors were obstructed and denied entry. KEBS then filed a case against Nakumatt Holdings at Makadara Law Courts. When the case was heard for the first time, Nakumatt proceeded to the High Court and obtained orders to stop the case at Makadara Law Courts and all other cases against Nakumatt Holdings Ltd. The Judge granted temporary order to Ms. Nakumatt, which made it difficult for KEBS to carry out inspections at Nakumatt outlets. The KEBS has made efforts to get the case heard inter-parties with little success. As it stands now, the KEBS is restrained from taking possession of any goods from Nakumatt. It is also restrained from filing any other cases against the company, and there are no further proceedings which can take place on the criminal case which is in court.

Thank you, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Poghisio): Alright. Are you seeking clarification, Mr. Likowa?

Mr. Owino: Mr. Temporary Deputy Speaker, Sir, according to the Statement, the Assistant Minister is telling us that Nakumatt has outrightly defied the orders of the KEBS, even to the extent that they have denied the inspectors entry into their stores. What does this mean to the Ministry? Does this mean that the matter will be left hanging forever, so that even if food is imported into Kenya that will make us impotent, it will be allowed into the stores of this supermarket!

(Loud consultations)

The Assistant Minister for Trade and Industry (Mr. Miriti): Mr. Temporary Deputy Speaker, Sir, it is a very unfortunate situation, because according to the court orders, the KEBS cannot do anything, while Nakumatt continues to trade in sub-standard goods with impunity.

The Temporary Deputy Speaker (Mr. Poghisio): We have another Statement from hon. Mungatana.

GOVERNMENT POSITION ON
YALA SWAMP PROJECT

The Assistant Minister for Regional Development (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, I rise to respond to a request for a Ministerial Statement by Dr. Oburu, Member of Parliament for Bondo Constituency, on the fate of the Yala Swamp and the involvement of the Dominion Group.

(Loud consultations)

The Temporary Deputy Speaker (Mr. Poghisio): Order, hon. Members! There was a request for a Ministerial Statement from an hon. Member. The Assistant Minister is giving that Statement and there is so much consultation going on. Could we give the Assistant Minister good hearing? Let us consult quietly. If you are withdrawing from the Chamber, do so quietly.

The Assistant Minister for Regional Development (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, the Yala Swamp is under the Lake Basin Development Authority (LBDA). It covers a total of 17,000 hectares as Trust Land under the Siaya and Bondo County councils. The Authority reclaimed 2,300 hectares and constructed irrigation infrastructure including dykes, canals and a weir, which is 60 per cent complete.

On 20th September, 2002, a Mr. Calvin Burgess of the Dominion Group of Companies of the United States of America, whose Kenyan registered company is Dominion Farms Ltd, visited the LBDA management on development opportunities in the region. Following this meeting, LBDA wrote to Mr. Calvin Burgess requesting the Dominion Group to invest in the Yala Swamp. A second meeting was held at the offices of Kaplan and Stratton Advocates in Nairobi on 17th October, 2002, where among other things, it was decided that the LBDA should be a shareholder in the project through contribution of land, heavy equipment, the ricemill for processing paddy rice, houses at Yala Swamp, including the value of all the civil works such as the incomplete weir, the canals and the dykes.

Mr. Temporary Deputy Speaker, Sir, in December, 2002, Dominion Farms Ltd, in collaboration with the LBDA, carried out an Environmental Impact Assessment (EIA) of the Yala Swamp. The report was presented to the NEMA in February, 2003, and during the NEMA stakeholders meeting held at the LBDA offices in Kisumu, the report was accepted only as a project report and NEMA gave the guidelines to be followed to undertake a proper EIA study.

The stakeholders in the meeting rejected the project proposal that had been prepared jointly by the Dominion Farms Ltd and the LBDA because it was found to be inadequate. Dominion Farms Ltd was directed to prepare a comprehensive project in a standard format, detailing the activities to be undertaken, a logical framework matrix, cost/benefit analysis, the roles of the community, LBDA, the county councils of Siaya and Bondo and Dominion itself. To date, no evidence of this proposal has been presented to the LBDA.

Mr. Temporary Deputy Speaker, Sir, on 19th May, 2003, the LBDA signed a project implementation arrangement with Dominion Farms Ltd to invest in rice production of the swamp. The signed project implementation arrangement allocated the entire swamp to Dominion and left only 20 hectares for the LBDA use. The salient points of the project implementation arrangement are as follows:-

The LBDA was to collaborate with Dominion in the development of the swamp and act as the official agent on behalf of the Government. The LBDA was to undertake adoptive research and extraneous activities at the swamp dependent on the project activities. The LBDA agreed to enter into lease agreement with the Dominion to use the LBDA's heavy machinery and other assets for the activities of the project at the approved Government rates. The LBDA was to nominate two of its members to the technical committee project and the Board of Directors in order to safeguard the interest of the Government and the LBDA. The LBDA was to transfer in accordance with the Water Act, 2002, all its water permits to Dominion, which it is currently holding or which affect the swamp today. The LBDA was to have the responsibility to ensure the protection and the contravention of areas of special interests in the swamp, including any areas considered of historical significance by the community.

Mr. Temporary Deputy Speaker, Sir, there were some areas of concern that resulted in the writing of the letter to temporarily stop the project which then generated the heat that it did. The areas of concern were:-

The Dominion Farms Ltd, since the signing of the agreement or the Memorandum of Agreement (MOU) started developing the land with minimal consultation with the LBDA management against the expectations of the MOU. This was the first problem. The second problem was that Dominion Farms Ltd had not fulfilled its obligation as provided for in the project implementation arrangement. All the lease agreements envisaged in the project implementation had not been negotiated even as of this date. These include the assets of the LBDA like the houses at Yala, the land, heavy equipment, the ricemill for processing paddy rice, the civil works and the other assets which were developed by the LBDA through a loan from the African Development Bank (ADB) at a cost of about Kshs450 million.

The third problem was that the Dominion Farms Ltd had not constituted a technical advisory committee with adequate capacity to address the environmental issues and collaborate with the LBDA's technical team in the development of the Yala Swamp. The fourth problem was that the Dominion Farms Ltd had not provided the LBDA with a project proposal to enable the authority to give technical advice as it was required. The fifth problem was that Dominion Farms Ltd had not paid for outstanding land rates and for land transfer respectively. The payment that was purportedly made to the Ministry of Lands and Settlement appears to be fraudulent and it is currently under police investigation.

*[The Temporary Deputy Speaker
(Mr. Poghisio) left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, the payment to the Municipal Council of Kisumu by Dominion Farms Ltd through its lawyers has up to date not been received by the council. The sixth problem was that Dominion Farms Ltd was to address issues that were raised by NEMA in the Environment Impact Report. The Dominion Farms Ltd commenced the work on the project before addressing all the concerns that the EIA report required, contrary to the spirit of the MOU that was signed by the LBDA on behalf of the Government and the Dominion Farms Ltd. The seventh problem was that Dominion Farms Ltd seemed to be working in total isolation to the LBDA and this left the LBDA, which was supposed to be representing the Government interest, totally in the dark. This then resulted in the letter that was written and signed by the three Ministers who wanted the project to be halted, so that information could be gathered.

The following is the way forward. Dominion Farms Ltd has been advised to sit with the management of the LBDA and address all the outstanding issues including the review of the project implementation arrangement to safeguard the interest of the Government and other stakeholders.

Secondly, it should be understood that an inter-Ministerial committee comprising of the Ministers for Regional Development, Water Resources Management and Development, Environment, Natural Resources and Wildlife and the Attorney-General's chambers has been constituted. The Ministers have tasked their respective Permanent Secretaries to steer the process. A technical project steering committee which will comprise the Lake Basin Development Authority (LBDA) together with the Permanent Secretaries and Dominion Farms Limited (DFL) will sit down to review the project and make recommendations to the Government. The company has already been informed.

Mr. Temporary Deputy Speaker, Sir, it must be understood that the Government does not

intend to stop this project. It must also be understood that there is a fundamental problem in that the investor was, probably, dealing with isolated Ministries. This resulted in some of the Ministries being in the dark. Otherwise, we believe, this project should go on. The areas that have a problem should retroactively be sorted out. That is all I wish to say.

Dr. Oburu: Mr. Temporary Deputy Speaker, Sir, I am glad to hear the Assistant Minister say that the Government does not intend to stop this project. However, what he has stated is misinformation which is meant to actually obstruct investors. For example, in a neighbouring country like Tanzania, it takes an investor only seven days to get all the documentation approved. In Botswana, this process takes only three days. However, he says this process started in October, 2002. We are now at the end of the year and the Government is still asking so many questions which we do not understand. I would like him to clarify how long it will take to complete this process. What measures is the Government taking to encourage investments in this country? All these things he said are based on obstruction rather than facilitation of the investment.

Mr. Temporary Deputy Speaker, Sir, on the statement he made about the National Environment Management Authority (NEMA), I have a letter which I would like to table. They wrote to Dominion Farms Limited. It says:

"Could you, as a matter of urgency, remit 0.1 per cent of the proposed project cost to the National Environmental Management Authority (NEMA), being payment of the stand fees to facilitate issuance of an Environmental Impact Assessment (EIA) licence as per the law. The license will enable you start implementation of the project without further delay."

If the Assistant Minister is still talking about another study, then on what aspect did the NEMA base this letter? They were writing to these people to pay fees, so that they could issue a licence.

The Temporary Deputy Speaker (Mr. Khamasi): Very well. Dr. Oburu, you have made your point!

Mr. Oburu: Mr. Temporary Deputy Speaker, Sir, I want to table this letter to show the money was paid. The Assistant Minister is misleading the House because we have a letter here acknowledging payment from the NEMA. We also have a letter here from the Office of the President approving this project. Where is an investor supposed to go in order to get his project approved if it takes more than one year to be processed?

The Temporary Deputy Speaker (Mr. Khamasi): Dr. Oburu, you have made your point.

Mr. Lesrima: Mr. Temporary Deputy Speaker, Sir, this is a very worrying matter because it appears that the Government wants to start all over again discussing this project. When the Assistant Minister talks about inter-Ministerial meetings and investigations on fraudulent acquisition of land, this will cause a lot of delays. I wanted clarification on why a project of this nature does not go through a one-stop shop called the IPC. We set up a long time ago a one-stop shop for investors, so that they avoid the frustrations of going to the Customs Department, the Ministry of Lands and Settlement or other organisations. It appears as if there is a problem at the LBDA. The LBDA is a statutory organisation established by an Act of Parliament to plan for the region and deal with environmental planning and control. One wonders how an organisation like the LBDA becomes a shareholder when it is supposed to be dealing with the planning of the region. There must be a conflict of interest in that respect. I would have thought that the Ministry of Trade and Industry or the Ministry of Finance would be the shareholders to represent the Government when it comes to these investments. Therefore, it is very clear that this matter is not over. These problems have been generated to give an excuse to stop this investor. It is very sad because it sends wrong signals to other investors.

Ms. Abdalla: Mr. Temporary Deputy Speaker, Sir, could the Assistant Minister clarify that the LBDA signed a Memorandum of Understanding (MOU) before stakeholder approval of the logical framework and implementation plan by the developer? Secondly, EIAs are not supposed to be

post-mortem. They are supposed to be done before a project is approved. Is this part of the NARC culture of signing MOUs that they do not intend to honour?

The Assistant Minister for Regional Development (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, first of all, I would like to share my agreement with Dr. Oburu and Mr. Lesrima about the lack of a comprehensive one-stop shop where an investor would come into the country and within 24 hours, for example, in some particular nations, or within seven days, as Dr. Oburu said, in Tanzania or Uganda, would get all the facilitation they require to start their projects. In Kenya, we still have a long way to go. I should admit that this is a typical example because as we have seen, the investor is given a certain criteria by this Ministry, they say it was okay. He goes on to another Ministry and it is okayed. When he starts, there is a problem. The Government is trying to address this through the Ministry of Trade and Industry. We are coming up with a code that will make it easy for all investors to get all the information they want to start business in this country. In the past, we had put more obstacles than facilitation to investors. That is why we are trying to sort out this mess that we are in. It is also an inherited mess.

Mr. Temporary Deputy Speaker, Sir, on the question of NEMA, all of us know that when this Act was passed by the previous Parliament, certain requirements were put in this Act. One of them is that there has to be a list of approved EIA specialists. This list, to date, is being compiled. Therefore, strictly going by the Act, the EIAs that have been done in the past including this one, may not be acceptable. There are some technicalities which have not been fulfilled. Yes, there are some problems which are pending and waiting to be sorted out. What we are doing is that we want to retroactively sort out this problem as the project is going on.

You are aware that on the ground, the project is still going on. There have been statements in this House that it should go on through our Ministers. That is the position. We are trying to solve the problems and the technicalities slowly but the project must go on.

POINT OF ORDER

RULING ON MILITARY RECRUITMENT

Mr. Omingo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Sometime ago, the House demanded to have the names of the Army recruits which appears to be a major scandal in this country. The Minister avoided presenting the names to this House because it is confidential material. The Chair ruled that it would make a decision whether the Minister should table the names or not. As far as my memory serves me, I am not too sure whether the ruling has come from the Chair. What would be your guidance?

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Omingo. I remember that the substantive Speaker made that ruling here. I think that I have to do some consultation before advising the House.

(Applause)

MOTION

AMENDMENT OF SUGAR ACT 2001

THAT, in view of the fact that problems affecting the sugar sub-sector have continued to escalate and that the sub-sector is on the verge of collapse; concerned that massive importation of cheap sugar from COMESA

countries and other world markets coupled with high cost of production locally have compounded the problems facing the sub-sector; further concerned that the collapse of the sub-sector would lead to loss of means of livelihood for over six million Kenyans; aware that the Sugar Act, 2001 has failed to address these problems; this House do grant leave to introduce a Bill for an Act of Parliament to amend the Sugar Act in order to comprehensively address all problems affecting the sugar sub-sector.

(Prof. Oniang'o on 3.12.2003)

*(Resumption of debate interrupted
on 3.12.2003)*

The Temporary Deputy Speaker (Mr. Khamasi): I am told that Mr. Osundwa was on the Floor. Mr. Osundwa, you have five minutes to make your contribution.

Mr. Osundwa: Thank you, Mr. Temporary Deputy Speaker, Sir, for the five minutes.

Indeed, before we start debating on this important Motion of amending the Sugar Act, you will notice that both the Minister and his Assistant Minister were not in the Chamber as we debated on the Motion. Now that we are about to conclude this important Motion, yet the Minister did not listen to what we said, I wonder how he is going to respond to the fact that we already made our presentations.

That notwithstanding, I touched on the issue of irrigation. I have travelled widely for the sake of agricultural issues. I have seen that most countries have adopted the irrigation system of agriculture. This country does not have a clear policy on irrigation. As we speak today, the Minister for Agriculture cannot tell us under whose docket it is. They do not take irrigation seriously.

Mr. Temporary Deputy Speaker, Sir, we are talking of finding sugar-cane that matures very fast. This cannot happen unless we adopt irrigation agriculture. The countries which have embraced irrigation agriculture have two cycles of sugar-cane while we have one. We obviously cannot compete with such an economy. I am urging the Government to look for funds if they are seriously interested in developing the sugar industry. They must not only speak as hon. Dr. Kituyi has been talking for four years, of protecting the industry. We must seek for a longer period during which we must do restructuring of the industry. Four years is a very short time. You are likely to go back to COMESA and ask for more four years. They will then think that we are jokers.

The Government should embrace irrigation agriculture in the sugar industry. The money is there. For example, Mumias Sugar Company pours into this economy Kshs540 million through the Sugar Development Levy. That is money collected within one year as SDF or SDL. Where does the money go to? In one year's time, it will be over Kshs1 billion. That is enough money to irrigate Nyanza and Western Provinces, and other areas like Kwale District where a very viable sugar industry went down. I am insisting that the money is available. There is Kshs540 million from Mumias Sugar factory alone. Where does it go?

Everyday, we hear of task forces that the Minister has appointed to look into the sugar industry. Indeed, it is a shame that early this year, the Minister for Agriculture appointed a task force hardly two weeks after the Sugar Board of Kenya had presented its report. He paid that task force over Kshs13 million to photocopy a report already worked on by the Kenya Sugar Board. How serious are we? That was a sugar task force headed by a fishmonger!

We want seriousness in this industry! Our people are suffering, we are being told that policies are being worked on. We were given policies which we campaigned with and used them to vote for NARC. Four years is such a short time in politics. We do not know what we are going to tell our farmers. Therefore, when the Minister comes to respond, we want him to tell us how far he has gone

in moving this country towards irrigation agriculture.

Mr. Temporary Deputy Speaker, Sir, I have a small fact sheet here which shows how much money my area alone contributes to this economy via sugar cane. Mumias Sugar Company contributes Kshs8 billion annually to this economy; whereby the cane farmers earn Kshs2.5 billion. That is a lot of money yet, in Mumias District, poverty and malnutrition are rampant, which means that the Government is not serious in empowering the farmers. There is a lot of capital flying from Mumias.

Secondly, as much as the Government is reaping Kshs1.2 billion from Mumias Sugar Factory through VAT, nothing goes back to develop the area, yet if you ask for a mere Kshs20 million under the Constituency Development Fund, the Government footdrags.

As we talk about cane, I want to suggest that the Government classifies sugar as a very strategic crop.

I beg to support.

Mr. Okemo: Thank you, Mr. Temporary, Deputy Speaker. I would like to support this Motion for the following reasons: one because the problems of the sugar industry have really not been well tackled more so by the current Government. I do remember that when we were trying to put together the Sugar Act, a Bill came to this House. I remember vividly that the Members of the Opposition then, who are now in the Government, completely "adulterated" the Bill until it was not the Bill that it was intended to be. They put in so many amendments which made it completely unimplementable.

They introduced new clauses to hoodwink the farmer and to make him or her feel that they were interested in the farmers welfare, not taking into account the fact that those clauses could not be implemented. For example, if you talk about paying the farmer according to the sucrose content of his cane, I do not think that many of us in this House know what the sucrose content is. If you put that in the law, how do we implement it?

Another Clause that I found to be completely impracticable was to say that we were going to weigh the farmers cane on the farm. That will be very good for the farmer because he will get better returns from his crop because the spillage between his farm and the milling company will be taken care of by somebody else and not the farmer. The problem is how you weigh cane on the farms when you do not have mobile weighing scales.

Mr. Temporary Deputy Speaker, Sir, we had never thought about that and we are now thinking about it after the effects. I think that if these Clauses are well looked at, we must be thinking of the practical implementability of the Act. I think this Motion has come at the right time. The farmer has been saying Parliament passed the law and the Government is unable to implement it. It will do the Government good if we can bring quick amendments to look at these Clauses which cannot be implemented.

When we come to this touchy issue about imports, it was an issue during the KANU regime. Even now, it is still a sensitive issue because people have been pointing fingers and saying there are powerful people who are bringing in sugar and they are not paying taxes. At that time it was alleged that those were people who were connected to KANU, but now, we are hearing different stories. We still have illegal importation of sugar and we are told that the people involved in this have strong NARC connections. I think we had better be very careful that we do not point fingers until we are able to really put our fingers on the problem. As a country that has got a deficit in terms of production vis-a-viz consumption, we should not be having problems of the flooding of imports. We must have mechanisms in place for controlling sugar importation.

Mr. Temporary Deputy Speaker, Sir, the Minister for Trade and Industry gave us some good news that they have managed to get an exemption from COMESA for four years, whereby COMESA imports will be allowed in duty free for that period with a hopeful extension for another four years.

That exemption has got meaning, only if we have proper mechanisms for controlling this Kshs200,000 tonnes of sugar that will come in. I do know for a fact that industrial sugar has got very good control mechanisms because the names of the importers are gazetted. The quantities that they require as industrial inputs are also gazetted. When it comes to table sugar, there is absolutely no control. In fact, a lot of the table sugar comes in as industrial sugar in order to avoid duties and taxes. I do urge the Minister, in consultation with the Minister for Finance, to put in place mechanisms for controlling the table sugar because that is where the problem actually is.

I do remember that we had put in place guidelines during the time we were in Government and they have been completely ignored. There is need for Kenya Revenue Authority, the Kenya Bureau of Standards and the Customs and Excise Department to be involved, so that all the three arms of Government working together, will know what is legal, what is to be duty exempt and how much sugar, therefore, should be subject to duty. Why can you not borrow this from what we left behind? Not everything that KANU did was bad. You have copied a few other things, but you can also copy this particular one.

The other thing I would like to add is that we would like to classify the problems facing the sugar industry as short-term and long-term. The short-term problems are those of the getting paid and getting an appropriate price for their crop. The long term problems are: How do we bring down the cost of production so that we can compete internationally? How do we get better varieties of cane, quicker maturing varieties, irrigation and all that so that in the long-run, our sugar should cost almost the same price as sugar from the other COMESA member countries. Otherwise, the four-year period is just a honeymoon, which, as soon as it is over, you are back to square one and the problem will still be there with you. Normally, four years is the period you are given to show tangible, measurable actions that you have taken to redress what you consider the problem that you are facing for the time being.

I would really urge the Minister to move with speed and put in place mechanisms to make sure that the cost of production of sugar is lower. At the moment, interest rates have gone down and this has a substantial effect on the cost of sugar because the overdraft cost will be lower. Therefore, that as an input in cost will be an advantage to the miller. We hope that this advantage can be passed on to the farmers.

Mr. Temporary Deputy Speaker, Sir, I will talk about Busia Sugar Company. This has been a project on the books for a long time. It has been talked about such that even today, even if I ask the Minister for Agriculture what the fate of Busia Sugar Factory is, he will not be able to give me an answer. The problem was that the Government was not meant to invest in that factory because of the conditionalities of the IMF and the World Bank. Since the Government could not invest there, we were told that it must be a private investor project. The private investor will only bring in his money if he is convinced that he will get a fair return on his investment.

One of the main problems that the investors brought out was the question of COMESA imports. If we have problems with the current sugar factories selling their sugar, which new investor will bring in money to invest in a new factory when the existing ones are having problems selling their sugar? So, the question of imports is so critical that we must address it. There is also the question of the Sugar Act. How does the Sugar Act address the question of the investor? I do remember that there is a Clause in the Sugar Act which makes it very unattractive for a private investor to bring money and set up a factory where it is stipulated that you must have more than 51 per cent shareholding.

If an investor wants to come here and invest in a factory and you tell him he must be a minority shareholder, I think you are starting from a position where you are telling the investor: "Please do not bring your money here" because then you cannot control it. These are the things that we want you to look at when you bring the amendment to the Sugar Act. Finally, I think that the NARC Government should be a bit transparent in promising what they feel they can deliver. I do remember vividly during

the campaign that the message to the voter in Western Kenya was that there would be no more imports of sugar. I did not know how that was going to be done and yet, we are members of COMESA. The other promise that was made was that there would be prompt payment to sugar farmers. Both promises are still floating in the air and I do not think they will ever be fulfilled.

Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. Sungu: On a point of order, Mr. Temporary Deputy Speaker, Sir. In view of the fact that this is a Motion that is just seeking the leave of the House and there will be ample opportunity to discuss the full details when the Bill does come to the House, would I be in order to request that the Mover be called upon to reply so that we can go to the next Motion?

The Temporary Deputy Speaker (Mr. Khamasi): Mr. Sungu, I cannot allow that. We have got provisions for Private Members' Motions. This time round, I will ask the Government Responder to respond.

The Minister for Agriculture (Mr. Kirwa): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to make a response to the Motion by my sister Prof. Oniang'o. I will say at the onset that I am impressed by the spirit of the Motion and the discussions that have taken place for the last two days that this Motion has been debated in the House. While I do recognise the fact that we may not be able to exhaust all the issues raised by Members of Parliament as far as this Motion is concerned, I take solace in the fact that during the deliberations that will take place, we will discuss some of the issues raised by my hon. colleagues and make appropriate amendments to the Act. In principle, the Government does not have any quarrel with the spirit of the Motion and I do want to support it.

Mr. Temporary Deputy Speaker, Sir, in response to various contributions by hon. Members, I would like to reply as follows. There were a number of issues raised and we took advantage of the HANSARD because, by the time this Motion was brought before the House, I was attending a Food and Agricultural Organisation (FAO) meeting in Rome. But I have taken cognisance of the fact that, any contributions made in the House are reflected in the HANSARD, which is the verbatim report of all the deliberations of the House.

In reply to specific issues, as far as the Sugar Act, 2001, is concerned, it was intended to provide a new legal regime for the industry. It was one of the steps taken by the Government in response to the long standing outcry from the sugar farmers and leaders of that area. It was, therefore, necessary to have an Act of Parliament to anchor the Government's perceived long term mission of establishing a transparent, predictable and credible regulatory framework that promotes the guaranteed economic and financial stability of the industry.

Mr. Temporary Deputy Speaker, Sir, while we do recognise the fact that the Sugar Act may not give an answer to all the problems of the sugar industry, as a Government, we have done the best we can within the sector. When we took over the Government at the beginning of the year, the sugar industry was in a state that could only be described as moribund. It was in a situation that made it impossible for us to move with the intended speed as we promised during the campaign period. It has, therefore, taken us a number of days to do various changes both in terms of management and restructuring of the industry; a restructuring that has taken the form of ensuring that farmers get affordable credit for farming at the end of the day.

We have written off Kshs10 billion in relation to Cereals and Sugar Finance Corporation. We have also waived penalties and arrears owing to various farming organisations and millers, so that we could revitalise the industry. We have done that in the spirit of ensuring that there is a new lease of life for all those who are involved in the sugar industry. All those improvements cannot give instant results as many hon. Members may expect.

Regarding the issue of sugar importation, we have not reneged on the promise we made to the people of Kenya; that we shall not allow sugar importation. The sugar that came into this country was

destined to come under the normal Common Market for Eastern and Southern Africa (COMESA) arrangement, given the fact that we produce 400,000 tonnes of sugar, while our consumption is slightly higher than that. That, therefore, means that the deficit is met by importation of sugar, which comes into the country through effective management by various organisations. I would like to assure Mr. Okemo that importation of sugar, be it industrial or table sugar, is now under properly guided principles. In the course of the year, I have gazetted regulations and rules governing importation of sugar, which give the Kenya Sugar Board (KSB) the requisite authority to know who is importing sugar, how much he is importing and for what purpose. That has brought sanity into the industry.

It is also imperative to state here and now that, it is impossible to reverse a situation of bad manners that has bedeviled our society for the last 24 years. In trying to address some of the issues, we faced a lot of problems, including an injunction in court, a situation that took me three months to dispense, and restart the process of ensuring sanity in the industry.

On the issue of the task force as referred to by Mr. Osundwa, I have said it here many other times - and I think Mr. Osundwa enjoys picking quarrels with me even when there is no dispute at all! I do appreciate that my brother would have liked to work with me more closely when he was my Assistant Minister, but his operational principles and mine could not tally and, therefore, one of us had to leave the Ministry. I would like to assure him that I would like to work with him in the preparation of the amendment of the Sugar Act, 2001 which, at the time it was brought before the House, he was the principal proponent of some of the clauses that he wishes to reverse now, as the Chairman of the Committee on Agriculture, Lands and Natural Resources and as a Member for that particular constituency. I do appreciate that the agricultural sector is not getting due returns from what is harvested from that area. But it is not possible for us to reverse that trend overnight. I do undertake that, in the course of the next couple of years, we will ensure that we move forward and keep in mind the various commitments made by the Government and the Head of State in other countries and, more so, during the New Partnership for Africa Development (NEPAD) meeting. That is where it was emphasised that, for the next five years, investments and, more so, budgetary provisions in the agricultural sector should be to the extent of 10 per cent of the national budget. It is at that time that I will be able to address some of the urgent issues such as irrigation, research and any other investment that is required in that sector. We are constrained by the fact that we do not have enough funds.

As we discuss this Motion, farmers are owed to the tune of Kshs1.75 billion. We have tried our best; we are paying farmers in some of the factories promptly. But what has not been paid are the arrears that accumulated over the last ten years. So, on the issue of payments to farmers, we are trying our best. But we do not have money. I am happy that my colleague, Mr. Okemo, has been to the Treasury and he knows what it means to be a Minister there and, more so, when you are faced with so many problems from the agricultural sector.

The sugar factory that is supposed to be in Busia is a factory that I would love to see. I am happy he understands why it cannot happen now. I am sure he is going to participate effectively in amending the Act and giving us various proposals as to what should be done. I want to state here and now that my intention as the Minister in charge of that Ministry, and for the time that I will be there, is to be open to suggestions from Members of Parliament and also from members of the public. That is because they are all part and parcel of the community of stakeholders. We do not believe that we are a monopoly of knowledge or information at the Ministry. We have maintained that open-door policy from the time I took over the Ministry. But I have to deal with the enormous inertia that was created over the period, by the situation of indecisiveness on the part of officers waiting to be directed by the Government. I have told them that they have the capacity to think and provide solutions to the problems affecting the industry. Those who are not going to think will not be allowed in that Ministry. I can assure you that I done the most I could as the Minister. I will do more as long as I am still in that Ministry. I strongly believe that the farmer must get the best benefit out of his sweat. But for the

farmer to get that, we must prepare the capacity of farming institutions to face the challenges of a liberalised market economy. One of them is for farmers' organisations to be improved and harmonised. I have said that all these mushrooming organisations pretending to be representing farmers are organisations I am planning to do away with. They cost the farmers more than it is necessary and they do not give farmers any value. They only take away without returning anything to the farmers.

I would also want Members of Parliament and other stakeholders to support the Government effort whenever we make certain changes within the organisation. I am happy those who come from sugar growing areas have been giving us a lot of support. But for the entire agricultural sector to thrive, we must make painful surgery that will involve some of the people being retired or told to go home. I would want the support of Members of Parliament and more so, in focusing on the situation of the sugar industry.

We have addressed the following four issues since I took over the Ministry. Apart from the fact that credit affordability is there in the entire sector, for the sugar industry, we have reduced the lending rates from 10 to 5 per cent for the last six months. We have also ensured that taxes that were levied to farmers unnecessarily are removed so that the farmers are relieved at the end of the day. We are also ensuring that there is improvement of access roads within the sugar zones and we have increased by 100 per cent, funding for research in sugar activities so that we have high yielding varieties. We are doing so because we believe the only way we can have sustained growth and be competitive as a region is to ensure we have faster maturing varieties with high yields.

Mr. Temporary Deputy Speaker, Sir, on the issue of irrigation, it is clear the opening of canals and other infrastructure is domiciled in the Ministry of Water Resources Management and Development. The issue of policy on irrigation is domiciled in the Ministry of Agriculture. I thought hon. Osundwa should have taken the liberty to read some of the documents in the Ministry for the short time he was there. It is an issue that we have been discussing---

Mr. Osundwa: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Minister to avoid concentrating on issues raised by Members and mentioning Osundwa every minute? Could he concentrate on the issues raised?

The Temporary Deputy Speaker (Mr. Khamasi): Order! Mr. Osundwa, that is not a point of order. Mr. Minister, do not respond to that.

The Minister for Agriculture (Mr. Kirwa): Mr. Temporary Deputy Speaker, Sir, I thought hon. Osundwa is a Member of Parliament and I was responding to the issue he raised as one of the Members of the House. So, I do support the spirit of the Motion and I want to thank hon. Oniang'o. I would also want to urge the Departmental Committee on Agriculture, Lands and Natural Resources to take liberty for the intervening period between now and the next Parliamentary business to have all effective changes done, so that before the next financial year, we bring before the House an amended Act so as to be able to discuss, dispose of the various amendments and ensure we implement it in the course of the next financial year.

With those remarks, I beg to support the Motion.

Mr. Omamba: Thank you, Mr. Temporary Deputy Speaker, Sir. We are fed up with talks and stories. I was here in the Eighth Parliament. We spoke at large, but the conditions of farmers remain deplorable. There are still delays in paying the farmers yet the sugar-cane cutters get their money within a week. A good example is a farmer like myself. My sugar-cane was harvested in December 2002 and up to date, I have not received my Kshs0.5 million. There have been a lot of cases of money being allocated for making roads in the sugar sector, in the nuclear estates and outside, but days are going. So, I am fed up with all these promises. The Minister for Agriculture is a good friend of mine, but we need action. When we went to Mombasa, our ears were open when we were told we could sell surplus sugar because sugar is used in very many ways, not only to make tea. Then, due to COMESA restrictions, we were told we cannot export our sugar because we export other

commodities like coffee to countries like Brazil. The importation of sugar from COMESA countries has frustrated our sugar farmers. So, I recommend and support the amendment.

I have seen that many Members support this Motion and I do not want to spend more time, but just to say, I support the mover of the Motion for urging that we implement this dormant Sugar Act that had been forgotten by the Government.

Mr. Wario: Asante Bw. Naibu Spika wa Muda kwa fursa uliyonipa. Ningependa kuchukua fursa hii kushukuru Mheshimiwa Prof. Ongiang'o kwa kujaribu kuleta suluhisho kwa tatizo ambalo limekumba Jumba hili kwa muda mrefu.

Ningependa kusema kwamba kuboresha uzalishaji wa mimea ya miwa ni kuboresha uchumi wa taifa hii. Na uchumi wa taifa hautaweza kuboreka---

The Temporary Deputy Speaker (Mr. Khamasi): Order! Mr. Wario, you only have seven minutes before we call upon the mover to reply.

Mr. Wario: Ninasema kwamba uchumi wa taifa hautaweza kuboreka mpaka yule mzalishaji ama mkulima awezeshwe kuwa na uwezo wa kujimudu kiuchumi, ndio uchumi wa taifa uweze kuboreka. Hata hivyo, katika nchi ya Kenya, gharama ya uzalishaji ni ghali mno. Na kama hatutaweza kushughulikia swala la gharama ya uzalishaji, basi Wakenya Millions sita watadhoofika na hali yao ya kiuchumi itakuwa mbaya zaidi.

Bw. Naibu Spika wa Muda, hivi majuzi, kamati ya uegezaji na washikadau wa sukari walipendekeza kwamba wataanzisha kilimo cha miwa katika Wilaya ya Tana River. Ingawa tutafurahia jambo hili likitekelezwa, tunajiuliza ni kwa nini kamati hii haijawasaidia wakulima wa sasa wa miwa? Kwanza, kamati hii ingewasaidia wakulima wa miwa kabla ya kuanzisha kilimo cha miwa katika Wilaya ya Tana River. Kwa nini inakimbilia wilaya hii na hali wakulima wa miwa wanaumia katika nchi hii?

Utafiti katika sekta ya miwa ni muhimu sana. Sukari ya bei nafuu inaagizwa kutoka nchi za COMESA. Sukari hii imewaathiri wakulima wa miwa katika nchi yetu. Ni vyema Serikali ya NARC iwaambie Wakenya kwamba ahadi ilizozitoa wakati wa kampeini haziko ili wakae kama walivyokuwa wakikaa hapo awali. Ninatoka Mkoa wa Pwani, na ukienda katika Bandari ya Mombasa, utasikitishwa na sukari ambayo inaagizwa katika nchi hii. Ningependa kumwomba Waziri ahakikishe kwamba watu ambao wanaagiza sukari kutoka nchi za ng'ambo wanakoma kufanya hivyo.

Bw. Naibu Spika, kwa hayo machache, ninaiunga mkono Hoja hii.

The Temporary Deputy Speaker (Mr. Khamasi): Prof. Olweny, you have about four or five minutes to contribute to this Motion.

Prof. Olweny: Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support this Motion. The Act we are talking about today has serious flaws. It is one Act which should be amended as fast as possible. If we look at the representation of the farmers on the Kenya Sugar Board (KSB), we will find that this Act is flawed. We have two Permanent Secretaries representing the Ministry of Agriculture and the Ministry of Finance on that Board. I rise to accuse the two Ministries because their representatives during the meetings held by the Kenya Sugar Board--- I have attended a few workshops organised by this Board. When the two Ministries' representatives attend the workshops, the best that they do is to talk against the farmers. I know the Minister for Agriculture has the interests of the farmers at heart, but the officials the Ministry sends to represent it in this Board are really against sugar cane farmers. The Ministries should look into that aspect. That representation should be dealt with if we get an opportunity to amend the Sugar Act. We need an Act which is friendly to sugar cane farmers when it comes to fixing of prices. There is a formula in the Act which cannot be implemented in this country. If you implement it, the farmers will lose.

The Act also says that sugar cane should be weighed at the farm gate. Is that possible in this country? Do we have the infrastructure in place to facilitate this? We require an Act which can be implemented. The current Sugar Act cannot be implemented. The Act should also be farmer or

sugar industry-friendly. The Value Added Tax (VAT) levied on sugar is very high. In other countries which produce sugar, this commodity is not taxed. Sugar is taxed in this country. That is one of the things which make the production of sugar in this country expensive. We keep on saying that our sugar is expensive to produce. If you look at the tax levied on it, you will find that it is very high.

The Government does not also support the sugar industry. In other sugar-producing countries, production of sugar is supported by the Government. Sugar cane farmers in those countries are subsidized. They do not use the word "subsidy" but the truth is that sugar cane farmers, or the sugar industry, are supported by the Government. If you go to Brazil and Cuba, you will find that sugar cane farmers are supported by their Government. This industry is also diversified in these countries. In our country, sugar cane farmers produce their crop without Government subsidy. This makes the production of sugar expensive. We need an Act which can take care of production costs. We need an Act which can take care of extension services. Who is offering extension services to farmers in this country? The farmers do not get these services, and yet they are being taxed. The farmers also pay cess but if you look at the roads in sugar-growing areas, you will find that they are in a pathetic state. These are some of the worst roads in this world, leave alone here in this country. So, sugar cane farmers suffer a great deal. We need an Act which will curb the kind of corrupt deals we have heard about in this country, and which have led to the collapse of the sugar industry. We need an Act which will ensure that anybody who tries to pull down the sugar industry suffers consequences for doing that.

Thank you, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Khamasi): Mr. Lesrima, you have got four minutes to contribute to the Motion.

Mr. Lesrima: Thank you, Mr. Temporary Deputy Speaker, Sir. I would also like to support this Motion which seeks leave to amend the current Sugar Act.

I would like to say that there is need to improve and reduce the cost of sugar production so that sugar can be sold to Kenyans at a reasonable price. This can only be achieved through innovation and allocation of more money to sugar research.

The other point that I would like to make is on the by-products obtained from sugar. These by-products are molasses and biogas. We know that molasses can be used in the dairy industry, as fuel and to make power alcohol. Biogas can be used in the generation of power. I believe that Mumias Sugar Company has excess power produced from biogas. It will be good if this power is put into the national grid and supplied to the sugar cane growing areas under the Rural Electrification Programme.

The Sugar Act should also provide for the growing of food crops in sugar cane growing areas.

I know that when the sugar industry started, there was no provision for the growing of food crops alongside sugar cane. I think we should amend the Act to allow the growing of food crops in sugar cane growing areas.

I do not think that the Kenya Sugar Board has teeth to bite the "sugar daddies", and we should amend the Act to strengthen it. The boards of directors in many sugar factories do not represent the interests of the local communities. Therefore, there should be a provision in the Act to allow the local people to sit in those boards. The tribunal which sorts out the stakeholders' problems should also be represented on those boards.

Mr. Temporary Deputy Speaker, Sir, finally, we should come up with some provisions in the amended Act on social responsibilities. For example, 5 per cent of the profits from the sugar industry should be ploughed back to build social amenities such as schools, hospitals and infrastructure in sugar cane growing areas.

Thank you very much.

The Temporary Deputy Speaker (Mr. Khamasi): I now call upon the Mover to reply.

Prof. Oniang'o: Thank you, Mr. Temporary Deputy Speaker, Sir. I would like to donate three minutes of my time to each of Prof. Mango and Mr. Kariuki.

Prof. Mango: Thank you, Mr. Temporary Deputy Speaker, Sir. I would [**Prof. Mango**] like to thank Prof. Oniang'o for bringing this Motion before this House at this time. The sugar industry is very important in this country because it supports six million Kenyans. That is not a crop which should be underrated. In fact, sugar cane should be classified as a strategic crop, because it is both a food and cash crop. Therefore, this is a very important crop. But the growing of sugar cane has become a kind of slavery to the farmers. A sugar cane farmer donates his land, plants it with seedlings, cultivates it, harvests and delivers the crop to the millers. At the end of it all, the farmer may end up owing the millers some money. Is that not slavery? The farmer has delivered the cane, but the payment is not forthcoming.

Mr. Temporary Deputy Speaker, Sir, last month we were told that farmers from Busia are owed Kshs133 million. When you think of Busia as one of the poorest districts in Kenya, to donate Kshs133 million to millers is a lot of money. This is also a district where 30 per cent of its inhabitants are carrying the HIV/AIDS virus, and badly need that money to take care of their needs; to buy medicine and food. I would like to urge the Minister to ensure that those farmers are paid so that they can afford school fees for their children, come the month of January.

Mr. Temporary Deputy Speaker, Sir, farmers in Busia are getting very discouraged because of sugar importation. While we appreciate being members of COMESA, every nation has a responsibility to its nationals. Therefore, when we make agreements with COMESA, we have to think of how to take care of our own nationals. In many countries, a crop like sugar cane is highly subsidised and is considered a strategic crop. We should, therefore, never hide behind COMESA. After all, some imported sugar in this country comes from Thailand. Is Thailand a member of COMESA? We get sugar from all over the world and hide behind the COMESA agreement. This has always been used to hoodwink farmers, pretending that we are getting sugar from the COMESA region. The Government should stop this game and take care of farmers in this country.

Mr. Temporary Deputy Speaker, Sir, the industry is rife with lots of problems. Yesterday, I spoke to the Chief Executive Officer of Mumias Sugar Company. He told me that every year, the company loses Kshs300 million worth of sugar cane during transportation. What happens is that, transporters are so cunning that when they reach a certain point, they off-load cane and sell it to other people. Both the millers and cane farmers lose. Therefore, to stop this kind of thievery, we need to have weigh bridges from the point of departure and at the factory, so that both parties can know what they are losing. This industry needs a lot of restructuring of the Act so that we can take care of both the millers and farmers.

With those few remarks, I beg to support.

Mr. M. Kariuki: Mr. Temporary Deputy Speaker, Sir, I beg to support the Motion.

I just wish to make two brief points. I like the spirit of the Minister in supporting possible amendments to the Sugar Act. I would also like to appeal to him that as we look at the Sugar Act, there are various other statutes under the Ministry of Agriculture which require urgent examination. In particular, I would like to urge the Minister to look at the Agriculture Act, which, in many ways, has not been operationalised. The District Agricultural Committee should actually be the centre for monitoring performance of the various sectors in the agricultural sector.

Mr. Temporary Deputy Speaker, Sir, the problem in the sugar industry is just a mere microcosm of the larger problem in the agricultural sector. We need to take a holistic approach in looking at the problems of farmers in the country.

Mr. Temporary Deputy Speaker, Sir, I would also like to say something about the dumping of sugar. There is this myth that COMESA sugar is cheap. It is not cheap. It is simply because that is the

dumping price. If you look at the market price of sugar in, for example, Malawi, Zimbabwe and Zambia, from where we used to import some sugar, you will find that it is much higher; it is three times the price of the sugar they export here for dumping. Basically, the principle is to preserve the market and ensure that prices remain high. I think this is something that will only require the political will of the Minister to say that, if we are going to have sugar imported into this country, then we must establish the source and the price at which it is sold in that home market from where it is coming. That is the only way we will be able to rule out the possibility of dumping sugar in this country and, therefore, undermining the efforts of our farmers.

Mr. Temporary Deputy Speaker, Sir, I also wish to underscore the point made by Prof. Mango. As a Government, we must always act in the best interest of our people. We do not seem to be doing so. We are being told by multinational donors and the World Trade Organisation (WTO) not to subsidise our farmers. What are they doing in their own countries? They are offering subsidies to their farmers. We must act in the best interest of our farmers. The backbone of our economy is agriculture. If we compromise the interest of our farmers to please foreigners, then we will be a ruined nation.

I strongly believe that the amendments to this Act must take into account the unfolding phenomena about a Customs Union within this region. It is important that those issues be factored. Also, the globalisation concept that is now unfolding has to be taken into account in re-examining this particular Act. I think it is important for the Government to keep monitoring growth in every sector, and to ensure that we have amendments in all relevant statutes at all time. Government officers should not wait for hon. Members of Parliament to move a Motion here for them to take the necessary action. They have to remain awake all the time. I think every Ministry should have a legal section which will examine, on a day to day basis, the problem faced by each particular sector. They should be alert and act in the best interest of our farmers.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support.

Prof. Oniang'o: Mr. Temporary Deputy Speaker, Sir, I take this opportunity to thank my colleagues for the very spirited debates we have had so far, and for the support they have given to this Motion. I also want to thank the Minister, first of all, for the reforms he is trying to effect in the agricultural sector as a whole, and in particular, the sugar subsector. Secondly, I also want to thank him for accepting that, indeed, the Sugar Act 2001 has many flaws, and that it requires to be amended. Without this collaborative effort, it would be impossible to actually amend the Sugar Act.

Mr. Temporary Deputy Speaker, Sir, we have heard very credible points put forward by hon. Members. I believe that we could use them to try and make some corrections within the sugar subsector. The sugar subsector is an extremely critical subsector because it sustains the lives of more than six million Kenyans. These Kenyans are now impoverished.

In fact, the Sugar Act 2001 was meant to empower the farmer, but it has now impoverished and abused him. We realise that there is plenty of money in circulation because of the sugar industry. For example, every year, the sugar subsector contributes about Kshs1.2 billion as Value Added Tax (VAT) to the Government. The sugar levy contributes Kshs540 million to the economy every year. We owe farmers because they have given everything to this industry. They have nothing else left, save for their energy and labour into this sector. So, we need to see fair play. We want to believe that the NARC Government, in its pursuit to correct the ills of the past, will look at this subsector. We are also aware that one of their campaign pledges in Western Kenya, was a promise to sugar farmers, that no illegal imports will be offloaded at the Port of Mombasa, and that there will be no delayed payment. We know that farmers go for even two years without being paid. We are also aware that often times, other members of the family are not aware of what is going on.

So, we hope that we can take leave of the House and look at this Sugar Act in a very collaborative and friendly way of working, to make sure we look at this subsector. This subsector does

not only affect sugarcane farmers in Western Kenya and Coast Province, but, indeed, all of us in the country. I hope it will be an effort that all of us will support. By so doing, it will, in fact, affect other crops in the agricultural sector. I look forward to working with the stakeholders, including the Minister himself, in effecting these changes.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to move.

(Question put and agreed to)

RE-NEGOTIATION OF LAKE
VICTORIA WATERS TREATY

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

THAT, in view of the fact that the Treaty signed between the British colonial authorities on behalf of the East African states and Egypt regarding the utilization of Lake Victoria waters is outdated and inimical to the socio-economic interests of the people living around the lake; and taking cognizance of the importance of the lake as a source of livelihood of our people, this House urges the Government, in consultation with other East African governments, to re-negotiate the Treaty with all the states which are signatories.

Mr. Temporary Deputy Speaker, Sir, this is a very important Motion for our country, and particularly for the region I come from. The Nile Basin is almost 1 per cent of the African continent and has a population of more than 250 million. The Nile Basin encompasses nine countries, namely, Kenya, Uganda, Tanzania, Rwanda, Burundi, Ethiopia, Eritrea, Sudan and Egypt. The gist of my Motion is to discuss an agreement which was signed by the British government on behalf of its former colonies, and the Egyptian Government in 1929. The Treaty was signed by the British High Commissioner to Egypt, Lord Lloyd, on behalf of the British Government, and Mr. Pasha, who was the Chairman of the Council of Ministers of Egypt, on 7th May, 1929. This agreement gave Egypt lop-sided rights in the use of both the River Nile and its waters.

Mr. Temporary Deputy Speaker, Sir, the Treaty was made without any reference to the affected states, which were colonies of Great Britain at that time. The fact that this Treaty was signed on behalf of our country without us being consulted makes it completely irrelevant to us in this Independence era. There have been lots of problems with this Treaty. It has been discussed over and over again, but to date, no action has been taken to abrogate or re-negotiate it.

Mr. Temporary Deputy Speaker, Sir, it is because of the importance of the waters of Lake Victoria to the people living around the lake that we feel we must, as a nation, discuss this issue with Egypt and resolve it once and for all. Kenya contributes more than 70 per cent of the water flowing into Lake Victoria.

Mr. Temporary Deputy Speaker, Sir, all the major rivers flowing into Lake Victoria originate from Kenya. Tanzania has River Mara but it does not originate from there. River Mara originates from Kenya and only gets into Lake Victoria through Tanzania. The only other major river which does not originate from Kenya is River Kagera, which originates from Rwanda/Burundi. Otherwise, Uganda has no river feeding Lake Victoria. They are only draining it, and the River Nile passes through there.

Mr. Temporary Deputy Speaker, Sir, when Tanzania attained independence in 1961, they immediately adopted a policy of not honouring agreements which were made on their behalf by the colonial authorities and which were unjust and unfair. Tanzania then declared that this agreement, that was signed unfairly between the British Government and the Egyptian Government on their behalf, was null and void. They wrote a letter to that effect to the Egyptian Government. It is interesting to note that the Egyptian Government, in their reply reiterated that the agreement which was signed on

behalf of our countries with Britain in 1929, was, in the view of the Egyptian Government, still valid and binding on the East African Governments up to now.

Hon. Members: Shame! Shame!

Dr. Oburu: Mr. Temporary Deputy Speaker, Sir, the principle of equitable and reasonable utilisation of common water resources, of which Egypt is a signatory, is in the United Nations (UN) Convention, Articles 5 and 6 of 1997. The agreement we are discussing today was lopsided that the principle of equitable and reasonable utilisation of common water resources was completely ignored.

Mr. Temporary Deputy Speaker, Sir, you will realise that in that particular agreement, the consideration by the British Government was only the interests of Britain in Egypt. It is because at that time, Great Britain was interested in utilisation of the Suez Canal. It is also because Egypt was a supplier of raw material for the British textile industry. It was, therefore, in the interest of Great Britain to protect the interest of Egypt in the utilisation of River Nile waters. As a result of this, the East African States were only mentioned in the Treaty. To make it worse, the so-called "Treaty", was not even a proper treaty. It was just an exchange of notes between the Chairman of the Council of Ministers from Egypt, and the British High Commissioner in Egypt. It is this mere exchange of letters or notes which is binding and making us slaves to date. This is a very serious matter because it refers not only to this particular agreement, but to all the other unfair treaties which the British colonial government might have signed on our behalf before Independence. It is important that our Government reviews these treaties with a view to renegotiating them, ignoring them or simply declaring them null and void.

Mr. Temporary Deputy Speaker, Sir, it is important that we protect our territorial integrity and the principle of territorial integrity includes our waters. We cannot claim to be protecting our territorial integrity if we allow lopsided agreements to deny us the use of our own waters which are flowing or emanating from our own country.

Mr. Temporary Deputy Speaker, Sir, this agreement we are talking about only mentions Sudan, and that the waters of Lake Victoria and the Nile were to be shared between Egypt and Sudan and the proportion of sharing them was stipulated and given in those exchanges of letters. It is the right of the East African countries to share the waters of Lake Victoria. This agreement stipulates that any construction of a major project in the states around the lake must get consent from Egypt. It is slavery. We cannot be independent when, if we want to construct a major dam in our own country, we have to get consent from Egypt. It is imprudent and against the law of natural justice that if we want to carry out a major irrigation scheme within our country, we have to seek permission or concurrence from the Egyptian Government. It is also very shameful that these people were only referring to the rights of Egypt and Sudan. Egypt itself insisted at that time that the interest of Sudan should be reviewed and that as far as Sudan was concerned, the 1929 Agreement was temporary. Therefore, after Sudan became independent in 1956, they immediately renegotiated a favourable agreement to share the waters of the Nile between Egypt and Sudan in disregard of all the other East African States.

Mr. Temporary Deputy Speaker, Sir, there is a clause which, in my view, is the most offending one. This clause is the one which the Government of Kenya must re-negotiate and remove immediately. It reads as follows:-

"With the agreement of the Egyptian Government, no irrigation or power works or measures to be constructed or taken on the Nile River and its branches or on the lake from which it flows, so far as all these are in the Sudan or in the countries under British administration which would in such a manner, as to entail any prejudice to the interest of Egypt, either reduce the quantity of the water arising in the Egypt or modify the date of its arrival or lower its level".

Mr. Temporary Deputy Speaker, Sir, this clause means that if we were to do anything which would result in lowering the levels of Lake Victoria or reduce the flow of River Nile towards Egypt,

then this would be an offence in itself. This is a very serious matter and it is the cornerstone of my introduction of this particular Motion to be discussed in this House. The 1929 Agreement is invalid in very many ways. It is invalid because we cannot---According to International laws, if we want to have international relations and co-operation, then, this Treaty must be renegotiated between independent states voluntarily.

Mr. Temporary Deputy Speaker, Sir, this particular Agreement was involuntarily entered into through a colonial policy whose interests were different from the interest of Kenya. Therefore, we cannot say that this principle of international law, concerning international trade relations was complied with during the time of writing this Agreement.

If you look at the principle of self-determination, which is enshrined in Article 2, subclauses 2 and 55 of the United Nations, this Agreement is against those principles. This particular Agreement is against the principles, as enshrined in the rights of self-determination, of the United Nations.

Mr. Temporary Deputy Speaker, Sir, the principle of consent, which is also enshrined in the rights as set out by the United Nations, is also violated by this particular Treaty.

The principle of equitable access and reasonable utilisation of shared water is also violated by this Treaty. The principle of non-succession of Treaties is very cardinal. Treaties cannot be succeeded. The principle states that there should be no succession of treaties. Because of this, there is the Nyerere Doctrine which was adopted by Tanzania or Tanganyika as it was known by that time. What this means is that the treaty is not binding on Tanzania. If it is not binding on Tanzania, then, there is no reason why it should be binding on Kenya.

The other fundamental principle is the Human Rights Principle. We cannot be starving or dying in poverty in our country when Egypt is wallowing in wealth by using our waters. Why are the Human Rights Principles not applied to this case? These principles cannot be effective if we continue to allow another country to use our water and wallow in wealth when our own people are wallowing in abject poverty.

Mr. Temporary Deputy Speaker, Sir, if this Treaty was renegotiated or declared null and void, we would be able to attract investors to come and help our people to control the floods that have become a menace year in, year out in certain parts of our country. They would create big dams for the generation of electricity and irrigation purposes and then, we would be able to control the flow of rivers that affect our people year in, and year out. The floods in Budalang'i and Kano Plains have become a national disaster. The floods have become a problem to the extent that the money the Government is using in building dykes is going to waste because the dykes burst. These dykes are useless unless the flow of river water is controlled by damming them upstream and using the water for irrigation purposes.

If we were allowed by law to utilise our waters equitably and reasonably, the areas which are affected by floods would become a granary of food production for the whole of Kenya.

Mr. Temporary Deputy Speaker, Sir, as it is, that region is a food-starved area, and year in, year out, we have to get food supplements from Uasin Gishu and the former---

The Temporary Deputy Speaker (Mr. Khamasi): Your time is up!

Dr. Oburu: Mr. Temporary Deputy Speaker, Sir, with those many remarks, I beg to move and also ask hon. Okemo to second the Motion.

Mr. Okemo: Thank you very much, Mr. Temporary Deputy Speaker, Sir. I will be very brief in seconding this Motion. Hearing what the hon. Member has just said, the gist of the Motion is very clear; that this Agreement did not have the participation of any of the East African states. It was an imposition by the British Government that negotiated with the Egyptians, purely to protect the Egyptian interests. You will find that at its initial stages, the Agreement was only referring to Egypt and Sudan. The East African states were just there as appendages. They were mentioned in the Agreement, but they were never taken into account in terms of the utilization of the water from Lake

Victoria.

This having happened, the Government ought to take a very active role now in order to ensure that the interests of the East African countries are taken into account, and to make sure that this Agreement is completely overhauled. The Agreement says that you cannot utilize this water for any purpose at all without prior consent or consultation with Egypt. So, it makes Egypt a superior state to the East African states, where the water originates from. So, we have to do something to rectify this anomaly. Initially, the Agreement was mainly worried about the relationship between Egypt and Sudan and, in fact, at some point, the Sudanese Government was going to be given time to attain its independence so that the Treaty could then be ratified. No reference was ever made to the East African countries. So, you can see that every effort must be made by the Government of Kenya, in consultation or in conjunction with other East African states, to see that this Treaty is revised to ensure just and equitable utilization of the waters.

It was also mentioned that on attainment of her independence, Tanzania responded immediately. I think they did the right thing when they had an exchange of notes in 1962, saying that they would not honour a Treaty of which they were not party to. This is because at the time the Treaty was signed, it was between the British Government and Egypt, but the British Government was acting for its dependencies. In fact, it refers to them as "dependencies", meaning "colonies". Now, when you attain independence, you cannot again be a dependency of the former colonizer. So, Kenya, Uganda and Tanzania are no longer dependencies of Britain. So, how can they be party to an Agreement in which they were just merely mentioned as interested parties? The Government of Kenya has the legitimate right, acting in unison with Uganda and Tanzania, particularly as the East African Community is now in place. We will be able to come up as a force to make sure that our sovereign interests are taken care of.

Mr. Temporary Deputy Speaker, Sir, Dr. Nyerere's doctrine of succession to treaties was very clear. I wish Kenya too had come up with something, which she did not. She should have come up, on attainment of Independence, with a similar note, saying that she cannot honour treaties which she did not take part in because she was only a colony at the time. When you look at what we could do with the waters in our rivers and the lakes, you will find that we can do a lot of things.

Dr. Oburu rightly said that you can have irrigation schemes, dam the rivers upstream to avoid flooding, and you can also create falls to produce hydro-power. The Kano Plains could be affected in terms of getting water irrigated and avoiding floods. These are things that we cannot be able to do now. If you said no, you cannot move. So, surely, can you call yourself a sovereign state if you cannot make a decision unless another sovereign state says that you must do it?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): We are sovereign!

Mr. Okemo: Mr. Temporary Deputy Speaker, Sir, I know we are sovereign, but we are subject to another sovereign state in respect of this particular Treaty.

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Okemo! Address the Chair.

Mr. Okemo: Mr. Temporary Deputy Speaker, Sir, I was being interrupted. There has been an attempt, however, in the recent past to deal with this Treaty in what they call the Draft Agreement on Co-operative Framework. There is a project like that. This is an attempt by the other riparian states to protect their interests by saying that the Treaty, in its original form, does not protect their interests and, therefore, must be changed to be seen to be just and fair. But it appears like the Sudanese and the Egyptians are not for that. They have, in fact, sent in a reservation to say that the original Treaty should not be interfered with in any way at all, or in any word to that effect. That means that the spirit of negotiation is going to be very difficult, if that is the position they take. The other riparian states are saying that the Treaty should be inconsequential in so far as they are inconsistent with their rights as far as the use of the water is concerned. So, these are two opposed positions. Our Government has to be very forthright and firm in insisting that the Egyptians and the Sudanese do not take a rigid stand that

would make negotiations for a fair treaty impossible to progress.

Mr. Temporary Deputy Speaker, Sir, in conclusion, I would like to urge the Government, through the Ministry of Foreign Affairs, to give this top priority, so that we can have a treaty in place as soon as possible that allows Kenyan nationals to utilise the waters in Lake Victoria and all the rivers that flow into it for economic development.

With those few remarks, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Mr. Khamasi): Mr. Wetangula, you are the official Government Responder to this Motion.

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, that is correct. Thank you, for giving me the opportunity to respond on behalf of the Government.

Mr. Temporary Deputy Speaker, Sir, the waters of Lake Victoria are the critical link between East African countries of Kenya, Uganda and Tanzania. They are also a main resource that sustains lives in excess of 30 million people within these three countries.

An hon. Member: One hundred million people depend on the lake!

The Assistant Minister for Foreign Affairs (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, I am made to understand that the lake sustains the lives of 100 million people. I stand corrected.

Kenya, as a sovereign State, attaches great importance to its fuelled influence on the lake and the resource that sustains its people. Between the time of the advent of colonialism and Independence, ten different treaties were negotiated and executed in respect to Lake Victoria. The first being in 1881, the second one in 1902, the third one in 1906, the fourth one in 1906, the fifth one in 1929, the sixth one in 1932, the seventh one in 1934, the eighth one in 1950, the ninth in 1953, and the last one, which was a supplement to an earlier one, in 1952. In each of these agreements, the critical player was Britain, and the critical beneficiary was Egypt. At times, Sudan was a peripheral beneficiary to these agreements. The underlying tenure in these agreements was to ensure protection of the flows of the River Nile and to ensure the lifeline of Egypt. In one of the agreements, East African states agreed that Egypt stations a hydrologist at the exit of River Nile. This was in 1949. That Egyptian hydrologist still stays at the source of River Nile and monitors the flow of its waters.

*[The Temporary Deputy Speaker
(Mr. Khamasi) left the Chair]*

*[The Temporary Deputy Speaker
(Mr. Poghio) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, in the agreements of 1949 and 1952, it was clearly stated that Egypt, and the then sovereign Britain were to compensate East African states for the environmental damage that the construction of the Owen Falls Dam would have caused to these countries. Indeed, there is still research going on to establish whether the persistent floods in the areas mentioned by the Mover are related to the dam that has restricted the free flow of the waters from the lake.

This Motion brings to light very critical issues. There has been a lot of talk about what Kenya has done and has not done as a sovereign State. I thank Dr. Oburu for bringing the Motion because it has also helped me dig out a lot of information, including the new knowledge I have, that there are, in

fact, ten agreements. Kenya, as a sovereign State, did not and has not sat back to suffer under the weight of a treaty executed by an illegal colonial regime to the benefit of unconcerned states that have nothing to do with our interests. At Independence in 1963, the Government of Kenya issued, in accordance with international law, a declaration and notice that it intended to either abrogate or renegotiate all these agreements.

Mr. Temporary Deputy Speaker, Sir, in 1967, no party having come forward for renegotiations, Kenya issued another declaration setting out two years within which such a negotiation would be done. Uganda, equally, issued a similar declaration. Kenya, of course, wanted to go along with other East African countries in dealing with the waters of lake Victoria. After these declarations, however, the sovereign state of Uganda - and I believe it has the right to do so - continued housing the Egyptian hydrologist at the exit of the Nile, rendering the declaration nugatory.

Kenya followed the Tanzanian style, although Tanzania was more vocal and made its stand more public, that it had absolutely nothing to do with agreements reached between an illegal colonial regime, Egypt and Sudan. I wish to inform this

House that the East African States of Kenya, Uganda, Tanzania, Eritrea, Ethiopia, Sudan, including Egypt, Rwanda, Burundi and the DRC Congo have negotiated a draft agreement that Mr. Okemo made some casual reference to, on the Nile Basin Co-operative Framework, comprising 39 articles containing principles on the management, protection, harmonisation and use of the waters of the Nile River.

As Mr. Okemo rightly mentioned, while the negotiations have gone on very well, Egypt and the Sudan are keen on insisting on the formal recognition of the onerous agreements that I have mentioned as part of the new agreement. This means that the countries in this region have to acknowledge and observe certain restrictions on the exploitation and use of the waters of Lake Victoria. The position of the Government of Kenya is that we shall have nothing to do with that. Kenya will not accept under any circumstances any restrictions on the use and exploitation of the Nile water.

In so doing, Kenya does not want to be a lone ranger. I do agree that the inflows into the lake are largely emanating from Kenya. I do agree that the most ravaged part of the lake, whenever we have floods is Kenya. Kenya wants to be a good regional player and we want to negotiate alongside all other involved countries, so that we can reach an agreement that will be helpful to our people, and the region, and one that will not harm the sovereign state of Egypt.

Mr. Temporary Deputy Speaker, Sir, you do know that under international law, all the riparian States have the right to access the waters of the rivers that flow through them. Under international law, it would be wrong for the East African countries to interfere with the flow of the River Nile to the extent that it becomes a strangulation of the people of Egypt who live on waters of the Nile. Equally, it would not be proper for us to deny ourselves opportunities to develop and use the waters of the lake for no reason at all. Under the doctrine of shared natural resources, the Government of Kenya and other governments in the region are urging Egypt and the Sudan not to insist on the recognition of the colonial agreements, but enter into new and comprehensive protocols that will assist us in the management of the lake.

Kenya attaches great importance and pride in not only the fact that we share in the waters of Lake Victoria, but that we contribute substantially to the existence of the lake through our inflows. Dr. Oburu was right when he said that Kenya has eight permanent rivers that flow into the lake. The only other river that flows into the lake is River Kagera from the Congo through Tanzania. Those of our nationals that are involved in these negotiations have been properly briefed that we do know that only 6 per cent of the lake is in Kenyan territory. When we are talking of shared resources, we must take into account the sources of these waters, which is Kenya. We will not give away our right, duty and interests to protect the waters of the lake. As it is now, in the absence of a new agreement, the only linkage between the agreements that were executed by the colonial state that I have mentioned, is the continued presence of hydrologists from Egypt at the Owen Falls Dam, which is a converse

recognition by Uganda and not Kenya, of certain clauses of that agreement.

I like the spirit of the Motion, but I want to point out that Kenya, having abrogated those treaties, has nothing to re-negotiate. I promise this House that the Government will put the best foot forward in the negotiations that are ongoing under the auspices of the Great Lakes Region with the countries that I have mentioned, to ensure that we get our fair share and value of the resources of the lake.

Equally, the three East African states of Kenya, Uganda and Tanzania are also discussing a separate protocol, where we want the boundaries on the lake that demarcate Kenya, Uganda and Tanzania into separate spheres of influence erased, so that the lake becomes a common sphere of influence and a common source of livelihood for the people from the three East African countries.

Mr. Temporary Deputy Speaker, Sir, I look forward to the day when we shall reach an agreement and find a way where fishermen from Kenya are not molested on the lake, can have their catch, dock in landing bays in Uganda and Tanzania to sell their fish and come back with their money. That is the best that we can do for our country.

Mr. Temporary Deputy Speaker, Sir, the reason why the Government supports the spirit of the Motion, I hasten to point out again, is that there is no re-negotiation to be done. The Government is negotiating and not re-negotiating, because we have a new treaty on the way that covers more countries than just Kenya, Uganda and Tanzania.

With those qualifications on the Motion, I beg to support its spirit.

Mr. Twaha: Mr. Temporary Deputy Speaker, Sir, I rise to support this Motion. To begin with, the very name of Lake Victoria is wrong. We need to change its name to an East African name. We should call it Lake Jaramogi Oginga Odinga or Lake Mwalimu Nyerere. We have our own heroes and the lake is ours. It is not Queen Victoria's lake. So, we should start at the beginning, and erase that name, and give our own proper name and claim titles to that lake.

Mr. Temporary Deputy Speaker, Sir, somebody said that water will be the cause of the next world war. So, we have to tread carefully when we are negotiating that treaty. We have to remember that when those treaties were signed, the British were, unashamedly, racists at the time. They had their own priorities and goals. We are not party to those goals! We are not responsible for upholding their own ideals. I will give an example.

In Australia, up to 1967, the Aborigine people, who were the owners of that place, were not counted during the census because they were covered under the Flora and Fauna Act! That was in 1967. It was not far off. The way they despise others races! *Yaani, hayo ni madharau yao*. They are contemptuous of other races. We have to be proud of our own races, priorities and goals. We must fight to uphold them. We have a responsibility to the people of Kenya. There are many people in Ukambani and surrounding areas who need water for irrigation.

There are people around the lake who need water for irrigation. They could benefit immensely from utilising those waters. At the moment, we are struggling to become the darling of the West. But we have to be careful because we are not going to be the darling that Egypt is. That is because Egypt made peace with Israel, and it is under the protection of the United States of America (USA).

Mr. Temporary Deputy Speaker, Sir, I can foresee a situation where we will put up our projects, build dams and other projects, and one night, aeroplanes will come and bomb them, and there is nothing we can do about it. So, when we are negotiating, we should also be arming ourselves. That is an aspect of life. They say you can get a lot more done with a kind word and a gun than just with a kind word. So, while we are negotiating, we should also build our military capacity, so that we can defend our national interest. Water is the highest national interest that we have and if we utilise it properly, it will make a big difference in the agricultural production of our country.

With those few remarks, I beg to support.

Mr. Sambu: On a Point of Order, Mr. Temporary Deputy Speaker, Sir. Would I be in order

to ask the Chair to call upon the Mover to reply?

(Applause)

The Temporary Deputy Speaker (Mr. Poghisio): Order! Mr. Sambu, I am not going to allow that. Hon. Members, this is a Private Member's Motion. It is a timed Motion and as long as Members are interested in contributing to it, they shall continue to do so. We have an allotted amount of time for this, and as long as I still see Members interested in contributing, I will disallow your request.

Mr. Kajembe: Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support the Motion. I do not want to take much time, but I would like to say that the Nile River is supported by Lake Victoria, which is owned by the three countries of East Africa. Therefore, the three East African countries should be the ones to dictate terms in this Treaty. It is wrong for the Kenya Government to have stayed for 40 years, waiting for a Member of Parliament to bring a Motion to this House, in order to take a position on this matter. What has the Government done since we attained Independence?

The Assistant Minister for Foreign Affairs (Mr. Wetangula): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Kajembe in order to say that the Government of Kenya sat for 40 years, when I just said that we abrogated this Treaty in 1963?

Mr. Kajembe: Mr. Temporary Deputy Speaker, Sir, whatever language the Government uses, it was its duty to negotiate instead of waiting for a Member to bring a Motion here. We are now going back to colonialism because, when you say you will invite those who signed this Treaty, you will also include the British Government. What has the British Government got to do with our lake and the River Nile? What I am trying to say, in short, is that the Government has lost direction on this issue. This is our lake. Uganda, today, is selling power to Kenya and they are dictating the terms. We must dictate terms to Egypt and any other user of our waters from Lake Victoria.

With those remarks, I support the Motion and I strongly feel that the Mover should be called upon to reply.

(Applause)

The Temporary Deputy Speaker (Mr. Poghisio): Order! There being no Member to contribute, I will now call upon the Mover to reply.

Dr. Oburu: Mr. Temporary Deputy Speaker, Sir, I would like to thank hon. Members who have contributed to this very important Motion. I would like to donate one minute of my time each to Messrs. Sambu, M. Kariuki and Mungatana.

Mr. Sambu: Thank you, Mr. Temporary Deputy Speaker, Sir. All the agreements which were signed by the British Government ceased, or should have ceased, to be effective at midnight on 12th December, 1963. We should not honour any agreement which was signed by the British Government. In fact, we should seek reparations from the British Government for the damage they caused us. Many Rivers, such as Yala, Nzoia and Nyando emanate from Nandi District, and we suffered greatly under the British rule. The British killed Koitalel Samoei. They also killed 2,000 of our people and took away our cattle. The British also took our land from which the rivers I have mentioned above emanate from. This is our land, but it is still under the British Government. If the Kenyatta and Moi Governments did nothing about this, we urge the Kibaki Government to do something for us. The British Government should be made to pay reparations. This treaty should cease to be effective. If the Egyptians want to declare war on Kenya, so be it!

(Applause)

The Temporary Deputy Speaker (Mr. Poghisio): Mr. M. Kariuki, did Dr. Oburu donate one minute to you?

Mr. M. Kariuki: Yes, Mr. Temporary deputy Speaker, Sir.

This is a very significant day in the history of this country. The Independence Order in Council was signed on 10th December, 1963. It was contained in Legal Notice No.718 of 10th December, 1963. Section 4 of the Independence Order and Council stated that any existing laws would apply with proper modification, qualification, adoption and exception to the Constitution which was being handed over to us. The colonial government was a military occupation!

Mr. Sambu: Yes!

Mr. M. Kariuki: Mr. Temporary Deputy Speaker, Sir, we did not have a Constitution and the British did not have our consent to lord it over us for that period. I think it will be grossly unfortunate for anybody to recognise treaties which were signed between the British Government and any other power. Article 53 of the Vienna Convention says that any treaty signed not in the interest of the people will be rejected. I think that we are within our powers, under international law, to say that we are not bound by this treaty.

I beg to support the Motion.

The Assistant Minister for Regional Development (Mr. Mungatana): Mr. Temporary Deputy Speaker, Sir, I would like to say that the treaties signed by the invading British army with the Ndembeles, the Khosas and the Zulus, and the one signed by the invading American army with the Red Indians, were not different from the treaty which the British signed on behalf of East African states and gave all the power to the Egyptians. We must review this treaty for the sake of this nation.

I support this Motion.

Dr. Oburu: Mr. Temporary Deputy Speaker, Sir, I would like to thank the hon. Members who have contributed to this Motion.

I beg to move.

The Temporary Deputy Speaker (Mr. Poghisio): Dr. Oburu, what have you said?

Dr. Oburu: Mr. Temporary Deputy Speaker, Sir, I moved the Motion.

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Poghisio): Hon. Members, it is now time for the interruption of our business. The House is, therefore, adjourned until this afternoon at 2.30 p.m.

The House rose at 12.30 p.m.