

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 5th December, 2001.

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATIONS FROM THE CHAIR

THEFT WITHIN PARLIAMENT BUILDINGS

Mr. Speaker: Order, hon. Members. On the morning of Thursday, 28th November, 2001, I received a report of theft within Parliament Buildings. I immediately came to my office and was then conducted to the offices where the theft was reported to have occurred. These are the HANSARD office next to my office and the Accounts offices which are adjacent to the HANSARD office. All these offices are located on the first floor of the building. At the scene I noticed that neither the doors nor the windows had been broken into. It appeared to me that the entry was gained through the doors to the various offices using keys to the said doors. A story that the items stolen had been passed through the windows did not impress me.

I immediately called the Commissioner of Police who arrived shortly afterwards, accompanied by the Director of CID, the Provincial Police Officer, Nairobi area, and a host of other police officers. The police officers and I discussed certain issues appertaining to the security of Parliament and ways and means of ensuring that Parliament and its occupants will be safe. Discussions along these lines are continuing between my officers and the police. In the meantime, short-term measures have been put in place to secure Parliament. Investigations are also under way and so far two police officers attached to Parliament Buildings and a watchman who was on duty on that particular night have been arrested. Several members of staff have also recorded their statements. I am informed that the police are making progress in the investigations. I am also informed that eight computers, three printers and a radio speaker were taken away in the theft.

I also wish to report that I have since held meetings with the Members of the Parliamentary Service Commission and senior members of my staff. I wish to assure this House that I will do what it takes to ensure the security of Parliament, its property and occupants. I also wish to assure this House that all backup information on the stolen computers is in place and no

inconvenience will be occasioned except for the lost hardware. I also wish to take this opportunity to record my appreciation for the co-operation I have received from the Commissioner of Police and his officers. They have been addressing this issue on a day-to-day basis since the incident occurred.

Due to this terrible incident, I have directed all those charged with the responsibility of security of Parliament to maintain strict surveillance at all times. I would like to call for your understanding and support as I do put these measures in place.

Thank you.

Mr. Muite: Mr. Speaker, Sir, I would like to thank you for the statement which you have made to the hon. Members. Some of us have been approached by members of the media to make comments on what we think about this issue, and it is very appropriate that you have made that statement which clarifies the issue.

I would like to take this opportunity to express the hope that the investigations will unearth the culprits involved. No one wants to compromise those investigations, but we hope the real culprits will be brought to book and that no innocent "small flies" will be sacrificed instead.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Let me assure you, Mr. Muite, that I do not go for either "big flies" or "small flies". I am going for the criminals.

Mr. Kihoro: Mr. Speaker, Sir, I also wish to thank you immensely for the statement. I would like to draw

your attention to what happened to my car on 22nd March, this year. While parked on D54 next to the canteen, my car was broken into. It is a four-wheel drive vehicle.

The window was smashed and personal belongings which were inside were stolen. As you conduct this investigation, it is important that the theft perpetrated on my car is also investigated. It cost me Kshs120,000 to do the repairs, including replacing the spare wheels, tyres, rims and things like that. This should also be taken on board while carrying out investigations.

Mr. Imanyara: Mr. Speaker, Sir, while I would also wish to commend the statement you have issued and note with appreciation that some arrests have been made, Mr. Speaker will also note that part of the jurisdiction of Parliament's precincts falls under the Armed Forces and not the police. These are people who also guard this place 24 hours a day and they have access to various parts of this House. I would urge that the investigations that have led to the arrest of police officers be also extended to others who have access to the House and do not fall under the jurisdiction of the Police Commissioner, so that we can exclude the possibility of all members of the disciplined forces from being involved in this matter.

Mr. Speaker: Could I just say this in addition. I do appreciate the fact that Mr. Kihoro's vehicle and those of other hon. Members parked outside were vandalised, broken into and property stolen. That was not all; previous to this, we have had two computers stolen at County Hall and one from the library. It does appear to me that whoever has been doing this must be somewhere within. For this reason, I am turning on the heat on everybody whom I can. Please, do not come to me if the heat does fall on your constituent or friend because I will not listen. I have directed the Clerk not to spare any person linked to this. I have further directed him not to listen to any presentations by any hon. Member or any other authority. We want to get to the bottom of this. It is a great shame; it is something that must be stopped. I am determined to do it and I require your support. In the process of putting these measures in place, a few of you who may be aggrieved by the measures that I will take, please, tolerate them. It is important in the wider good. We will do what we can as soon as we can.

Thank you very much. I appreciate your understanding.

Next Order!

SUPPLEMENTARY ORDER PAPER

Mr. Speaker: Sorry! Mr. Clerk, have we got the Supplementary Order Paper as I want to bring it to the attention of hon. Members?

(Mr. Speaker consulted with the Clerk-at-the-Table)

Order! hon. Members, I wanted to bring this issue to your attention. In the original Order Paper which we had been given, the Statute Law (Miscellaneous Amendments) Bill was printed twice in place of the Sugar Bill which was omitted. When we noticed this error, it has since been rectified and I hope everybody has the Order Paper containing Order No.8 as the Sugar Bill, and Order No.9 as the Statute Law (Miscellaneous Amendments) Bill. So, I hope everybody has it, so that we do not have a confusion.

Thank you.

Mr. Wamae: On a point of order, Mr. Speaker, Sir. I am just wondering what happened to the Coffee Bill? We were discussing it. We are supposed to go to the Committee Stage. It has just disappeared.

Mr. Speaker: No, Mr. Wamae! Things do not just disappear. It will again appear tomorrow in the Order Paper.

(Laughter)

So, it will be all right. There is no problem at all. I understand there are many amendments that are being considered because of the presentations by Members in the course of the debate. Give it time and it will come.

It is Question Time now!

ORAL ANSWERS TO QUESTIONS

Question No.674

QUERY OVER NAIROBI BOUNDARIES

Mr. Muchiri asked the Minister of State, Office of the President:-

(a) what are the boundaries of:-

- (i) Nairobi extra Provincial District;
- (ii) the City of Nairobi which was granted a charter on 20th March, 1950;
- (iii) the Municipality of Nairobi; and,
- (iv) Nairobi Area;

(b) who controls Nairobi as a whole, as far as the execution of the by-laws of the City of Nairobi are concerned; and,

(c) whether he could re-gazette the City Inspectorate as a Police formation under the Commissioner of Police.

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

(a) The northern boundary covers Kasarani Division and towards the north-western boundary is Westlands Division. The western boundary covers Dagoretti Division and the southern boundary is Kibera Division. Embakasi Division covers the eastern boundary while Pumwani, Makadara and Central Divisions are in the centre of Nairobi Province. The total area then covered is approximately 100 square kilometres, with the eastern boundary stretching to the Outering Road; the southern boundary to Kabete area; the northern boundary to Gatharaini River on the northern boundary to Muthaiga. The northern boundary borders Thika District while the western boundary goes up to Kiambu Municipality. The southern boundary borders Kajiado District and the eastern boundary stretches to Machakos along the Nairobi/Mavoko Municipality boundary.

(b) The City of Nairobi is governed by the City Council of Nairobi, which is incorporated by an Act of Parliament through the Local Government Act.

(c) Unfortunately, I cannot include the City Inspectorate as a Police formation because it falls under the City Council of Nairobi, with powers granted by the Local Government Act. The present Police Act cannot, therefore, cover the City Inspectorate Department.

Mr. Muchiri: Mr. Speaker, Sir, the City of Nairobi is within Nairobi extra-Provincial District and so is the Municipality of Nairobi. You will agree with me that the charter that was granted by the Duke of Edinburgh on 20th March, 1950, at that time, was an Act or a charter issued by the authority of Great Britain---

Mr. Speaker: Now, what is the question?

Mr. Muchiri: Mr. Speaker, Sir, the question I am coming to is this: There has been a political fraud by this Government against the residents of Nairobi. We ought to be having a council of elders and councillors in Nairobi because there is a City and a Municipality. Could the Assistant Minister explain to this House the reason why we do not have the elders of this City and councillors of the Municipality of Nairobi?

(Laughter)

Mr. Samoei: Mr. Speaker, Sir, I am sure we do have elders in Nairobi because the residents of Nairobi have very responsible elders. However, according to the provision of our laws, we can only have councillors who have been elected as per the Local Government Act. Unfortunately, we cannot have elections of elders, but they still play a very pivotal role in the management of the affairs of this municipality.

Mr. Speaker: Mr. Assistant Minister, could I get this on behalf of the House; do we have a municipality within Nairobi City?

Mr. Samoei: Mr. Speaker, Sir, it was upgraded from a municipality to a city.

Mr. Speaker: That is what I thought!

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. In response to part "c" of the Question, everybody who lives in Nairobi knows that the City Council *askaris* behave like policemen. They arrest, lock up and take people to City courts and for all political purposes, exercise the powers of the Kenya Police officers. Because the training differential is so great between the City Inspectorate and the Police, could the Assistant Minister agree with me that incorporating the City Inspectorate within the Kenya Police Force would improve the manner in which the functions of the City Inspectorate, particularly *askaris*, are carried out? Secondly, could he consider absorbing this into the Kenya Police Force so that we can have City *askaris* that behave in accordance with the law rather than behaving like a gang of rogues, arresting people at night without uniforms and no proper chain of command?

Mr. Samoei: Mr. Speaker, Sir, the City Inspectorate Department performs a very specific function with respect to the by-laws that have been issued by the Nairobi City Council. Beyond or outside that jurisdiction, duties are carried out by members of the Police Force. These two functions are not in conflict, and I do not think that it

would be prudent for us to include the City Inspectorate as a Police formation. Maybe, we will take up suggestions on ways of training the City Inspectorate so that they are aware of the extent of their powers.

Mr. Speaker: Final question, Mr. Muchiri!

Mr. Muchiri: Mr. Speaker, Sir, the Assistant Minister has misled this House. There was a City until 1963, and it was downgraded to a municipality under Legal Notice No.256 of 1963. However, the PC of Nairobi, the Provincial Administration police officers and the PPO Nairobi Area have been roaming about in this City with lorries, chasing away the hawkers within the City. Now that we are going on a Christmas holiday and you know that there is a lot of poverty in this City, could you give the hawkers a leeway to trade within some roads of this City, so that they can get school fees for next year, and get some money to utilise during the Christmas holiday?

Mr. Samoei: Mr. Speaker, Sir, I think that presentation could rightfully be put to the "City Fathers" including the Mayor, who is a member of the hon. Member's party. However, maybe, they would be able to consider; I do not know. We will continue to round up criminals masquerading as hawkers and put them in their rightful place.

Question No.758

KILLING OF TAVETA RESIDENTS BY ELEPHANTS

Mr. Mwalulu asked the Minister of State, Office of the President:-

(a) whether he is aware that residents of Jipe, Challa and Njukini areas of Taveta Constituency have been killed and their crops destroyed by rogue elephants from the Tsavo National Park; and,

(b) what he is doing to ensure that the residents are safeguarded and duly compensated.

The Minister of State, Office of the President (Mr. Nassir): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware of the people killed by elephants in Taveta Constituency. However, there are four cases reported of people injured by wildlife in the year 2000/2001 and their crops damaged by rogue elephants from the national park.

(b) The residents are safeguarded through the ground and area movement of the wild animals by the game rangers in the area. The injured persons are compensated after duly completing compensation forms.

Mr. Mwalulu: Mr. Speaker, Sir, whereas I may agree with the Minister that he may not be aware of some people killed by elephants in Taveta, and I promise to provide him with a list very soon, could he tell this House which are these reported four cases of injured people by wildlife between 2000 and 2001? What damage had they caused, and were they compensated? If they had not been compensated, why not?

Mr. Nassir: Mr. Speaker, Sir, the people concerned and the officers in the area are investigating the matter and looking for the reasons behind that, and the damage caused.

Mr. Mwakiringo: Mr. Speaker, Sir, the Assistant Minister is being misled by his officers on the ground. Since the departure of Dr. Leakey, the Kenya Wildlife Service has had no money, and KWS has had all vehicles grounded. Therefore, no rangers are safeguarding wananchi in Taita-Taveta; who border the national parks. Could the Minister tell us what measures the Government is taking to safeguard the crops and the killing of residents of Taveta and those surrounding the national parks because there are no rangers patrolling those areas?

Mr. Nassir: Mr. Speaker, Sir, for the information of my colleague, I have taken over this job and I can assure him that everything will be done properly in a better way.

(Laughter)

Question No.765

REPLACEMENT OF BOMET TELEPHONE EXCHANGE

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

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

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

The Assistant Minister for Transport and Communications (Mr. Lengees): Mr. Speaker, Sir, I kindly

beg to tell the House that Question No.765 has been withdrawn because the written reply is not available. The Question should be deferred.

Mr. Kimeto: Mr. Speaker, Sir, when will the Ministry come up with a written reply?

The Assistant Minister for Transport and Communications (Mr. Lengees): Mr. Speaker, Sir, we will come up with a proper answer by Tuesday, next week.

Mr. Kimeto: Mr. Speaker, Sir, as long as he comes up with a proper answer which will assist the people of Bomet and Transmara, I have no problem.

Mr. Speaker: The Question is deferred to Tuesday next week.

(Question deferred)

Question No.453

QUERY OVER CASUALS AT DIATOMITE INDUSTRIES

Mr. Kihara asked the Minister for Labour and Human Resource Development:-

- (a) whether he is aware that most workers at the African Diatomite Industries Limited in Kariandus, Gilgil, Naivasha Constituency, have been casuals for more than ten years; and,
(b) whether he could take immediate steps to rectify the situation.

The Assistant Minister for Labour and Human Resource Development (Mr. Ethuro): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the majority of workers of African Diatomite Industries Limited are engaged as casuals because of the inconsistency and fluctuations of the production levels.

(b) We have taken steps to rectify this situation. The District Labour Officer in Naivasha, the employer and the union have been holding consultations to ensure that these long-serving casual employees are considered on permanent contracts.

Mr. Kihara: Mr. Speaker, Sir, the employees who have complained to me about this matter have not been employed permanently. They have been employed consistently for more than ten years. However, could he tell us how long these consultations will take before we know the state of the casual employees?

Mr. Ethuro: Mr. Speaker, Sir, the company basically operates on one-90 basis in a year in terms of normal productions. That is why the casuals are hired for that kind of work. It does not mean that the company does not have permanent employees. It has, but in terms of how long the consultation would take place, we have reached some tentative agreement that by January, 2002, most of the employees should be considered on a permanent basis. We are sharing the same consensus that the Minister and the hon. Member have raised, and we are working with the company to ensure that some specific number of people can be placed on a permanent basis.

Mr. Mwakiringo: Mr. Speaker, Sir, according to labour laws, anybody working as a casual labourer for three months continuously must be absorbed as a permanent employee. When did these rules change, that you could not force this company to absorb these workers who have worked for more than ten years as casual labourers?

Mr. Ethuro: Mr. Speaker, Sir, the law is very clear. If one remains in employment for three months continuously, he should be permanently employed. However, employers terminate the services of employees before they complete three months on the job. They avoid re-hiring them so as to break the three months cycle. In such a case, the law cannot be enforced. So, what we are saying is that we have realised there are people who have been doing that, and we have initiated negotiations to ensure that some of these people, who have worked for many years, are considered for employment on a permanent basis. But in terms of the legality of the matter, there is not much we can do.

Mr. Speaker: Next Question!

Question No.779

JUA KALI PROGRAMMES IN NYATIKE

Mr. Onyango asked the Minister for Vocational Training:-

- (a) what programmes under the Jua Kali Scheme the Ministry has implemented in Nyatike Constituency in the last five years; and,
(b) whether he could list those projects and state how much has been spent on each.

The Assistant Minister for Labour and Human Resource Development (Mr. Ethuro): Mr. Speaker, Sir, I beg to reply.

(a) The Micro and Small Enterprise Training and Technology Project is a national programme which

focuses on the district as the focal point, as opposed to the constituency. Since Nyatike Constituency falls within Migori District, it has benefitted from the Jua Kali Scheme under the Voucher Training Project component of this particular programme.

(b) The Voucher Training Project is the only project that has been implemented in Migori District. A total of Kshs2,041,000 has been spent on training 113 Jua Kali artisans. Another 44 artisans are earmarked for training before the end of the year.

Mr. Onyango: Mr. Speaker, Sir, could the Assistant Minister specify which particular projects in Nyatike Constituency have benefitted from the fund?

Mr. Ethuro: Mr. Speaker, Sir, I was very clear in my reply, that the focal point of the project is the district and not the constituency. However, I have a list of implemented projects, from which the hon. Member can identify the projects that fall under his constituency. The focal point of the project is Migori District, and Kshs2 million has been spent for training 113 artisans.

Mr. Achola: Mr. Speaker, Sir, is the Assistant Minister aware that the Voucher Training Project is really not benefitting anybody because the trainers claim to have trained certain Jua Kali artisans when, in fact, no training has been carried out? Is he aware that, that is what is happening in the field, and that the money provided under this programme is actually being thrown to the dogs?

Mr. Ethuro: Mr. Speaker, Sir, I am not aware that, that is happening. We have put a structure in place to ensure that many institutions carry out training. Also, there is a committee which selects the artisans to be trained. So, I do not believe that the hon. Member's allegations are correct.

Mr. Speaker: Very well. Let us proceed to Mr. P.K. Mwangi's Question!

Question No.472

LAND RECLAMATION IN MARAGWA

Mr. Speaker: Is Mr. P.K. Mwangi not here? The Question is dropped.

(Question dropped)

Question No.780

KISII TEA FARMERS' UNION
UNREST OVER PAYMENTS

Mr. Anyona asked the Minister for Agriculture:-

(a) whether he is aware of serious unrest between tea farmers and directors of tea factories in Gucha, Kisii and Nyamira Districts because of poor second (bonus) payments for 2000/2001;

(b) what were the total earnings and operational costs of Kebirigo, Nyankoba, Nyansiongo, Sanyanyi and Tombe Tea Factories in Nyamira District; Kiamokama Tea Factory in Kisii District, and Nyamache and Ogembo Tea Factories in Gucha District;

(c) what was the mode of payment to farmers without bank accounts; and,

(d) whether he could order for new elections for directors in all the tea factories in Gucha, Kisii and Nyamira Districts in order to end the unrest in the tea sub-sector.

The Assistant Minister for Agriculture and Rural Development (Col. Kiluta): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that there was some unrest in some of the mentioned tea factories.

(b) The following were the total earnings and operational costs of Kebirigo, Nyankoba, Nyansiongo, Sanganyi and Tombe Tea Factories in Nyamira District; Kiamokama Tea Factory in Kisii District, and Nyamache and Ogembo Tea Factories in Gucha District.

<u>Factory</u>	<u>Operational Costs</u>	<u>Total Earnings</u>
Nyansiongo	Kshs250,871,477	Kshs485,705,718
Sanyanyi	Kshs341,644,046	Kshs612,615,039
Tombe	Kshs348,360,986	Kshs578,101,425
Kebirigo	Kshs307,529,157	Kshs506,571,524
Nyankoba	Kshs260,883,969	Kshs425,645,792
Kiamokama	Kshs325,903,770	Kshs508,794,296
Nyamache	Kshs352,935,122	Kshs624,454,256

Ogembo

Kshs378,314,700

Kshs619,972,202

(c) Farmers without bank accounts were paid in cash through their respective leaf base managers.

(d) I have no powers to order for elections of directors in tea factories. These are limited liability companies governed by the Companies Act, Cap. 486, and their own Memoranda and Articles of Association. If for any reason, tea farmers, who also own these factories, are dissatisfied with the performance of their directors, they should invoke the relevant provisions of the law to remove such directors from office, instead of resorting to ill-advised tea boycotts and destruction of their own property.

Mr. Anyona: Mr. Speaker, Sir, first of all, the Assistant Minister should have apologised for not having been here yesterday to answer this Question.

Mr. Speaker: Thank you for bringing the matter to my attention, Mr. Anyona.

Col. Kiluta, I have always been warning Members of the Front Bench and everybody else in this House to take their job seriously. In spite of all that, where were you yesterday, and why did you not apologise today?

Col. Kiluta: Mr. Speaker, Sir, I wish to apologise on behalf of my substantive Minister. You realise that I am only an Assistant Minister, Sir.

Mr. Speaker: Col. Kiluta and everybody else, let me tell you something. Under the Standing Orders, the definition of a Minister includes an Assistant Minister. How you organise yourselves in your offices is not the business of the Chair. If my attention is drawn to a request to name the Minister in charge of this Question, I will name you, Col. Kiluta.

Col. Kiluta: Mr. Speaker, Sir, I have noted your sentiments. We will take appropriate action next time.

Mr. Speaker: Very well.

Mr. Anyona: Mr. Speaker, Sir, I spared the Assistant Minister from naming in the interest of the House. Also, he is my friend. I asked the Minister for Agriculture yesterday, who was supposed to answer this Question, and he replied that it was Col. Kiluta. So, the Assistant Minister is not being entirely truthful with the House. Be that as it may, I would like to find out whether the Assistant Minister has received letters sent to him by farmers from these factories. Farmers from Nyankoba and Tombe Tea Factories, which are located in my constituency, have written letters to the Assistant Minister. In fact, farmers from Nyankoba Tea Factory wrote directly to the Minister on 31st October, 2001, and one of the issues they raised was that, out of the operational expenditure highlighted by the Assistant Minister here, the factory directors had spent Kshs14 million on tours. In the case of Tombe Tea Factory, the directors spent Kshs1 million to visit this year's Nairobi Agricultural Society of Kenya (ASK) show. So, could he give a breakdown of the operational expenditure highlighted here, indicating how it was incurred? I would like to table this letter in case the Assistant Minister has not got it.

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

Col. Kiluta: Mr. Speaker, Sir, I must apologise and say that I did not see that letter, but we can look at it. As I said, the factories have got powers to discipline directors. This is because since we liberalised the tea sector, the Ministry is no longer in control of the directors. But if hon. Anyona wants us to assist, we can do that.

Mr. Wamae: Mr. Speaker, Sir, what surprises me about these factories is that their operational costs exceed 50 per cent of the revenue received from them. This operational cost is too high.

Col. Kiluta: Mr. Speaker, Sir, that is an observation, but the truth of the matter is that some of these figures are agreed upon by the factories themselves. As you realise, the price of tea leaves per kilogramme varies from factory to factory.

Mr. Speaker, Sir, the only thing that is constant is the operational cost, which seems to have been agreed upon by the directors themselves.

Mr. Angwenyi: Mr. Speaker, Sir, could the Assistant Minister answer the question raised by Mr. Anyona? He should give us a tabulation of these operational costs. He should also give us the amount of money that was paid to the farmers per kilogramme.

Col. Kiluta: Mr. Speaker, Sir, when I answered this Question, I gave the operational costs per factory. It is a long list and if the hon. Member wants it, I can give it to him. I can table it before the House.

Mr. Speaker: You can table it!

Col. Kiluta: Mr. Speaker, Sir, payments per kilogramme also vary from factory to factory. The following tea factories paid as follows:- Nyasiongo - Kshs17.83; Sanganyi - Kshs14.05; Tombe - Kshs12; Kibirigo -

Kshs11.63; Nyankoba - Kshs12.10; Kiamokama - Kshs10.50; Nyamache - Kshs13.68 and Ogembo - Kshs11.56.

As you realise, payments per kilogramme of tea leaves vary from one factory to the other depending on the quality of leaf delivered.

Mr. Anyona: Mr. Speaker, Sir, the Assistant Minister has said that if we want his assistance, we should seek it. That is precisely what that letter has sought. The farmers have asked him to intervene and help them. I have received a similar letter from Tombe Tea Factory.

But could I ask the Assistant Minister to do two things? First, he should give us a breakdown of the operational costs of each factory. I raised the element of tours, which, in the case of Nyankoba Tea Factory, cost Kshs14 million, and a tour to the Nairobi International Agricultural Show cost Kshs1 million in the case of Tombe Tea factory. We want that breakdown. Secondly, we want the Assistant Minister to table the memorandum and articles of association. This is because that is where the terms which govern actions of directors are contained.

Mr. Speaker, Sir, when the Tea Act was amended, it required tea factories to amend their articles of association to be slightly differently from those in the Companies Act because these are not, strictly speaking, companies.

Could he table them here so that the farmers can then be guided on what to do?

Mr. Speaker: Well, articles of association of a public company are public documents and can be found at the Attorney-General's office. I think that is one of Mr. Anyona's requests and you must respond to it.

Col. Kiluta: Mr. Speaker, Sir, the first request by Mr. Anyona was for me to give him the breakdown of the operational costs of each factory. We can demand that information, from the factories because he had not asked for it.

Mr. Speaker, Sir, I will go back and demand that information and as soon as it is available, I will let the hon. Member have it.

Mr. Speaker: Can you bring it by next week?

Col. Kiluta: Mr. Speaker, Sir, I really do not know. We have got a number of factories and writing to them and getting the response may take long. But we will try.

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir, is the Assistant Minister in order to mislead this House that he only got a lump sum amount for operational costs? He should have been told what bills built up to that lump sum amount of money.

Mr. Speaker: That is not a point of order.

Question No.408

DISILTATION OF DAMS IN MBOONI

Mr. Kalulu alimuuliza Waziri wa Maji:-

(a) kama anaelewa kuwa aliahidi Bungeni mwaka wa 1998 kuwa mabwawa yaliyotengenezwa na wakoloni katika mwaka wa 1954, na ambayo yamefunikwa na udongo katika taarafa za Mbooni, Kalawa na Tulimani, yangetengewa pesa na kutengenezwa mara moja; na,

(b) ni lini haya mabwawa yatarekebishwa.

The Assistant Minister for Environment and Natural Resources (Mr. Kofa): Bw. Spika, ninaomba kujibu.

(a) Ndio, mnamo mwaka wa 1998/1999 wa makadirio ya fedha, Wizara yangu ilikuwa imetayarisha mipango kabambe ya kurekebisha baadhi ya mabwawa ya zamani katika tarafa za Mbooni, Kalawa na Tulimani. Nyingi za fedha za

kurekebisha haya mabwawa, zilitegemewa kutoka kwa wafadhili wetu kama vile European Economic Union (EEU), *El Nino* Emergency Programme na Belgium Administration Development Co-operation (BADCO). Kutokana na sababu ambazo hazikujulikana, baadhi ya hawa wafadhili walizuia misaada hiyo ya kifedha, na hivyo basi kufanya mipango yetu kusita kidogo.

Hata hivyo, Wizara yangu, kupitia kwa wafadhili ambao hawakukata misaada, ilifanikiwa kutoa mchanga kutoka mabwawa ya Kwa Mukuu, Mwambe na Kyamakuthi. Wakati huo huo, bwawa moja jipya la Ndauni lilichimbwa na kukamilika. Pia, mabwawa ya Maua na Kaloi yalitolewa mchanga.

(b) Wizara yangu imetenga Kshs3.7 million kwa Wilaya ya Makueni kwa ajili ya kurekebisha mabwawa katika mwaka huu wa fedha 2001/2002. Pamoja na hayo, Wizara yangu, ikishirikiana na wafadhili,

inashughulikia mabwawa matano katika Mbooni kwa sasa. Hayo mabwawa ni kama yafuatayo:-

- (i) Tarafa ya Kalawa - bwawa la Wendo wa Mutukya linajengwa upya.
- (ii) Tarafa ya Tulimani - Syonthaa Earth Dam inarekebishwa.
- (iii) Tarafa ya Mbooni, Mulima Earth Dam inarekebishwa.
- (iv) Tarafa ya Tulimani, Bwawa la Syuuni linajengwa upya.
- (v) Tarafa ya Kalawa, Kathulumbi Earth Dam inajengwa upya.

Wizara yangu itaendelea kurekebisha mabwawa zaidi kulingana na vile pesa zitakavyopatikana.

Mr. Kalulu: Bw. Spika, sijatosheka na majibu mengine ambayo Waziri Msaidizi ametoa. Orodha ya majina ya mabwawa ambayo nilimpatia Waziri Msaidizi hakuyasoma, bali amesoma orodha ya majina ya mabwawa mengine ambayo yako katika sehemu za Kibwezi, Kilome na Kaiti. Je, Waziri Msaidizi amepoteza orodha ya majina ya mabwawa ambayo nilimpatia yeye mwenyewe katika afisi yake, au iko wapi? Ama iko katika mfuko wake?

Mr. Kofa: Bw. Spika, labda Bw. Kalulu amekasirika. Hakunipa orodha ya mabwawa hayo. Lakini katika Tarafa ya Kalawa, mabwawa ambayo yalijaa mchanga yalirekebishwa. Kwa mfano, Kwa Mukuu Earth Dam ilirekebishwa na shirika la Danish International Development Agency (DANIDA) katika mwaka wa 1997, na iligharimu Kshs400,000. Mwambe Earth Dam pia ilirekebishwa na DANIDA katika mwaka huo huo wa 1997, na ikagharimu Kshs400,000 vile vile. Bwawa la Ndauni pia lilichimbwa na DANIDA kwa gharama ya Kshs400,000. Kyamakuthi Earth Dam ilirekebishwa na DANIDA vile vile kwa gharama ya Kshs400,000. Maua Earth Dam---

Mr. Speaker: How long is that list, Mr. Kofa?

Mr. Kofa: Bw. Spika, nimemaliza.

Nilikuwa nikisema kwamba Maua Earth Dam lilirekebishwa na DANIDA vile vile kwa gharama ya Kshs400,000.

Mr. Munyao: Mr. Speaker, Sir, some of us come from the area referred to in the Question. I would like to put it to the Assistant Minister that the names which he has just read out do not belong to that area. A place like Chamakuthi and all the others do not exist in that area. Therefore, the dams listed in his reply do not exist in the area, just like the hon. Member has just said.

Mr. Speaker, Sir, let the Assistant Minister find out where those names belong. As a confirmation, now that a Motion came to this House and the Minister accepted to construct more dams in the area and desilt those dams which have been silted, can he promise this House that he will rectify this situation by making sure that money is made available to desilt dams in that area and several other areas?

Mr. Kofa: Mr. Speaker, Sir, I do make the promise.

Question No.775

QUERY OVER SUBSTANDARD WATER PUMPS IN VOI

Mr. Mwakiringo asked the Minister for Water Development:-

- (a) whether he could explain why the residents of Buguta in Kasigau Location do not get constant water supply from Maingu pump stations;
- (b) why the current supplier of water pumps at Maingu and Itinyi stations is supplying substandard pumps which cannot sustain pressure; and,
- (c) what action he is taking to ensure that pumps supplied in the area are in good working conditions.

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

(a) The residents of Buguta in Kasigau Location do not get constant water supply because the demand for water exceeds the supply by far. This situation arose due to rapid population increase in the area. As a result of these conditions, water is now being rationed to the residents of Kasigau because the water flow is not enough to cover all the residents at once.

(b) I am not aware of any substandard pumps which have been supplied by the current pumps supplier at Maingu and Itinyi stations. The pumps so far supplied were strictly verified by experts and they met the specifications required.

(c) Pumps, like all other machines, occasionally break down. However, my Ministry has a technical team which carries out regular inspection and maintenance of all installed pumping equipment. The pumps at Maingu

and Itinyi stations are in good working condition.

Mr. Mwakiringo: Mr. Speaker, Sir, the answer given by the Assistant Minister is not satisfactory. One, the Assistant Minister must admit that the officers on the ground are corrupt. This is because the residents of Buguta are not given water at any one time during weekdays, except on Fridays, Saturdays, and Sundays, when they know that I will be going there over weekends to attend to my constituents. Those are the days when the water reaches them, but during the rest of the days, they do not get water. This situation has continued because officers from the Ministry collude with people with underground water tanks to make business by selling water to the people of Buguta during weekdays. Could the Assistant Minister undertake to cut off the keys which supply water to those private business people with water tanks underground?

Mr. Kofa: Mr. Speaker, Sir, I am not aware of the existence of corrupt officers on the ground, unless the hon. Member has some evidence to show that. However, I did say that residents of Buguta in Kasigau Location do not get water supply. That one I said because, as I said, demand for water is in excess of supply, and secondly, because of population increase.

Mr. Mwakiringo: Mr. Speaker, Sir, let me ask the last question.

Mr. Speaker: Sorry, Mr. Mwakiringo. I must give others the chance to ask their Questions.

Mr. Mwakiringo: It is just a small one, Mr. Speaker, Sir.

Mr. Speaker: Order! Order, Mr. Mwakiringo! Do not negotiate when I do not have time. I am always good natured, but today, I am not!

Question No.737

POLLUTION OF RIVERS IN KITUTU CHACHE

Mr. Angwenyi asked the Minister for Water Development:-

- (a) whether he is aware that the rivers in Kitutu Chache are highly polluted leading to the rapid spread of water-borne diseases such as typhoid, dysentery and cholera;
- (b) whether he is further aware that the only water scheme (Kiareni Water Project) in the constituency has stalled; and,
- (c) whether he could, as a matter of urgency, set funds aside for the following community water projects:-

- (i) Nyatieko Water Project;
- (ii) Sensi Water Project;
- (iii) Nyabinyinyi Water Project;
- (iv) Nyamondo Water Project; and,
- (v) Eronge Water Project.

The Assistant Minister for Water Development (Mr. Kofa): Mr. Speaker, Sir, I beg to reply.

(a) No, I am not aware.

(b) Yes, I am aware that Kiareni Water Project has stalled. However, Kiareni Water Project is not the only water project in Kitutu Chache Constituency. There are 13 other piped water supply schemes which are operated and maintained by the user community and institutions in Kitutu Chache.

(c) In view of the negative economic conditions in our country, my Ministry is not able to provide funds to Nyatieko, Sensi, Nyabinyinyi, Nyamondo and Eronge Community Water Projects at the moment. However, my Ministry will always offer technical support to the community whenever the service is needed. In this respect, the community has been advised to seek assistance from other water development partners, such as the Community Development Trustee Fund, the British High Commission small grants projects, and the Kenya-Sweden Rural Water Supply and Sanitation Programme, among others, to implement its water projects.

Mr. Angwenyi: Mr. Speaker, Sir, I wish I had a copy of the written reply, which I have not received yet. Maybe, if I had, I would have asked a proper supplementary question. But we have allocated funds to this Ministry to provide these services to the people of Kenya. Could the Assistant Minister undertake to share out some of the amounts that we have allocated to this Ministry with those projects in my constituency?

Mr. Kofa: Mr. Speaker, Sir, these projects, as I said, are community-based. But the Ministry is willing to assist whenever asked to do so.

Mr. Omingo: Mr. Speaker, Sir, there was a policy guideline in the Ministry of Water Development stating that it will provide water for Kenyans by the year 2000. The hon. Member is making a request on a very basic necessity for his constituents. What really happened to those policy guidelines which the Ministry had in

terms of providing water to all Kenyans by the year 2000, or it was water minus for all, by the year 2000?

Mr. Kofa: It is true, that was the Ministry's wish. But as I have already said, we have had a population outburst and weather inconveniences. Indeed, the *El Nino*-induced rains destroyed most of the structures. So, bearing that in mind, it was not possible to supply water to every Kenyan by the year 2000.

Mr. Angwenyi: Mr. Speaker, Sir, the Assistant Minister said that he is not aware that water is polluted in Kisii. If the Assistant Minister would have travelled to any part of Kisii, he would have seen that Kisii is like a cosmopolitan city now. All our water sources have been polluted and the Ministry has undertaken, as an agent of the Government, to provide clean water to Kenyans. Could he undertake to source funds to provide clean water in Kitutu Chache?

Mr. Kofa: I will do that when funds will be available.

Mr. Speaker: Hon. Members, I order that the Questions which have not been asked today be given the first priority tomorrow. I think we will take more Questions by Private Notice than ordinary Questions because we are coming to the end of the Session.

Question No. 742

REFUND OF SACCO SHARES TO MR. GICHUHI

(Question deferred)

QUESTIONS BY PRIVATE NOTICE

SHOOTING OF MASTER MOKENI BY POLICE

(Mr. Shitanda) to ask the Minister of State, Office of the President:-

- (a) Is the Minister aware that a prison convict kept at Kabras Police Station was shot and killed by the police on 10th November, 2001?
- (b) Is he further aware that the convict, by the name Stone Mokeni, had been kept at the police station three days after conviction in a Butali Court?
- (c) What led to the shooting of the said Master Mokeni by police?

(Question deferred)

PROTECTION OF KENYANS FROM
TOXIC SUBSTANCES

(Mr. Gatabaki) to ask the Minister for Public Health:-

- (a) Is the Minister aware that many fruit juices and other popular ready-to-drink products contain dangerous levels of lead, harmful to consumers' health?
- (b) Is he also aware that Kenyans may be facing cancer and other health risks because of uncontrolled use of artificial flavours and preservatives in a wide range of processed and packaged food products?
- (c) Is he also aware that saccharin, banned in some countries as far back as 1997, is widely used in Kenya as sweetener and preservative in fruit juices?
- (d) What measures is the Ministry taking to ensure Kenyans are protected from toxic substances in processed and packaged food products?

(Question deferred)

HARASSMENT OF VILLAGERS BY
POLICE IN SOUTH MUGIRANGO

(Mr. Omingo) to ask the Minister of State, Office of the President:-

- (a) Is the Minister aware that on 21st November, 2001, five police officers illegally invaded Iringa Bomocharo, Bonyabwanga and Bombure villages in the pretext of flushing out *chang'aa* brewers?
- (b) Is he further aware that the officers destroyed property, allegedly took bribes and harassed the women and children between 3.00 a.m. and 1.00 p.m., thereby attracting the wrath of the

villagers?

(c) Could the Minister table a list of the officers involved in these illegal raids and state what action he is taking against the DO, the chief and the police officers concerned?

(Question deferred)

DISPLACEMENT OF SQUATTERS IN KISAUNI

(Mr. Maitha) to ask the Minister for Lands and Settlement:-

(a) Is the Minister aware that Land Parcel GL.Plot No.15A Kidutani/Mtwapa in Kilifi District which is in the process of adjudication is being sold privately by the local administration personnel?

(b) Is he further aware that the squatters living on the same land at Kidutani, Chengoni, Mtomkuu, Kidzimbwe and Lutsanga are being threatened by the local administration with eviction letters?

(c) What action is the Minister taking to have the land allocated to the squatters?

(Question deferred)

COMMUNICATION FROM THE CHAIR

PROCEDURE FOR RE-COMMITTING A BILL

Mr. Speaker: Before we go to the next agenda, I have had inquiries as to the procedure to be followed in the event of re-committing a Bill. I would like to give the following guidance in the event that it does occur.

After consideration of a Bill, the Chairman will report progress to the House. A Motion will be moved and a Question proposed in the following terms: "The House doth agree with the Committee in the said Report."

But before the Question is put, under Standing Order No.109(2), an amendment could be moved to that Motion to add the following terms - if you want a re-committal -

"Subject to the recommittal of the Bill in respect of clauses."

Whatever clause any hon. Member wishes to re-commit should be put in that Motion to a Committee of the whole House. So, those are the words to be added at the end of the Motion of Report of Progress. The Mover of the amendment will, for the purposes of re-committing the Bill to the Committee of the whole House, explain to the House the reasons for moving such an amendment. So, it is the business of the Mover of a Motion re-committing a Bill to the Committee of the whole House to explain to the House the reasons why such re-committal is desirable. After the short debate arising out of that, the Question will be put. It will be:-

"The House doth agree with the Committee in the said Report subject to the re-committal of the Bill in respect of Clauses "A", "B" and "C" to a Committee of the whole House."

If that Question will be carried, the Mover of the Motion will indicate to the Chair when he wishes the Bill to be re-committed. This could be immediately; and if that is the position, the Chair may order an immediate re-committal. It could also be tomorrow or any other day. It must be understood that it is not the whole Bill we re-commit, but whatever clauses the Mover would like to. But if the Motion is negatived; that is, the House has refused a re-committal, then it will proceed to the Third Reading and the usual procedure will apply.

So, I hope that I have made that clear. Inquiries have been made to me and I think I want to make it in plenary so that any hon. Member who is interested can use it today, next year or ten years from now, so long as he is on record.

Thank you. Let us move on to the next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

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

THE FINANCE BILL

The Temporary Deputy Chairman (Mr. Musila): Order, hon. Members! We are now in the Committee of the whole House. I am just perusing the HANSARD to see where we had stopped. According to the HANSARD, we stopped at the Fourth Schedule. So, we will now start from where we had left; that is, after the Chair had reported progress. We had just concluded the Fourth Schedule, which was agreed to.

Mr. Muithia: On a point of order, Mr. Temporary Deputy Chairman, Sir. We are not quite sure where we had stopped. Have we agreed to the Motion on the Progress of the Committee?

The Temporary Deputy Chairman (Mr. Musila): Yes, I have just briefed the Committee of the Whole House that we finalised the Fourth Schedule. So, now, we are starting with the Fifth Schedule.

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Chairman, Sir. Has the Bill been re-committed?

The Temporary Deputy Chairman (Mr. Musila): No! We have not reached there yet!

Fifth Schedule

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

THAT, the Fifth Schedule to the Bill be amended -

(a) by deleting paragraph 3 and replacing the following new paragraph -

3(1) Subject to subparagraph (2), education and training services offered to students by institutions and establishments registered by the Government.

(2) Subparagraph (1) shall not apply in respect of business or user training and other consultancy services designed to improve work practices and efficiency of an organisation.

(b) by deleting paragraph 10 and replacing it with the following new paragraph -

10. Renting, leasing, hiring or letting of -

- (a) land;
- (b) residential buildings; and
- (c) non-residential buildings.

(c) by deleting paragraph 14 and replacing it with the following new paragraph -

14(1) Subject to paragraph (2), the hiring, leasing or chartering of the goods listed in Part I of the Second Schedule and Part B of the Fifth Schedule, but excluding the chartering of aircraft and the hiring of buses.

(2) Paragraph (1) shall not apply in respect of the chartering of aircraft for the provision of air ambulance services.

(d) by deleting paragraph 16 and replacing it with the following new paragraph -

16. Services rendered by -

- (a) trade, professional and labour associations;
 - (b) educational, political, religious, welfare and other philanthropic associations to their members:
- Provided that this paragraph shall not apply where any such services are rendered by way of business.

(e) by inserting the following new paragraph -

21. Transportation of tourists by any means of conveyance.

This is really a question of definition. We are trying to define education and the kind of training services, which will be exempted from tax. This is purely for purposes of clarification and to avoid having too many disputes and issues being raised. We are amending paragraph 10 to withdraw taxation on rent for non-residential purposes. This one has been a subject of great interest in public domain. We are now saying that we will exempt this tax on all rents, including from non-residential buildings.

An hon. Member: What about paragraph 14?

The Minister for Finance (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, amendment to paragraph 14 is meant to make chartering of aircraft for the provision of air ambulance services exempt from the VAT. I think it is a welcome move to all of us, particularly those who will be unlucky to fall ill in places far away from hospitals.

There is also a proposed amendment to paragraph 16. This is meant to make the services of the listed organisations exempt from VAT. Such services are not rendered for business purposes.

Mr. Temporary Deputy Chairman, Sir, paragraph 21 has been inserted in order to make transportation of tourists exempt from tax. We hope that this will be a measure that will provide some incentives to the tourism industry at this particular time when we are just going through a severe slump. I want to confirm that other countries within the region have done exactly that, and I recommend we do so.

(Question of the amendment proposed)

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

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

(Fifth schedule as amended agreed to)

(Sixth schedule agreed to)

Seventh Schedule

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

THAT, the Seventh Schedule to the Bill be amended by inserting the following new tariff number and description in its proper numerical sequence -

<i>Tariff No.</i>	<i>Tariff Description</i>
3808.10.30	Aerosol insecticides

Mr. Temporary Deputy Chairman, Sir, this item was introduced to make aerosol insecticides free of tax. This insecticides is normally used to kill mosquitoes. The intention here is to make this product more affordable to wananchi in their fight against mosquitoes.

(Question of the amendment proposed)

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, could the Minister explain to the House the difference between aerosol insecticides and other insecticides? Why is the Minister exempting only the aerosol insecticides and not the others? Have the others been included? Why single this one out? What is its significance?

The Minister for Finance (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, we have made this distinction because we realise the other types of insecticides can be used for commercial purposes. We want to exempt aerosol insecticides from VAT, so that we facilitate the fight against the spread of malaria through mosquitoes.

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I would like to remind the Minister that one of the

biggest dangers in my constituency is tsetse flies. I do not know which insecticides kill tsetse flies. Have your technocrats advised you that such insecticides should also be imported without tax so that they become easily available and cheaper? This will assist us in dealing with the tsetse fly menace in Suba and the lake region in general.

The Minister for Finance (Mr. Obure): Mr. Temporary Deputy Speaker, Sir, I appreciate the significance of the sentiments expressed by hon. Kajwang. I know the dangers posed by tsetse flies and the impact of tsetse flies to people's productivity. We will find ways of ensuring that if there are any insecticides that kill tsetse flies, we also exempt them from this tax.

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

(Seventh schedule as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

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

(Question proposed)

Mr. Mwenje: Mr. Temporary Deputy Chairman, Sir, now that the mood in the House is good, could the Minister tell us exactly which amendment he is talking about? Is it the ones we have proposed or he is referring to something else?

The Temporary Deputy Chairman (Mr. Musila): Order! The Minister did not talk about any amendments. He talked about the amendments which have already been agreed to.

The Minister for Finance (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, I wish to inform hon. Members that after the adoption of the Finance Bill with amendments, I intend to come up later to put before the House the provisions relating to Section 84.

The Temporary Deputy Speaker (Mr. Musila): Order hon. Members! I think Mr. Speaker explained this very well; that, that move will not be done here. It will be moved when we are reporting. Please, be patient, since you have got the Minister's word.

(Question put and agreed to)

THE BANKING (AMENDMENT) BILL

Clause 2

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, we are now in the Committee Stage to consider the Banking (Amendment) Bill. In fact, you have just said that we are considering Clause 2, which defines the Minister, as the Minister for Finance, so that there is no doubt that the responsibility of making decisions is now on the shoulders of the Minister for Finance. I wonder whether the Minister for Finance is aware of the provisions of Sections 44 and 45 of the Act which he does not seek to amend. I wonder whether this is an oversight or a deliberate move, because, Section 44 of the Act, which I would have thought he would have taken the opportunity to amend, says that without the prior authority of the Minister for Finance, the banks cannot alter the charges, which would include interest rates. So, the implication of this Section as it is, is that, despite the earlier amendments to the Central Bank of Kenya Act, in 1997 removing interest controls, without amending Section 44, any increments on interest rates by the banks remain illegal up to now. How is it that you are not trying to tidy up the law by amending this Section? If you do not, sooner or later, we are going to have another case in court, and the bankers might start filing another constitutional reference. Is the Minister aware of the implications of Section 44, if it remains un-amended? If so, why has he not taken the opportunity of amending of the Banking Act?

The Minister for Finance (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, I am aware of the provisions of Section 44 of the Banking Act, but I did not consider it prudent at this stage, to consider amending it or doing anything about it, because, as you are aware there is case in court relating to this aspect of the provisions of the Banking Act. I think it would be better to avoid any discussions on that issue, because it would be *sub judice*.

Mr. Sambu: Mr. Temporary Deputy Speaker, Sir, the Minister has said that there is a pending case in court, but the litigation is about parties and not about the law. Are the courts superior to Parliament in matters relating to enactment of laws?

Mr. Keriri: Mr. Temporary Deputy Chairman, Sir, the Minister has responded to Mr. Muite's question in a casual manner. If the Minister reads the Section he says he is aware of, it actually means that any increase on the interest rates that has taken place so far is illegal, because none of those banks have sought the authority of the Minister to increase interest rates. I suppose this should have been amended long time ago, if the Minister for Finance was to act the way he has been acting. He has allowed illegality to continue before coming to Parliament to amend that particular section. If he is aware, then we are dealing with a matter that the Minister has failed to address. I do not think the answer he has given is adequate. If it is, then we are going to continue with illegalities.

The Minister for Finance (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, Mr. Sambu wanted to know who is more superior; the courts or this Parliament. I do not think I am competent enough to comment on such an important issue. As far as I am concerned, each of those institutions have different roles to play. Parliament on one hand makes laws and, the courts on the other interpret those laws. As far as I am concerned, the issue is in court, and I am meant to understand that it would be *sub judice* to discuss the matter at this stage. With regard to the question raised by Mr. Keriri, I would like to say that, really, the issue is in court so that the court can basically determine on the question of--

Mr. Muite: On a point of order, Mr. Temporary Deputy Chairman, Sir. Is it in order for the Minister to mislead the House, that the issue which is now pending in court - I am not going to the merits - relates to Section 44 of the Banking Act, when it is common knowledge that the issues in court relate to the amendment of the Central Bank of Kenya Act?

The Minister for Finance (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, I also know that the issue in court relates to interest rates. I also know that with respect to the issue raised by Mr. Keriri, the Minister for Finance in fact, allowed deregulation of rates. By that very action at the time, he in fact, gave consent to the institutions to charge interest because they were deregulated. So, I see no inconsistency at all.

(Clause 2 agreed to)

*(Clauses 3, 4, 5, 6, 7, 8, 9,
10 and 11 agreed to)*

(Title agreed to)

(Clause 1 agreed to)

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

The Temporary Deputy Chairman (Mr. Musila): But I have already put the Question and it has already been agreed to! Please, do not take me backwards!

Mr. Kibicho: It is a matter of procedure!

The Temporary Deputy Chairman (Mr. Musila): We are following the right procedure!

The Minister for Finance (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Banking (Amendment) Bill, and its approval thereof without amendment.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

REPORTS

THE FINANCE BILL

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

The Minister for Finance (Mr. Obure): Mr. Deputy Speaker, Sir, pursuant to that, I beg to propose that the House doth agree with the Committee in the said Report, subject to the re-committal of the Bill in respect of Clause 84 to a Committee of the whole House.

The Vice-President and Minister for Home Affairs (Prof. Saitoti) seconded.

Mr. Deputy Speaker: Order! The procedure ought to be as follows: That you propose that the House doth agree with the Committee in the said Report as we normally do. Now, if there is an intention to amend that Motion, then you will go on to say: "Subject to the re-committal of the Bill in respect of Clause 84". He cannot move a Motion and then move an amendment while on his feet. Somebody else must do that. Move the Motion first, Mr. Minister!

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

The Vice-President and Minister for Home Affairs (Prof. Saitoti): Mr. Deputy Speaker, Sir---

Mr. Deputy Speaker: Sorry! Let me propose the Question first! That is when you can start discussing it.

(Question proposed)

The Vice-President and Minister for Home Affairs (Prof. Saitoti): Mr. Deputy Speaker, Sir, I do wish to move an amendment to the Motion to the following effect:-

THAT, subject to the re-committal of the Bill in respect of Clause 84 to a Committee of the whole House.

The Minister for Finance (Mr. Obure) seconded.

(Question proposed)

Mr. Kajwang: Mr. Deputy Speaker, Sir, we are happy that the Government has requested for this amendment to re-commit the Bill, especially in respect of Clause 84, to a Committee of the whole House. First, we must say that when the matter came up yesterday, there were a lot of points of order as to whether Mr. Angwenyi should be in or not. It was mixed up with other sections and we were a bit confused when the Question was put. The House did not apply its mind to this clause. So, we are happy that it can be brought back to the Committee so that we can deal with it. But the main question was that we felt an amendment to the Penal Code is such a serious amendment that should not be sneaked in through the Finance Bill. If the Government has an intention of amending the Penal Code, it should do so with a proper Bill to amend the Penal Code or through the Law (Miscellaneous) Amendments Bill, so that the House can apply its mind to the Bill sufficiently, before making a finding.

With those few remarks, I beg to support.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, I would like to thank the Government for seeing sense in assuming this important amendment. If we were not to make the amendment, this clause could have been misused by mischievous and malicious people, who could carry out vendettas against their opponents, whether political or commercial. Like the previous contributor has just said, we do not want to use the Finance Bill to amend the Penal Code or major laws of this country. I believe that if the Government wants to pursue this matter further, it could bring another Bill. The Bill could be exhaustively discussed and we would be assured that the Government has got the machinery to protect the interests of those people who draw cheques. As we know today, court files and decisions get lost or are doctored. So, Kenyans are scared of giving a leeway to mischievous and malicious people to misuse the good intentions of people who draw cheques in payment of services or goods.

With those few remarks, I beg to support.

Mr. Mwenje: Mr. Deputy Speaker, Sir, all that we would like to say is: If only we debated in this manner, where both sides of the House could agree that where we find something wrong, we remove it--- That is because, at one stage or another, this side could come to that side and vice-

versa. That could happen. It is, therefore, important that whatever decisions we make, we are careful. That is because Section 84 is one of the most dangerous. It could be misused if we have the wrong person in power. That is why we agree with that side and we should now put it back to the Committee of the whole House, discuss it a little, amend it and then go on the same route.

With those few remarks, I beg to support.

Mr. Muihia: Mr. Deputy Speaker, Sir, I also want to join my colleagues in supporting the Motion---

An hon. Member: Speak loudly!

Mr. Muihia: The microphones are being switched off! We are cognisant of the fact that we need to have fair transactions in whatever dealings we have between members of the public and the banks. It is wrong to think that Members of this House want to continue having bank transactions in bouncing cheques and the like. Therefore, I propose that this amendment should come substantially, so that we can put in a foolproof law that will help the giver and the taker of those transactions.

With those few remarks, I beg to support.

The Minister for Energy (Mr. Raila): Mr. Deputy Speaker, Sir, it is unfortunate that this clause has been withdrawn.

Mr. Deputy Speaker: Order! No clause has been withdrawn yet!

The Minister for Energy (Mr. Raila): Mr. Deputy Speaker, Sir, all I am trying to say more substantively is this: As a House, we really need to give good examples to the country. I am also speaking as somebody who has been in the private sector. It is a bad business practice to issue bouncing cheques.

Mr. Obwocha: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to impute improper motives on the House? It was agreed between the Government and the hon. Members of this House that his amendment had come through the wrong Bill! The Government should bring an amendment to the Penal Code, rather than bringing this amendment through the Finance Bill. He is imputing improper motives on the House!

Mr. Deputy Speaker: Order, hon. Members! What we have before the House is the recommittal of a clause to the Committee of the whole House. So far, there is no amendment before the House. So, let us avoid that topic because that amounts to anticipating debate.

The Minister for Energy (Mr. Raila): Mr. Deputy Speaker, Sir, I would rather reserve what I wanted to say until we go into the Committee of the whole House.

Mr. Deputy Speaker: Hon. Members, for the sake of orderly continuation of business, I call upon the Minister to move that the House goes into the Committee of the whole House now.

The Minister for Finance (Mr. Obure): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, the House doth agree with the Committee in the said report.

Mr. Deputy Speaker: Order, Mr. Minister! You must indicate to us the time you want this to be done.

The Minister for Finance (Mr. Obure): Mr. Deputy Speaker, Sir, I beg move:-

THAT, the House goes into the Committee of the Whole House now.

The Minister for Mineral Exploration (Mr. Kalweo): Seconded.

*(Question, that Clause 84 be recommitted to a Committee of the whole House today,
put and agreed to)*

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

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

THE FINANCE BILL

The Temporary Deputy Chairman (Mr. Musila): Order, hon. Members! We are now in the Committee of the whole House because Clause 84 of the Finance Bill has been recommitted to the Committee of the whole House.

Clause 84

The Minister for Finance (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, as you will recall, there was some confusion when we were deliberating on this aspect of the Bill last night. You will also recall that last night, we proceeded in fact, to delete Clause 85 of the Bill which is very closely linked to Clause 84. For that reason, Clause 84 cannot operate on its own without Clause 85. In the spirit demonstrated by the hon. Members of this House, I therefore, propose that Clause 84 be deleted.

(Question of the amendment proposed)

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, we are grateful to the Minister for moving that Clause 84 be brought back to the Committee and be deleted. Clause 85 which is dealing with a similar matter was deleted yesterday. I want to plead with the House that next time an hon. Member like hon. Angwenyi is almost doing a very important thing for the nation like deleting Clause 84, he should not be thrown out unceremoniously. This has caused us a lot of damage.

With those remarks, I support the amendment.

The Minister for Energy (Mr. Raila): Mr. Temporary Deputy Chairman, Sir, I support the amendment, but for different reasons. I do not share the sentiments of hon. Kajwang, that hon. Angwenyi was moving a very important amendment by deleting this particular clause. This House ought to agree that if somebody knowingly knows that he has no money in his account and issues a cheque to somebody, and receives service as a result of that, he is involving himself in fraud.

Mr. Temporary Deputy Chairman, Sir, last week, I was dealing with a case where somebody went to a travel agency and pretended that he had money in his account and issued a cheque for an air ticket to travel to London and back only for the travel agent to discover that, that account had been closed one year ago. In the meantime, the person had travelled to London and had come back. So, this is something that ought to be made a crime under our statutes.

Mr. Temporary Deputy Chairman, Sir, for this House to refuse to make offences like this one a crime, it means that we, as hon. Members of this House, collectively encourage this kind of fraudulent practice. So, I want to buy the other argument advanced by hon. Kajwang, that this should not have been brought under the Finance Bill. I think it is something that ought to be brought substantively, so that the Penal Code is appropriately amended to make this an offence.

With those remarks, I beg to support

Mr. Obwocha: Mr. Temporary Deputy Chairman, Sir, I think the Minister was not here yesterday. Nobody in this Parliament is encouraging the issuance of bouncing cheques, like the one that was issued to the travel agent when the account had been closed one year ago. We are saying that this is too much an important matter to come through a Finance Bill. We want it to come through the Penal Code so that we can discuss it substantively to see whether it will be misused by the Government against its opponents.

Mr. Temporary Deputy Chairman, Sir, we want it to come to this House in the right manner. I would be the first one to support that nobody should issue a bouncing cheque when he knows that he has no money. This particular amendment was brought through the back door.

Mr. Nyachae: Mr. Temporary Deputy Chairman, Sir, I think we should avoid mixing the two issues here. Committing of fraud, for example, through obtaining money or goods fraudulently is totally different from issuing a bouncing cheque. Let us realise in this House that we are not going to eradicate all criminal activities among the people of this country who want to be criminals. We should not think that by legislating laws to criminalise bouncing cheques, we will be dealing with criminals. Let us accept the fact that even banks themselves know how to deal with dishonest customers. Personally, I do not think this particular section was brought here in good faith. This is contained in the Penal Code and we are dealing with the Banking Act. I believe that---

(Mr. Samoei stood up in his place)

An hon. Member: Kaa chini!

Mr. Nyachae: Mr. Temporary Deputy Chairman, Sir, if the young man wants to challenge this, I can remind him that some years back, Mr. Orengo was chased around because of making false claims on mileage until he had to run out of his own country. We must not legislate laws here when we know that some people want to put ropes around our necks.

(Applause)

Mr. Mwenda: Mr. Temporary Deputy Chairman, Sir, I will be very brief. The kind of mischief that is intended to be cured by this legislation does not exist. Those of us who are lawyers and conduct cases in court from time to time, know that the kind of situation that Mr. Raila was alluding to is taken care of properly by the law relating to obtaining goods or services by false pretences. If a person issues a cheque in return of services given when he knows he has no money, he has already committed an offence which is known under the Penal Code. This is punishable under our legal system. Even in future, this kind of situation does not require a further legislation. It is properly taken care of.

The Assistant Minister, Office of the President (Mr. Samoei): Mr. Temporary Deputy Chairman, Sir, while I support the spirit of this House to try and create harmony so that we can be able to transact the business of this House, I think it is in the interest of us, as Members of Parliament, to provide leadership. Instruments used by the banks and our banking industry, one of them being cheques, have been reduced to pieces of paper and irrelevant documents because of persons who misuse them. I think it would have augured well if this House had provided the way forward and demonstrated its commitment to proper management of our affairs by criminalising acts of issuance of bouncing cheques. I do not think any amount of explanation as to how this amendment was brought to this House will justify what we are doing now by decriminalising issuance of bouncing cheques.

Mr. Temporary Deputy Chairman, Sir, the former Minister for Finance himself, Mr. Nyachae, had brought this issue to the Floor of this House when he was the Minister for Finance. I am surprised now he is saying otherwise. I think it is fair that we are consistent as Members of Parliament.

Mr. Kathangu: On a point of order, Mr. Temporary Deputy Chairman, Sir. It tires our ears and mind to listen to Mr. Samoei talking to us about evils of bouncing cheques. Is it in order for the Assistant Minister to talk to us in this manner when we know that his own boss, His Excellency the President, gave Mr. Njoroge Mungai a bouncing cheque of Kshs500,000? He also gave Kibabii Teachers College a Kshs200,000 cheque which bounced and three others---

An hon. Member: Could you substantiate that claim?

(Laughter)

The Temporary Deputy Chairman (Mr. Musila): Order! Order, Mr. Kathangu! You know the rules of the House and, surely, that is completely out of order.

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

(Clause 84 was deleted)

The Minister for Finance (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its reconsideration of the Finance Bill, Clause 84, and its approval thereof with amendment.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

CONSIDERATION OF REPORT AND THIRD READING

THE FINANCE BILL

Mr. Musila: Mr. Deputy Speaker, Sir, I beg to report that the Committee of the whole House has reconsidered the Finance Bill, Clause 84, and approved the same with amendment.

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

The Minister for Public Health (Prof. Onger) seconded.

(Question proposed)

(Question put and agreed to)

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

The Minister for Public Health (Prof. Onger) seconded.

(Question proposed)

Mr. Muite: Mr. Deputy Speaker, Sir, some of the clauses in this Bill which we are now reading the Third Time, some of us would have wanted to support them in the wider interest of the nation. I would appeal to the Ministers, generally, when we have got important Bills like this one, to be conciliatory. Yesterday, we kept begging them that we vote on the different clauses differently and that we omit some parts of particular clauses so that we pass the rest of them. The Government side was very combative, forcing us to reject some of the clauses that we would have wanted to pass. In future, could they bear in mind that we are also Kenyans and would like to enact provisions that are for the benefit of the country and stop pushing us into corners because we nearly threw out the entire Finance Bill? The Ministers know the effect in the Commonwealth that a Government of the day has in failing to have the Finance Bill enacted. The Government would have to resign. You should stop pushing us to pass these Bills.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Angwenyi: Thank you, Mr. Deputy Speaker, Sir. I am very grateful to the House for re-committing that Bill to the Committee of the whole House so that, that clause can be considered alongside others. We have learnt one experience from what has transpired in the last few days. If we reach a consensus on major issues facing this country we will be able to move forward. I happen to have been in the Australian Parliament two months ago and we were told by the Speaker of the House of Representatives that they always seek consensus on both sides of the House on all major issues facing that nation. They avoid confrontational debating on major issues at all costs. I hope, from now on, the Government will seek consensus from the other side on major issues facing this country, especially the economy, so that we can move forward for the benefit of our country.

Thank you.

Mr. Wamalwa: Thank you, Mr. Deputy Speaker, Sir. I just have a word to say on the passage of this Finance Bill. Contrary to what many people might feel, the Finance Bill has brought out the best in this Parliament. I think both sides accommodated each other. If this will be the trend in the future, then we have a Parliament that this country can rely upon. I would just like to appeal to the House that, in future, the Finance Bill be restricted to financial matters like taxation. Some of the things that we initially disagreed upon were an attempt to use the Finance Bill to amend certain very major Acts, like the Audit and Exchequer Act in the matter of the Auditor-General (Corporations).

In future, things like those should be brought either under the Statute Law (Miscellaneous Amendments) Bill, or specific Bills to amend specific situations. Otherwise, I would like to commend the House for a very combative, but co-operative spirit in the end. I think everybody will go home happy today.

Thank you, very much.

Mr. Deputy Speaker: Mr. Nyanja, I have not heard you in a long time.

(Laughter)

Mr. Nyanja: Thank you, Mr. Deputy Speaker, Sir. I want to enjoy myself with the last speaker in

praising both sides of the House because of the manner in which the debate has ended. I have only one problem in Limuru. I do not know how to treat this particular individual, but he is giving out cheques in various Harambees and you cannot catch him because he goes on---

(Laughter)

Mr. Deputy Speaker: Order! I can see that you have been away for so long that you do not know what order means these days. We are not discussing individuals in the Third Reading. Just make a few brief remarks to give encouragement for the better enforcement of this law.

Mr. Nyanja: Mr. Deputy Speaker, Sir, all I was trying to say is that we have financial minds and brains here. We are all politicians and we have people who like to test us in the political arena. We must be aware of people who give out cheques, but then, later on, they go back to ask the same organising committee not to cash the cheque. So, you cannot criminalise such acts. How do we treat such cases? For how long do people have to wait for the cash in order to take it to the bank? That is the problem that Limuru people are experiencing, and I know it is also faced elsewhere.

Thank you, Mr. Deputy Speaker, Sir.

(Laughter)

Mr. Deputy Speaker: Order! I think I have given you sufficient time to make a few general remarks on this Bill.

(Question put and agreed to)

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

REPORT AND THIRD READING

THE BANKING (AMENDMENT) BILL

Mr. Musila: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered the Banking (Amendment) Bill, 2001, and approved the same without amendment.

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

The Minister for Agriculture (Dr. Godana) seconded.

(Question proposed)

Mr. Kibicho: Mr. Deputy Speaker, Sir, as far as this Bill is concerned, the Minister gave the excuse of the court case as the reason why he could not amend Section 2. This principle of *sub judice* which stops people from discussing matters in court is founded on the common law of England, where laws are made from the courts and Parliament. So, that law was made there---

Mr. Deputy Speaker: Order! Mr. Kibicho, we are considering the Report on the Banking (Amendment) Bill. So, do not bring in any extraneous matters.

Mr. Kibicho: Mr. Deputy Speaker, Sir, I would like to ask the Minister to ensure that there is better administration of this Act. He should not consider cases that are before a court while bringing here amendments which hon. Members require. The reason for this is that courts and Parliament are sources of law. In the process of carrying out its duties, Parliament is not required to refer to the court as an authority.

(Question put and agreed to)

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

The Minister for Agriculture (Dr. Godana) seconded.

(Question proposed)

Mr. Angwenyi: Mr. Deputy Speaker, Sir, here again, the House has demonstrated its maturity in consideration of the major issue of this country. In the same spirit, I hope the Minister for Finance will ensure that the Central Bank of Kenya (Amendment) Bill which we passed in August is implemented for the benefit of our people. As you know, banks have destroyed our economy. So, I am urging the Minister for Finance to move with speed and manage and control our banking system for the benefit of Kenyans, especially with respect to non-performing loans and high interest rates.

With those few remarks, I support.

Mr. Michuki: Thank you, Mr. Deputy Speaker, Sir, for granting me an opportunity to talk about this Bill. I know what I will say will make no difference, given that the Bill has reached the Third Reading. However, I would like to go on record that I have been highly saddened by the fact that this Bill was considered by the Finance Committee and the report tabled before this House, in which it was pointed out that the amendment of the Building Societies Act, within the ambit of what we are now calling the Banking (Amendment) Act, was wrong.

At least, this was the view of the Committee, and in similar tones, such as those which have been expressed in connection with the Finance Bill regarding sneaking in an amendment to the Penal Code, the same principle ought to have applied within the Banking (Amendment) Act in relation to the Building Societies Act.

Mr. Deputy Speaker, Sir, as it is, we have completely departed from the principles of building societies---

Mr. Deputy Speaker: Order, hon. Michuki! We are not contributing now. Please, make your brief comments!

Mr. Michuki: Mr. Deputy Speaker, Sir, I am making my brief remarks for the record, and I think this House should better listen very carefully to what I am going to say. The Finance Committee of this House will never be effective as long as the Chairman of the Committee is the Whip of a political party that is in power. We could have thought very seriously to bring the views of the Committee to this House, but surely, how can a Chairman like that "whip" his party against the feelings within the Finance Bill?

Mr. Deputy Speaker: Order, Mr. Michuki! You know as well as everybody here knows that if you have dissenting views from your Committee, you can submit a minority report. However, I will not allow you to now start attacking a Committee of which you are a very prominent Member. That is not in order at all!

(Applause)

Mr. Michuki: Mr. Deputy Speaker, Sir, I was just trying to point out the predicaments that the Committee faced, and that was my major point.

Thank you very much, Mr. Deputy Speaker, Sir.

The Minister for Finance (Mr. Obure): Mr. Deputy Speaker, Sir, I stand to express my personal appreciation and gratitude to hon. Members for the serious manner in which they addressed the issues in the Finance Bill and in the Banking (Amendment) Bill. I fully appreciate the co-operation and support extended to me on this particular occasion. I know that it was very turbulent at some stages, but it has been a very good lesson for all of us. The spirit which has emerged at the end is a shining example of what we should be doing; the support and the consultations which we should be giving in carrying out the affairs of this country.

I also thank you for making it possible for Members to contribute so freely and vigorously on this Bill. Thank you very much.

Mr. Murathe: Mr. Deputy Speaker, Sir, I have just a little thing to say. While congratulating the Minister for his capability to handle such a tricky situation at very short notice, since he has barely been in office for two weeks; however, the issues that came out are really about the budget-making process, and that we were making amendments here which had even financial implications for revenue. We hope that in the future, it should be possible to involve the various Departmental Committees in budget separation for the various Ministries, and looking for ways and means of raising revenue.

Again, I want to congratulate the new Minister for Finance.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order, hon. Members! Do forgive me since I made a slight error. It is Bill No.18 and not Bill No.24.

(Question put and agreed to)

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

Mr. Deputy Speaker: Next Order!

BILL

Second Reading

THE SUGAR BILL

(The Minister for Agriculture on 27.11.2001)

(Resumption of Debate interrupted on 29.11.2001)

Mr. Deputy Speaker: Who was contributing? Hon. Ochilo-Ayacko was on the Floor. Proceed!

Mr. Ochilo-Ayacko: Thank you, Mr. Deputy Speaker, Sir, for giving me a further opportunity to make my contribution to this very important debate that is the mainstay of the Western region of this country.

Mr. Deputy Speaker, Sir, we know that there were days when it used to be also the mainstay of the Coastal strip, but those very sweet days are no longer with us. I am sure Members of Parliament from the Coast Province are looking at those days with nostalgia.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, I represent Rongo Constituency which is the heart of sugar growing in South Nyanza, and there are organisations that purport to be growers' organisations. For instance, in that region, there is an organisation that calls itself SOC, that is SONY Outgrowers Company, and that organisation purports to be a farmers' organisation. However, since the inception of that organisation, the farmers who have sustained it by having their monies deducted and given to it, have never had any shares or profits returned or any dividends given to them. I am saying that in the current Sugar Bill, there is desire by the Ministry, or by the Government, to restructure those organisations to effectively represent farmers.

You will find that most of those organisations that purport to represent farmers have, as part of the directors, the District Commissioner. When farmers are complaining about misuse of funds and want of provision of services, those organisations use the District Commissioner to disrupt genuine farmers' meetings. I want to say that, in the last four years, farmers from Sony Sugar Company have tried to meet and each time they requisition a meeting, police are sent to disperse them. This is a situation that is not tolerable and must be brought to an end forthwith. This is because, other than being farmers, and that does not negate any person's rights to meet or to associate, we need a Bill that will put in place or register what we call proper farmers' organisations that will be the voice of the farmers and whose meetings will not be disrupted by the Provincial Administration. A lot of these growers' institutions that purport to be farmers' organisations are riddled with corruption.

For instance, if you look at the books of South Nyanza Outgrowers Company, you will find that they are indebted to the tune of Kshs300 million to the Kenya Sugar Authority. If you look at how the Kshs385 million was used, you would not be able to visualize how this money was used. They reckon that such monies were used to purchase tractors. You will find that, that particular organisation does not have any tractor running and has no capacity to transport cane that belongs to the farmers. These growers' institutions which deduct or take farmers' money and put it into their own use must also be structured in such a manner that they are transparent, and also accountable to the very farmers that they serve. They must have no interference whatsoever from either the Provincial Administration or any person for that matter. You will find that in the present Bill that we are debating, it is not the objective of either the Kenya Sugar Board or the farmer institutions or the Act to look at the development of infrastructure in the areas where the millers are. In fact, if you look at the Bill, you will find that nothing in there enjoins the millers to contribute in the development of the infrastructure in that region. You will

find that nothing enjoins the outgrowers institutions to also participate in the development of infrastructure in that area.

If I am to contextualise the situation obtaining in Migori District, you will find that there has never been participation on the part of the miller, that is Sony or the Outgrowers Company, in terms of trying to improve the hospitals and schools there. So, what we need in this Bill is an additional objective; that, it will also be the responsibility of the miller and the outgrower or grower institutions to participate or to put a fraction of their earnings into infrastructural development. This is because if that does not happen, then, the general surrounding of that place does not benefit from the hosting of such miller institutions or grower institutions. So, this is an area that we must look at and we must also try and ingrain in the Act.

You will find that the greatest threat to growing and processing of sugar in this country is importation of sugar. The illegal importers of sugar who dump sugar into this economy are known. Instead of putting mechanisms in place or punishing or bringing these people to book, you will find that in practice we reward them. We give them affluent jobs, within and without this country. We appoint them to key positions. For the sugar industry to survive, and it has been said in this House that the sugar industry is beneficial to about five million Kenyans, by way of employment directly or indirectly or provision of money to them-- For us to show that we want the sugar sector to stand on its feet, first, these persons who have been associated with the dumping of sugar should not be appointed to the positions that they are holding. I do not want to give names, but they are known all over this place. We even gather that we recently appointed a few to go to the East African Legislative Assembly, and that is a very bad practice. It is bad example; we are rewarding people who are committing economic crimes against this country. It is even alleged that one of them is a Member of this House. I am sure that the guess of the Minister is as good as mine. We should not allow that. In the present Sugar Bill, as we have it, we should put stiffer penalties than those suggested to people who dump sugar into this economy to people who violate provisions that relate to duty, particularly when that touches on sugar.

We should put in place stiffer penalties so that these people who threaten the lifeline of five million Kenyans are deterred and discouraged from engaging in such activities. This Sugar Bill, as it is, should also define how the Boards of the miller institutions, and those are the sugar factories, are constituted. The situation obtaining, and this can also be found in the adopted reports of the Public Investments Committee, is that the Boards of the sugar factories are dominated by civil servants who are only interested in brown envelopes. They know nothing about the sugar industry and they have no desire that the sugar industry should be improved, and they have no interest in anybody associated with the sugar-growing or processing. This Act should spell out the qualifications of those who should be directors. The majority of those who should be directors of the miller institutions should be people who are interested in sugar-cane growing. In fact, I am saying that they should be farmers.

There is a trend that is gaining currency; where our privatised sugar factories should be owned 30 per cent by the farmers. The ratio differential behind this trend is that the farmers are the people who are interested in the sugar factory. If it is agreed, and it is the Government's policy that a given percentage should be owned by farmers, then, majority of the directors of these Boards should be farmers. This is because, if they are the directors of these sugar factories, then, they are not going to allow the factory upon which they depend on to be run down. Currently, you will find that the directors of the factories all over; from Sony, Mumias, Nzoia, Muhoroni and Miwani sugar factories are the same clowns. There are some people from the Attorney-General's office who, if we call them to appear before Committees of this House, will not even recollect what was their contribution when they attended a Board sitting and they want to run down our factories. They are the people who tolerate the kind of pilfering and theft that abounds in the sugar factory. I expected the Sugar Bill to talk about the Boards and who should sit on those Boards. It should be people who are interested in the survival and sustenance of those sugar factories.

You will also find that, in the Sugar Bill, it is not put as part of the objective of the Board; that, we should strive to be self-reliant in sugar production. That is an area which needs to be captured explicitly. It should be stated in the Bill that it is the objective of the Board to get more funds and build more factories, so that this country is able to meet its sugar needs and export some sugar to other countries. Because our greatest threat is importation, we should take the battle out of this country. We should aim at exporting sugar to Europe. I have been told that there is very good money for exporters of sugar to Europe. We should also aim at exporting sugar to countries which have developed that habit of dumping sugar in this country. Until we are self-reliant in sugar production, people will always have an excuse to dump sugar onto our market. So, it should be a clear objective of the Board that the core part of its engagement will be to ensure that we are self-reliant in sugar production.

Mr. Temporary Deputy Speaker, Sir, we have been levying some money and putting it into the Sugar Development Fund (SDF). Money from SDF is normally borrowed by both grower institutions and millers to run

the industry. I must say that, currently, the Kenya Sugar Authority (KSA) cannot account for more than Kshs20 billion it has collected over the years. So, the management of funds deducted from farmers' proceeds should be put under the charge of a more defined entity. Also, the manner in which money from the SDF should be shared amongst sugar factories should be spelt out, so that we do not have leanings towards the regions from which the Fund's directors come.

So, this is a function the Minister should spell out in the Bill and ensure that such situations are avoided. In fact, the collapse of the sugar industry is a testimony that the SDF has been misused. It is evident that the SDF has not been re-invested to the benefit of this country. At no time will this country fail to desire sugar. Sugar will always be a commodity for use as a raw material in our industries as well as food in our kitchens; it will always be required. So, the need and the desire to be self-sufficient in food production must be captured in the this Bill.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to urge the Minister to include my suggestions in the Bill during the Committee Stage.

Mr. Kihoro: Mr. Temporary Deputy Speaker, Sir, I rise to contribute to this Bill because I have tried to take coffee without sugar, but I found the concoction impossible to take. So, I found sugar to be a good companion of my coffee. I do not take *kahawa chungu*; I take coffee with sugar.

Mr. Temporary Deputy Speaker, Sir, the sugar industry has the direct support of 30 million Kenyans. Even when a mother starts to wean a baby, she gives it sugar. Sugar is the first thing that many human beings recognise immediately they are born. People continue taking sugar directly or indirectly until their death. So, you find that although the sugar industry has a local market, we have failed to meet our own needs.

While debating the Coffee Bill, it was pointed out that one of the problems of the industry was that Kenyans do not take coffee. It was noted that coffee is a product that is mainly exported, and that because of the vagaries of the market out there, it was difficult to sustain the industry and ensure that there is sufficient income for the coffee farmer. Sugar has a very big local market. Once produced, sugar must meet the needs of this country before it is exported.

So, what has happened to the sugar industry is a big embarrassment. I realise that the major sugar factories in western Kenya are either in liquidation or owe so much money to the sugar-cane farmer. Six months ago, Nzoia Sugar Company owed sugar-cane farmers Kshs700 million; Muhoroni Sugar Company, Kshs250 million; Miwani Sugar Company, Kshs100 million, and South Nyanza Sugar Company (SONY), Kshs100 million. From this data, you can see how the sector has collapsed.

It is unfortunate that the people who deserve income from the sugar industry are the first ones to suffer. Although nobody buys sugar on credit in this country, the farmer is left to finance the production of sugar-cane and ultimately is not paid. Today, so much money is owed to sugar-cane farmers. The consequences of not paying up this money are that farmers fail to meet their educational and health obligations towards their families. Also, spending in the economy is reduced. Indeed, even the Government loses on revenue. In 1997, for example, Nzoia Sugar Factory could not remit to the Government Kshs217 million in statutory taxes because it did not have sufficient income.

So, of importance is the need to streamline the management of the sugar factory. Also, as the Government processes the privatisation of the sugar industry, it should give the sugar-cane farmer, and other stakeholders of this sector, the first priority in the privatisation programme. It will be very unfortunate if the 71 per cent of the Government's shareholding in Mumias Sugar Factory is sold to outsiders. The Commonwealth Development Corporation (CDC) has 17 per cent shareholding; M/s Booker Mackone has 4.5 per cent, and the East African Development Bank has about 3 per cent.

The Government owns about 98 per cent of Nzoia Sugar Company's shareholding, while the Company's minor shareholders, namely, the Industrial Development Bank and M/s Kelly Barb Cork, own less than 2 per cent of the shares. What I am saying is that it is important that sugar-cane farmers are empowered as they are. Sugar companies should pay farmers their money before they go into liquidation, and the Government should enable the farmers to buy sufficient shareholding in the factories. That is the only sure way of enabling them to intensify sugar-cane growing and ensure that their lives are also inter-linked with the fate of the sugar factories.

Mr. Temporary Deputy Speaker, Sir, this is the same sad story about lack of proper management that has bedeviled the coffee sector. As Mr. Ochilo-Ayacko said, you find that whenever sugar-cane farmers organise meetings to streamline cane delivery processes to the factories, the Provincial Administration and the police interfere with them. You will find the police and political operatives interfering with the farmers' meetings, and in consequence ensuring that there are problems in the administration of the sugar factories.

Mr. Temporary Deputy Speaker, Sir, also, I find that a lot of sugar has been put in storage in western Kenya. By October, 1998, there were 76,000 tonnes of sugar valued at Kshs2.2 billion. This was at a time when sugar had been imported previously or was being imported into this country under whatever trade pact there could

be. It could be COMESA or any other arrangement, but it is true that sugar has been imported from South Africa, Mauritius and even Egypt, while it is available in this country and sugar that has been produced by farmers in western Kenya has been left in storage. It is important that the market firstly be given opportunity in this country to consume Mumias sugar. It is cheap and sweeter maybe, than even the imported sugar. It is important that sugar is not stored, but should be sold.

I find also that some people have formed a habit of importing sugar without sometimes, even paying duty to the Government. Even hon. Members have been mentioned in this House during contribution by hon. Members, that they have formed a habit of importing sugar from outside, have sold it and I understand that a large proportion of the fortune of Mr. Sajjad has come from sugar imports. There is no reason why he should be allowed to import sugar when sugar produced in this country is actually in storage.

I know the Minister is opposed to the existence of vampires and other elites in the industry who exploit the farmers; the first one to prevail upon maybe is the Minister's colleague in KANU, Mr. Sajjad.

Mr. Khamasi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Would I be in order to call upon Mr. Kihoro to substantiate the allegation that Mr. Sajjad has imported sugar into this country?

Mr. Kihoro: Mr. Temporary Deputy Speaker, Sir, it is a long-standing rule in this House that you do not need to substantiate the obvious. It is very true that Mr. Sajjad has made a fortune out of importing sugar without paying duty.

I find from the Bill that the Kenya Sugar Authority (KSA) will be abolished when this Bill becomes an Act and it comes into force. This is an Authority that has squandered and misappropriated a lot of money. I also find that some hon. Members have chaired the Authority's Board and have misappropriated a lot of money. It is important that people who have misappropriated farmers' resources are not just removed from office; it is important to recover money that they have misappropriated. In this particular situation, before KSA is actually abolished, it is important that money owed, misappropriated and misapplied to other purposes should actually be recovered from those hon. Members who have actually done so. We do not want the new Board, that will be set up, not to start on a proper footing. All resources that previously belonged to the KSA, and money not currently recovered, must be recovered and put in the hands of this Board and proper supervision undertaken after that to ensure that farmers' resources are not used to enrich a few people.

I would want to say that there is also an external market for this country for sugar. Since now we are members of COMESA, we should ensure that Kenyan sugar is also exported. Firstly, it should be consumed in this country. There is sufficient market for sugar in this country and we should compete on an even footing with a country such as Mauritius. I know she is a big producer of sugar, but there is no reason why Kenya should not intensify her efforts in the production of sugar.

Mr. Temporary Deputy Speaker, Sir, when I was doing my A-Levels, a long time ago at the Alliance High School, I was told that Kenya would be self-sufficient in sugar production by the year 1984. It is not the population which has out-stripped the growth of the industry, but, indeed, we have mismanaged the sugar sector. A factory, such as Mumias is a very recent factory and even though I know it is having problems, there is no reason why we should not meet our local needs from it and export our sugar.

Lastly, let me say that the question of setting up a Sugar Development Fund (SDF) is very important. This is a very important area where we will have a fund here, which will assist sugar-cane growing in western Kenya and make sure that our sugar-cane farmers are properly empowered.

Also, let me talk about Clause 5. I find that the Minister will still have the power to appoint the chairperson of the Board that will be set up under the Act. I wonder why he would want to have power to appoint the chairmen of the Board. If we have agreed to liberalise and to be democratic, it is only right that members of the Board, or the farmers, are given the opportunity of deciding who should be the chairman of the Board so that, that person can be responsible to them directly.

It is very important to increase members of the Board and have more farmers on it. This will ensure that the "ball" is played in the right direction, the farmers are in control and their future is inter-linked with the sugar-cane industry. It is important that the membership of the farmers on the Board is increased. As it is provided here, farmers are really marginalised. They will have only four representatives to represent them on a Board of 11 members. You can see that they will really be a minority on the Board. So, it is important to increase the membership of the farmers on the proposed Board as we liberalise the sugar sector. They are the ones who know sugar-cane from the time of planting up to 18 months when it is harvested earliest, or even 24 months later, when it is harvested latest.

With those few remarks, I beg to support the Bill.

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Muchilwa): Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to contribute to the debate on

this very important Bill.

The sugar industry has been in a mess and continues to be in a mess. Even the so-called successful factories, such as Mumias Sugar Factory, have not acted as cleanly as has been spoken of. For example, for a long time Mumias Sugar Factory used to pay for all outgrower services. During that time, the local people enjoyed good money, so much so that one could visibly see development projects, including good houses. Those who did not want to put their money in development projects, enjoyed themselves by taking their girlfriends to Mombasa and so on. That was a sign that there was money in Mumias area as a result of having established the Mumias Sugar Factory.

Mr. Temporary Deputy Speaker, Sir, then something happened. Those who were running the factory decided to begin fleecing farmers. They introduced an animal called "outgrower company", and then transferred all the costs of outgrowers from the factory to this new establishment, which was now to be funded by the farmers. The farmers knew that by doing so, the co-operative society had no management capability to perform the tasks that it was supposed to perform. Mr. Ochilo-Ayacko spoke about that matter and I also support it. What do they do? The sugar-cane organisation, being a co-operative society, started facing all sorts of the problems that have killed co-operatives in this country. In this country, co-operatives have been killed by many factors. One of them is the fact that every member has one vote. It does not matter how many shares you have in a society because you have only one vote. Because of that, the junior people fight very hard when there is an election, to make sure that they join the management. This is because they see it as an opportunity to make money.

Mr. Temporary Deputy Speaker, Sir, because of their sheer numbers, if you take an example of a society of that kind, you would expect the small people or those with the least shares, but constituting the biggest number, to win. After they win, they join the management. After they have joined the management, they begin to mismanage the organisation because they do not know how to run it; they bring their brothers and sisters in it, they buy all sorts of things because they can see the money and so on. Now, all these expenses are passed on to the farmer. The factories themselves were very free because to them, their commissions, or management fees, were based on turnover and nothing else. So, they could do whatever they liked. Whether they ran the institutions very efficiently or not, that was not the question. When they found that they were not making a decent profit to pass over to the Treasury, they simply squeezed the farmer to make sure that he gets less and less money. So, because of that system, the farmer has always remained at the short end of the stick with the factory pulling all the strings, enjoying the cream; followed by transporters and then officials in the out-grower units.

Having said that, it is important, and I do not see it in the Bill, that out-grower organisations should be streamlined. However, and I do not see these organisations being catered for in this Bill. I do not know whether will have another Bill to deal with this aspect. But this is a very important aspect because it affects the take-home money of the farmer. Right now, instead of the farmer getting some money, the person who was getting enough money to buy a lorry from 30 acres of sugar-cane, finds that the management of the organisation is demanding money from him. That is how bad the situation is.

Mr. Temporary Deputy Speaker, Sir, these companies have entered into various agreements and so on and so forth. The agreements do not include the damage to the farmers' fields during harvesting period. What happens is that sugar-cane is cut during the rainy season and they bring in the mechanical loader. They have one now which does the loading by grabbing bits instead of lifting the whole stake. So, as the loader goes round picking the sugar-cane, it damages most of the field. As a result, after the harvesting exercise, one will find that maybe half or more of the farmer's sugar-cane has been damaged. Nobody bothers to go and help that farmer to replant the sugar-cane. They leave him and he has to struggle with it alone, no wonder the yields have continued to go down and down, and then they blame it on other factors forgetting that, that one is a contributory factor. There is need to close that particular loophole and help the farmer. Also, there are tractor trailers, with long tyres which also damage the farmers' fields.

Mr. Temporary Deputy Speaker, Sir, I support those who said that payments should be done according to weight and not according to the sugar content in sugar-cane. There is a lot of corruption in this country and most of the sugar-cane farmers do not know about sucrose content and the rest. So, if we will go by that, there will be a lot of cheating, whereby somebody will pay money so that his lower quality sugar-cane can be upgraded and the poor people will not know. The current system, where they pay according to the weight, is the appropriate one.

Mr. Temporary Deputy Speaker, Sir, one of the biggest problems in sugar-cane farming is fire. In an area like Nyanza, where there is no good organisation and where the practice is that during December, when the local people want some money, they set fire to sugar-cane, knowing very well that they will then have to be paid higher rates because when sugar-cane is not delivered to the factory, within four to five days maximum, the sugar in it turns to alcohol and the factory will not take it. So, if it is very dry and there is wind and somebody sets fire to a sugar-cane field, very often a large area of sugar-cane is burned; an area that is beyond the capacity of the local

people to harvest. To make it worse, all the local people who are involved in the transportation of sugar-cane, are farmers of the Indian origin. Once their fields have been burned, it is only natural that they should harvest their sugar-cane first and leave everybody else to transport his or her sugar-cane. When this situation arises, those others who have no capacity to harvest, have their sugar-cane wasted. They have to spend money to cut down that sugar-cane and put it aside. The local people enjoy that because, after it dries up, it forms firewood for the people of the area. Of course, that is a very big wastage of the farmers' sugar-cane.

Mr. Temporary Deputy Speaker, Sir, there should be fire insurance cover for the farmers. I do not see the reason why there should be no fire insurance cover for the farmers. Part of the levies that farmers are levied, should be used to insure sugar-cane farmers, so that if there is a fire outbreak in the farms, the farmers do not lose everything.

Mr. Temporary Deputy Speaker, Sir, sugar is an important commodity and we want to promote it. The sugar-cane crop has been under pressure so much that once sugar is dumped in this country, we cannot sell ours. The fact that Kenya produces sugar at slightly higher costs than other areas is not the fault of the farmer. The farmer is not responsible for taxation and other policies that affect the farming. The Government should, therefore, be serious and try to help the farmer.

For example, we cannot compete with factories in Sudan. Arab countries are known to have lower interest rates because of their religion and so on. They do not believe in very heavy interest rates and besides, they are the main producers of oil. So, interest rates charged on their factories may be very low whereas ours are higher. This is because we must raise money to run the Government, and we have fewer things to tax. So, the taxation in this country is known to be high. When we leave farming of a major crop like this one to the vagaries of weather and fire, and we have some people dumping sugar in the country, do we expect the industry to grow? If the industry does not grow and somebody else tells us that it is more economical to import sugar than to grow sugar-cane and process it locally, what will we do with the people who work in it?

Mr. Temporary Deputy Speaker, Sir, I would like to propose that, since taxation charged on sugar is very high, the Government should consider reducing it. A 50-kilogramme bag of sugar costs Kshs2,230 on average. Out of this amount of money, Kshs334.80 is paid as the VAT. This means, per kilogramme, the VAT of Kshs6.68 is charged, while Kshs2.60 is paid as Sugar Development Levy. That is very high taxation given the fact that, on average, it is 10 tonnes of sugar-cane which make one tonne of sugar. If the Government wants to develop this industry, let it reduce or waive the VAT on sugar. The Government should also make it in bulk, by exporting sugar under the Lome Convention. If we do that, we will get hard currency because, for a long time, we have been unable to supply 5,000 metric tonnes, which we are supposed to supply to the European Union under the Lome Convention. I am sure that if that kind of action was taken, it would help this country to alleviate unemployment instead of just mourning and chasing the donors.

I would now like to touch on the roads in sugar-cane growing areas. In Mumias, Mumias Sugar Company repairs the roads and it is supposed to be reimbursed the money it uses by the Government, but it does not do that. That means that the local farmer is being taxed again for the repair of those roads. This is because the money that he would have earned goes to the maintenance of those roads. This is not right. The Sugar Development Levy, which is supposed to be used to repair the roads, is not used for that purpose. In the Nyanza sugar-belt, and sometimes I grow sugar-cane there, the situation is terrible. People have to drive tractors through other people's farms because the roads are impassable. It is important that, if there is a levy like this one, it should also be used to develop the roads.

I would like to say that buying of sugar in bulk is a problem. The local man who is black has been "squeezed" totally out of wholesale and even retail business of sugar, which was not the case before. This happens because the traders with a lot of money, and you know whom I am talking about, will come together and raise, maybe, Kshs100 million. These traders will then go to a factory and negotiate a price that is way lower than the mill price. As a result, they can sell sugar wholesale at a much lower price than the African who is an agent and goes to collect the sugar from the mill. This is not right. Who will defend these people because they also have got to survive? Therefore, this aspect should be looked into closely by the boards which will be established to deal with sugar.

Mr. Temporary Deputy Speaker, Sir, I have talked about fire burning sugar-cane and farmers losing everything. We are fortunate to have a Minister for Agriculture who understands all these things. He is a very bright person. We are also fortunate to have another good Minister at the Treasury, who was once the Minister for Agriculture. I hope that since the two Ministers understand the problems of the farmers, they will now write-off the Agricultural Finance Corporation (AFC) loans which were given to the farmers so that the debts which were incurred as a result of natural calamities, fires in factories like Miwani, can also be given a chance to start. This is very important.

Let me now comment on one or two paragraphs in this Bill. Under paragraph 4(g), one of the objects of the Board is to promote and encourage the use of environmentally friendly technologies in the industry. If one is careful, he will find that chemicals which were outlawed, because they have a terrible impact on the environment, are still sold but under different names. It is very important that institutions which were put in place to monitor standards ensure that these damaging chemicals do not come into this country. Paragraph 4(k) says:

"Oversee the formulation of standard provisions governing the mutual rights and obligations of growers, millers and other interested parties."

This is where I proposed that the interest of Kenyans, who are interested parties in marketing, should be looked into. I have no quarrel with Paragraph 5 which talks about directors because, if there are more directors from the farmers side than elsewhere, chances are that we may end up with a situation where things do not run as they should. I think an equal number of directors from both the factories--- There is also the non-executive chairman who is appointed by the Minister making the number five. The rest of the directors will be Permanent Secretaries, Director of Agriculture and so on. These ones will have to neutralise any biased decision because they would not have any partisan interest in the matter.

Mr. Temporary Deputy Speaker, Sir, Clause 10(2) talks about the qualifications of the person to be appointed as Chief Executive of the Sugar Board. It says:

"No person shall be appointed under this section unless he holds a degree from a university recognised in Kenya in agriculture, economics or business administration and has at least five years experience in a managerial capacity in agricultural sector."

Mr. Temporary Deputy Speaker, Sir, I do not think we should restrict qualifications of a chief executive to the agricultural sector. We can have a very good manager who does not have an agricultural background. But so long as we have people with an agricultural background in the Board, he or she will effectively coordinate the activities of the Board. I do not support that particular provision.

Mr. Temporary Deputy Speaker, Sir, Clause 12 talks about protection from personal liability. It talks about protecting the chief executive, any officer or employee of the Board against any decision they might have made in good faith. However, we can have a rogue chief executive, and we have seen many. I think where a chief executive or anybody has misbehaved, he or she should be prosecuted. We should not put this provision in order to cover the misdeeds of employees of the Board.

Mr. Temporary Deputy Speaker, Sir, Clause 13 says:-

"The provisions of clause 12 shall not relieve the Board of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power conferred by this Act or by failure, whether wholly or partly, of any works."

Mr. Temporary Deputy Speaker, Sir, if a chief executive makes a decision which will cost the organisation very heavily, why should he be protected? So, I do not support this clause.

Clause 14(1) talks about licensing of the sugar mills and jaggery mills. It is good that they be licensed. But right now, there are very many unlicensed jaggery operators in sugar-cane zone. They send their employees to cut other people's sugar-cane because they do not have their own sugar-cane. They are hardly arrested. When they are arrested, they are taken to court and fined very little. Usually, they bribe their way out.

Mr. Temporary Deputy Speaker, Sir, this particular Bill should make sure that fines imposed on such fellows are high. There should be a provision to ensure that whoever sells sugar-cane within a sugar-cane zone shows where he got it from. Otherwise, we will end up with many idle people. We should come up with a provision to discourage people from stealing sugar-cane in the sugarbelt.

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

The Temporary Deputy Speaker (Mr. Imanyara): Let us hear from the official Opposition spokesman on agriculture.

Mr. Ndwiga: Thank you Mr. Temporary Deputy Speaker, Sir for giving me this opportunity to contribute to this Bill. I will be very brief because I want to give the opportunity to hon. Members from the sugar-cane growing areas to do justice to this Bill.

Mr. Temporary Deputy Speaker, Sir, when the Departmental Committee on Agriculture, Lands and Natural Resources visited the sugarbelt, we were able to see the suffering of the sugar-cane farmers. **[Mr. Ndwiga]** It is unbelievable that this Bill has taken this long to come to this House. Sugar-cane farmers, like all the other farmers, have really suffered. As we toured the sugar-belt we were told that, in some areas, farmers had not been paid for three years. How can we expect a farmer to continue producing sugar-cane if he is not paid for three years and yet he has delivered cane to factories? This is an area where we felt the Government has been very negligent and careless. How can you expect to improve the production of a key commodity like sugar without Government's intervention to make sure that farmers are paid what they deserve on time? I support this Bill. By the time we

will be through it, I hope it will have addressed the key issues in the sugar industry. It should focus on the farmer.

As it is now, I have a few reservations, especially on the composition of the Board. The Board, as proposed in the Bill, is Government-controlled. I do not see the reason why we should have two Permanent Secretaries and a director of agriculture in the Board. I propose that the composition of the Sugar Board should be similar to that of the tea and coffee boards. I feel the farmer must be the dominant person on the Board. Whose Board is it? This Bill shows the attitude of the Government, that sugar-cane is their cash-cow. Why should we have a Permanent Secretary, Treasury, in the Board, if they do not see it as their cash-cow? We cannot legislate so that the Government continues to fleece farmers. I propose that we have a majority representatives of farmers on the Board. In fact, I am proposing that we have seven representatives of farmers in the Board because we want to address the plight of the sugar-cane farmer.

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

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

The other area which I want to touch on briefly, which has been mentioned in the Bill, is the mode of payment. If we are going to use the sucrose content, I think the Minister will agree with me that we are not ready. In a country like Botswana, where they use the sucrose content, there is adequate research, and varieties of sugar and the sucrose content is known. So that, if you get cane from a particular zone, which grows a particular variety, then you automatically know the sucrose content. Here we are not ready to go to that direction. It is not practical. So, I am proposing that pricing should be based on weight. When we toured the sugar belt region, we noticed that, once the cane is cut, it is ferried to the factory. At that point, it is still the farmer's sugar-cane until it gets to the weighbridge at the factory. But when the cane is in the farm, it is contracted sugar-cane, and so it belongs to the factory. But when it is being ferried, it is now the farmer's sugar-cane, so that whatever spills on the way and the drivers fail to gather, that is the farmer's loss. This is totally unacceptable. Sugar-cane should be bought at the farm. That will ensure that the farmers get the real value for their commodity.

Mr. Temporary Deputy Speaker, Sir, the other issue which we discovered, which requires attention, is the area of financing. Like in most agricultural areas, there is no clear way to show farmers how to access credit for sugar-cane growing. We are proposing, therefore, that there be created a Sugar Development Fund. I know the Minister has his reservations, because there was such a levy which was misused. A committee should be created to run the Sugar Development Fund, like we are proposing in the coffee sector, so that farmers can access cheap credit to improve their crop.

Mr. Temporary Deputy Speaker, Sir, it is very sad that today, Kenya has a quota in the European Union which we have never even attempted to exploit. When we visited the sugar belt area, what struck us was that the sugar factories had huge stock- piles of sugar, yet the farmers had not been paid. If the problem, as we were told that time, was that there was too much sugar in the market, why do we not exploit the European Union quota? I am given to understand that right now, our quota to the EU is being exploited by Mauritius, at a time when the sugar-cane farmer in this country is so impoverished. I think something is wrong, and I hope the Minister, who I know is concerned about the farmer, will address this key issue.

Mr. Temporary Deputy Speaker, Sir, the other issue is the kind of commitments we enter into as a country. I have in mind the COMESA agreement. We are allowing sugar under the COMESA agreement to be imported into this country from Botswana, Sudan and other parts of the world at very low prices which our local sugar cannot compete with. If you are a business person what business would you go into? We now have factories which are closing down in the sugar belt. We have been told that the Government is looking for foreign investors to help rehabilitate those factories. If you were a businessman, where would you put your money? If I can get sugar from Kenana Sugar Factory in Sudan and import it into the country at prices lower than the production cost here, why would I want to go into the business of opening factories? I would, instead, import the sugar. There are a lot of areas which we must address, because some of these agreements are hurting our farmers. I hope the Minister, with his colleagues, will address that area so that we have a market for what we are producing.

Mr. Temporary Deputy Speaker, Sir, the other issue is with regard to production. One of the reasons why our prices cannot compete with other producers, for example, Kenana Sugar Factory in Sudan and the others, is because we depend on rain to grow sugar-cane. In the sugar belt region, we have the Nyando River which all the time we hear hon. Members from the area mourn that it is overflowing. Why does the Government not have a deliberate policy to expand and improve on irrigation in the sugar belt, so that we can engage in irrigation which

is a more cost-effective way of producing sugar-cane than waiting for the rains. That is a challenge that the Minister for Agriculture should take into consideration and we hope something will be done in that direction. I promised that I will give a chance to more hon. Members from the sugar-cane growing areas to contribute to the nitty-gritty of this Bill.

With those few remarks, I beg to support.

Mr. Wamunyinyi: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill.

(A mobile phone rang)

The Temporary Deputy Speaker (Mr. Mwenda): Order, hon. Members! Who is that with a mobile phone? He is lucky I did not notice him!

Mr. Wamunyinyi: Thank you Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this important Bill, which seeks to introduce the Kenya Sugar Board.

Mr. Temporary Deputy Speaker, Sir, 95 per cent of my electorate are sugar-cane farmers and, also Nzoia Sugar Company is also in my constituency. I also sought leave of the House to introduce this Bill before the Government brought the Bill. I have had the opportunity to speak to the Committee on Agriculture, Lands and Natural Resources, and the chance to meet the stakeholders. They have come up with various ideas and input which we have passed on to the Committee. There are a few issues which I would like to highlight, and which I strongly feel must be taken into account before we pass this Bill.

Mr. Temporary Deputy Speaker, Sir, one of the major issues which I am sure many Members will talk about is the representation of the farmers. The major reason why we had to bring this Bill was to free the sugar-cane farmers and generally other farmers, where we introduced the Coffee and Tea Bills to take the Government off the activities of farmers. If that is the intention, then representation of the farmers on the Board must be on the majority side. Like what the other hon. Member said, I also would like to suggest to the Minister that the minimum number of members of the Board representing the farmers should be seven. That gives the farmer the majority number in the Board.

Mr. Temporary Deputy Speaker, Sir, the other issue which is very important and the Minister should look into - we have pointed it out to him - is the Sugar Development Levy Fund. The Fund is not run by the Board itself. We know that the Fund that was previously under the Kenya Sugar Authority has been mismanaged and money has been "eaten"! We have questioned that very strongly before, and we would not like to get to that stage again. When this Bill is passed, and the Board is established, we want a committee of the Board which will run the Sugar Development Levy Fund. That committee must be put in place. The Fund, basically, is meant to help in the development of cane varieties, to assist and improve efficiency in the management of cane and many other benefits, which should be passed on to the farmers.

The present Fund that we would like to re-organise has not benefitted the farmers, save for a few people who are in authority! It has benefited some people in the Ministry and others in the Kenya Sugar Authority. So, when we are pointing out that to the Minister, we are doing it so that he can take it up and know that those are the wishes of the farmers; on how the Fund should be run. All those amendments should be incorporated to ensure that the Fund is run by the Kenya Sugar Board.

Mr. Temporary Deputy Speaker, Sir, there are various other provisions in the Bill which Members have talked about. One such provision is in regard to the jaggeries. In many other countries, where sugar cane is grown and sugar is produced, jaggeries are licensed and allowed to operate freely. We would like the jaggeries in this country to be licensed to operate freely. We should put in place certain legislation which will protect farmers who are contracted to other millers, so that the jaggeries do not poach the cane. But they cannot be prevented from operating and producing sugar. We know of the problems in Nzoia Sugar Company where the farmers have not been paid for a long time. Their cane has remained in their farms for as long as three years without being harvested. Under such circumstances, the farmer has no choice if there is a jaggery willing to purchase the cane. Of course, when you have a farm holding cane for over three years, it will end up drying up and you will not earn anything from the cane. So, if there is a jaggery willing to buy, it is to me a good Samaritan! It should be licensed to operate and help other sugar cane farmers.

Mr. Temporary Deputy Speaker, Sir, the other important point is the payment to the farmers. That is very important and I have always talked about it. Our farmers wait for too long to be paid. I was so much disturbed recently when I heard the Chairman of Nzoia Sugar Factory say that the management was trying to pay the farmers, when we know for sure, because we talk to the farmers every other day, that they have not been paid! There are some arrears to the tune of about Kshs600 million which have not been paid. When we talk about the

farmers' money which is in arrears because the sugar-cane was harvested and delivered to the factory--- Some wait for as long as three years before they are paid! Why should the miller not give priority to the farmers, before other parties like the transporters, suppliers, employees salaries, stationery and other bills are paid? Before the miller pays the others, the farmers should be given priority number one. We know small young countries like Swaziland which pay their farmers every seven days after delivery of their sugar-cane. Other examples are South Africa and India. The farmers in those countries are paid promptly. That is how you could help the farmers to get rid of poverty.

Mr. Temporary Deputy Speaker, Sir, alongside that payment, there are costs which are passed on to the farmers. Those are the costs which are incurred before the sugar is produced. The contract is signed between the farmer and the sugar company. The seeds are supplied to the farmers. But when the crop is harvested, the transport cost is charged to the farmers. A lot of cane is spilt or dropped on the way. Nobody takes into account the amount of cane that is spilt or dropped on the way. But the farmer is charged the transport cost and yet, the transporter is paid before the farmer! The cost of fertiliser is charged to the farmers at very high rates. I know some farmers who are contracted to Nzoia Sugar Factory, who are supplied with very cheap imported fertiliser and charged double rates! In fact, they are not only charged the double-rates, but also the element of interest! The fertiliser is supplied in November this year, but they will continue to charge interest up to the time when you are paid for the cane. So, those are some of the things that came up during discussions with the Committee and the Ministry. I think they should be taken into account if we are to assist our farmers.

Mr. Temporary Deputy Speaker, Sir, the other issue is with regard to pricing. Equally, the farmers do not take part at all, in determining the prices of raw cane. It is just harvested and delivered to the factories, where it is weighed but nobody knows the exact weight because of the corruption that is everywhere. That is what inflates the cost of production. When the costs of transport and harvesting are inflated, obviously, the cost of production must go up. That is how our people are suffering in the sugar growing areas.

Mr. Temporary Deputy Speaker, Sir, one hon. Member talked about the quota we had been allocated by the European Union. When we had stockpiles of sugar at Nzoia Sugar Company, some of it was exported to the European Union market. That was done through the Kenya Sugar Authority. When the money was paid to the Kenya Sugar Authority, it never reached Nzoia Sugar Company, until we made noise here. In fact, I personally raised the issue with the Minister for Agriculture, because the sugar that was exported went through the Kenya Sugar Authority, and the payment was done through the Kenya Sugar Authority. But the Kenya Sugar Authority did not pass the money to the miller. I believe that is the reason why---

Mr. Shaaban: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a very important matter affecting thousands of Kenyans. You can see that it is only the Minister for Agriculture who is sitting on the Front Bench of the Government side. The officers who are supposed to implement what we will pass here are not on the Civil Servants' Bench! Is this Ministry serious about this matter? Why is it that the Minister is the only one who is here, and his officers are absent?

The Temporary Deputy Speaker (Mr. Mwenda): Mr. Shaaban, that is not a point of order. The Minister suffices.

Proceed, Mr. Wamunyinyi.

Mr. Wamunyinyi: Mr. Temporary Deputy Speaker, Sir, I believe that the Minister is taking notes. That should not stop me from making my contribution. So, Nzoia Sugar Company had to stop any further exports to the European Union, because any monies that would have accrued from the sale of sugar would remain with the Kenya Sugar Authority and some of it would be paid to the Government in the form of taxes without the authority of Nzoia Sugar Company. So, we hope that when the Sugar Board comes into existence, most of these things will be done away with, and the problems we had experienced before should not be there any more.

Mr. Temporary Deputy Speaker, Sir, the Government has 98 per cent shareholding in Nzoia Sugar Company and it also had 71 per cent shareholding in Mumias Sugar Company. Should the process of privatisation be undertaken, the farmers who are the major stakeholders in the sugar industry must be given a chance to purchase controlling shares. The 71 per cent shareholding by the Government at Nzoia Sugar Company ought to have been passed on to the sugar farmers. The issue of money should not be used to deny those farmers the opportunity to purchase shares. The Government should have taken the available amount and the difference could be raised over a period of time, with the Government being a guarantor. This would encourage them to improve, control the management and improve the quality of cane. By so doing, we would be able to compete effectively with other producers of sugar.

Mr. Temporary Deputy Speaker, Sir, I am hoping that, when the problematic Nzoia Sugar Company will be privatised, the farmers should be given the chance to buy all the shares that are presently held by the Government. The farmers should be given first priority when it comes to floating those shares.

Mr. Temporary Deputy Speaker, Sir, the other issue which I must not forget to mention is the indebtedness of Nzoia Sugar Company. We have talked about it several times and it is important that this is also addressed. This is important because we are trying to put in place laws which will help the industry to flourish. The same laws should also help the farmers. At Nzoia Sugar Company, there is an expatriate management team and we have read in newspapers that the Ministry is contemplating renewing their contract. When these expatriate managers came to Nzoia, we were informed that they were coming with money to pay farmers all the arrears and other outstanding payments which were due to the farmers. But the outstanding amount which they found at Nzoia Sugar Company is still outstanding. The leaders who represent sugar cane farmers were not represented in the negotiations with those expatriates.

Mr. Temporary Deputy Speaker, Sir, we are appealing to the Minister to make sure that if they are going to renew the contract of the present expatriates, he should involve the leaders who represent sugar cane farmers. We should be given sufficient reasons for the renewal of that contract. The Minister has measured the performance of these expatriates and he should tell us whether he is satisfied that they have really performed. Have they settled the problems they have with the farmers? If their performance has not been good, then they are not worth being there. If they want different people to manage it, then they can have any persons other than those ones because they have failed.

Finally, Mr. Temporary Deputy Speaker, Sir, the Bill could be passed and all the amendments that we have proposed incorporated, but if there is no political goodwill from that side, those problems will continue to be there. So, as I finalise my contribution, I want to appeal to that side to develop political goodwill and support the sugar industry. We should not allow hon. Sajjad and some of the Members on this side to import cheap duty-free sugar at the expense of what is produced locally. With those few remarks, I beg to support.

Dr. Anangwe: Thank you, Mr. Temporary Deputy Speaker, Sir. I read the mood of the House that it would like to conclude this Bill this evening, so I will be very brief. Let me add my voice to what has been said, being a representative from the sugarbelt. I am sure farmers will be very keen to hear that I have had the opportunity to register my voice.

Mr. Temporary Deputy Speaker, Sir, I would like to thank the Government for having brought this particular Bill. The hopes of many Kenyans hinge on the passing of this particular Bill and the expectation is that, once it is passed, it will address the chronic problems which confront the sugar industry in this country. Indeed, as the Minister did mention, five million Kenyans depend on sugar-cane in terms of earning a livelihood and educating their children. So, it is a bigger percentage of the Kenyan population. If this Bill is going to be passed, I believe that the situation will improve.

However, Mr. Temporary Deputy Speaker, Sir, let me express one or two disappointments. First, the Bills in the coffee and tea sectors were preceded by a Sessional Paper. This particular Bill does not have any Sessional Paper. A Sessional Paper is very crucial, because it is a synthesis of ideas of the various stakeholders. The Government has had some time to reflect on what is the long-term and short-term policy towards that particular sector. Indeed, in respect of coffee, there was a yellow document. This was the Sessional Paper. We have not been shown, or there is no indication that in respect of sugar, there has been a Sessional Paper. We do not like these double standards. In my view, the Minister, who is my friend, is treating the sugar sector in a very cavalierish manner. Although belated as it may be, I would request the Minister, when he goes back after this Bill has been passed, to try his level best to come up with a Sessional Paper. He has circulated a document, I do not know whether to call it a policy document, but fortunately, when he was making his presentation, he read some paragraph from it. So, I concluded that what he gave us as a policy document was Godana's talking notes. So, we still need a policy document. We do not have a policy document in respect of this particular matter.

Mr. Temporary Deputy Speaker, Sir, a policy is very crucial, because it sets the parameters on the kind of policy problem that is at hand. It does state and articulate the goals and objects. It also sets up the policy instruments that are going to be pursued. In addition, it sets up the institutional and the legal framework. Some of those things may find expression in this particular document, but in the way that they have been brought about, it is a bit disorganised. I know the Minister is very committed to ensuring that farmers get a better deal. But we want to institutionalise whatever ideas he may be having, by coming up with a policy document that can outlive him. What he has presented to us may even be called "Godana's policy." Once he goes, he can go with those documents and the new Minister will come with his new ideas, because there is no Sessional Paper. I think it is imperative that there are no double standards and the sugar-cane farmers are given a fair deal like the coffee and tea farmers, so that there is a long-term document that can be a reference point.

Mr. Temporary Deputy Speaker, Sir, may I specifically address Clause 4(d) which assigns the responsibility to advise the Government on distortions in the domestic market of sugar on the proposed Kenya Sugar Board. The assumption is that there will be distortion. Listening to what my colleagues have been saying

from the Floor of the House, there is this notion that we in Kenya are producing sugar that is above the world market prices, and which is expensive. Therefore, there are in-built distortions. Indeed, in this particular Bill, when the Minister made his presentation, he emphasized the idea that the sugar market in this country is liberalised. Let me clear that particular impression by saying that, the world over, the production of sugar is characterised by State intervention. I can cite the examples of the sweetener policy in the USA and the sugar beet industry in Europe and similarly in Japan. I can cite examples of sugar production and the by-products in Brazil as well as Australia. In all these cases, which seem to have been very successful in the sugar industry, the one underlining denominator is always government intervention in the interest of the producers. But it is only in this country, sometimes where we are ambivalent towards the interest of the producers. Sometimes, we want to sacrifice the interest of the producers in order to satisfy the consumers. The world over, when it comes to the issue of sugar production, government always intervenes in the interest of the producers. I believe it should also be a policy of the Kenyan Government to entrench, institutionalise and ensure that all the time, when it is devising measures and policy instruments in all the sectors, including coffee, tea and sugar, at the centre of its intentions should be the interest of the producers.

Mr. Temporary Deputy Speaker, Sir, if you take the example of the USA and Europe, two-thirds of the price paid to the producers of the sweetener in the USA and the sugar beet in Europe is government subsidy. Only one-third may come from the domestic market. In all the cases that I have already cited, whether it is Brazil, Australia, Japan or Europe or the USA, producers are paid above world market prices. I have had the opportunity to share an authority with my friend the hon. Minister. Indeed that is the key message. Therefore, to use world market prices as the bench mark for judging whether or not the sugar industry in this country meets the required economic criteria misses the fundamental point.

Mr. Temporary Deputy Speaker, Sir, let me pick a low cost country like Australia. Ninety-five per cent of the sugar-cane grown in Australia is in the State of Queensland. All the manufactured sugar that is produced in that state is sold to the Queensland State. It is up to that particular state to control both the supply and production in the case where a market may be a bit disadvantageous to the farmer. It does this by withholding sugar supply until it creates some artificial shortage so that when it disposes of it the farmer is shielded. All I am trying to say is that we must also insulate our farmers from the vagaries of both the domestic and international market.

In this country sugar costs about US\$400 per tonne which is well above the world market prices. We should take note of the fact that 60 per cent of that particular price is the cost of raw cane. Are you trying to say that the price of raw cane that is paid to the farmer should be cut down? What would be the point of doing so? That is why I was saying that it may be imperative for the Minister to think very seriously and advise this country on what is to be done. Given the kind of parameters and constraints we have, as you did mention, of small holdings, the technology and climate, you need to come up with a policy document that will enable Kenyans to continue producing sugar. It should be one which reflects that we understand that the cost of production is relatively higher than elsewhere.

It should also indicate what kind of policy instruments we need to put in place. You may even have to tell us whether or not we should grow sugar-cane in this country. Someone else also did wonder whether we should resort to the external markets for our sugar needs. One thing that we should always bear in mind is that many of the countries which engage in sugar production do not do so largely for economic reasons. They do so to gain self-sufficiency in this particular commodity. The other reason is to ensure a regular income to the producers. I am sure these kind of concerns are still relevant to us and the Minister has to bear this in mind.

Finally, let me thank the Government for privatising Mumias Sugar Company. Our farmers were able to pay for 30 per cent of the shares set aside for them. As a consequence, the farmers have been able to secure two positions on the Board. That is a good start. I hope that in future, when the situation improves and when the Government will have concretised its policy in this particular area, it should be a formal Government policy such that when it privatises the sugar industry, 51 per cent of the shares go to the farmers. This will enable the farmers to control the boards and policy decisions that may be forthcoming.

A lot has been said about the issue of the grower institutions, but these intermediary organisations between the farmers and the millers are necessary. We may debate on their management approaches but it is a desirable concept. Without these particular institutions, you can understand how difficult it is to husband and transport crops, mobilise credit and so forth. Whereas we may have problems in the management of these institutions, let us not debate on whether or not we need outgrower institutions because we need them. However, it is quite possible to improve on their performance.

Mr. Temporary Deputy Speaker, Sir, there have been problems in respect of Mumias Sugar Company because of excessive deductions of various kinds which the farmer does not understand sometimes. In addition, the directors are not responsive with answers to the extent that, due to lack of information, the farmer ends up with

conclusions which are not based on facts. We need some kind of transparency and accountability from the outgrower institutions, particularly Mumias Outgrowers Company (MOCO). The leaders met, we discussed and certain resolutions were passed. Some were implemented and some were not. We need another follow-up meeting under the chairmanship of the PC, Western Province, so that we can reflect on and review the need for further measures. Only then can we institute further measures.

With those few remarks, I beg to support.

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, there is one issue that I would like to bring to the attention of the Minister and it relates to the privatisation of Mumias Sugar Company. It is an important issue because I had representatives from that area coming to consult with me. There are two types of land around Mumias Sugar Company. There is the nucleus estate where Mumias Sugar Company grows its own sugar-cane. There are also the outgrowers. I wish to bring to the attention of the Minister a problem with regard to the nucleus estate where Mumias Sugar Company grows sugar-cane. The factory was set up on part of Trust land and not Government land.

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

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

According to the provisions of the Constitution, Trust land is held by the county council of the area, in trust for the inhabitants of that particular area. Therefore, Mumias

Sugar Company and its nucleus estate were set up on land which was owned by individuals and different clans. It was Trustland. When the factory was being set up they negotiated individual leases for 33 years with the individual land owners and clan members. They have been receiving an annual rent in respect of the land they leased for 33 years. All of a sudden, these people, who leased out their land to Mumias Sugar Company, learnt that privatisation is taking place and the company is being sold.

No one is suggesting that the company should not be sold, but I am asking the Minister to investigate this issue with a view to adequately compensating the land owners as individuals and clan members. You cannot sell their land just because they leased it out and have been receiving rent. If you are going to sell the factory in the process of privatisation, they should be legally compensated. At the moment, this issue has not been addressed.

Mr. Temporary Deputy Speaker, Sir, trust land is very important. Land anywhere in the Republic is very important. It is very volatile and emotive when it comes to issues of land. So, I am appealing to the Minister to bear in mind the volatile nature of claims and disputes regarding land. What we saw in Kibera has all to do with land. By the way, there is no such thing as Government land. One other issue relating to Mumias land is that the Government appears to have issued one or two titles. How it issued those two titles is not comprehensible to me because this was trust land. There appears to be some misapprehension on the part of the Government that, because the Commissioner of Lands is an employee of the Government, he can just go issuing titles right, left and centre. It is a breach! When it comes to trustland, it is not even Government land. In fact, the Government would have to request the county council to surrender the land to the Government, if they want a particular public purpose for it. Even to call any land "Government land", is a misnomer because it is public land and held by the people of Kenya. So, you see some misconceptions being bandied around like some people talking about it in Kibera that "this is Government land", sort of suggesting, therefore, it belongs to KANU and NDP. No! Government land is public land held by the Government of the day in trust for the Kenyan public. Mr. Temporary Deputy Speaker, Sir, I ask through you that Mr. Minister should look into this issue.

Mr. Temporary Deputy Speaker, Sir, the second issue I would like to raise relates to the very good point about competitiveness and hon. Dr. Anangwe argued very eloquently about that issue. I agree, in principle, that agriculture the world over is always subsidised by the respective governments of the day. However, you must be careful and get the balance right when you are subsidising any agricultural product. The balance is that, first of all, you have got to ensure you do not spoil the particular crop that you are protecting whether it is sugar, maize, coffee or wheat. The way forward, and this is what I say to the Minister through you, Mr. Temporary Deputy Speaker, Sir, is that in addition to this legislation which we are now passing, the Government needs to develop a policy on sugar - a road map. You got to have a road map of where you want to take the sugar industry. Where is the sugar industry today and where do we want to take it? Develop that as a policy so that even as you now begin to provide protection within that policy, you are careful not to encourage idleness or "uncompetitiveness".

In other words, if you are going to subsidise, you must be very clear on how you are going also to encourage the sugar industry in this country to be competitive. If we are going to be competitive in our sugar, we have got to bring down the cost of production of the sugar. Simultaneously, we have got to increase the sugar content of the sugar-cane that we are producing both in quality and quantity. That way, then you can make our sugar competitive. So, you have got to invest in research so as to come up with sugar-cane seed varieties that are very productive and mature within the shortest possible period of time. These are varieties that have got high quality sugar and very high content of sugar. That way, you begin to produce sugar that is going to be competitive in the world market. Even as we provide subsidies, these landmarks would have to be in-built in this policy. It was mentioned about producing sugar-cane through irrigation and not just rain. These are matters that you can look into and encourage. That way, then there can be a bright future for the sugar industry.

I beg to support.

Mr. Sungu: Thank you, Mr. Temporary Deputy Speaker, Sir. I think it is right and proper to take this opportunity to congratulate the Minister for Agriculture for "bulldozing" his way through Government bureaucracy and finally bringing this Bill to the House. We have waited for this Bill for too long and it is important to the sugar industry which supports over five million Kenyans. As we well know, the sugar industry has virtually collapsed because we have not made adequate structures to support the industry so that it can succeed like other industries.

Mr. Temporary Deputy Speaker, Sir, I think it is right and proper, at this stage, to ask why other sectors of agriculture, like coffee and tea, have had relative success in comparison to sugar, cotton and other crops grown in Western Kenya. It is imperative to look at that because sometimes the origins of the industry, who supported it, who are the major farmers and who are the middlemen involved, are of major importance. It is pertinent to note that the sugar sub-sector has been dominated initially by a certain section of Kenyans of a certain origin and I do not want to be racist here. However, it is true that these fellows have played a major role in the lack of development and under-development of this sector.

Mr. Temporary Deputy Speaker, Sir, take the example of Miwani Sugar Factory. Miwani was built well before I was born and yet this factory functioned well until some Asian called Ketan Somaia came and took it using Government funds obtained from National Bank of Kenya and then made it his own. After that, he made it collapse and then gave it again to yet another Asian.

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. I have no wish to interrupt my good friend there but is he in order to single out Ketan Somaia and leave out the political godfathers with whom he was doing this act?

(Laughter)

Mr. Sungu: Thank you. Maybe I was coming to that. I think you are short-circuiting me. However, the truth of the matter is that whoever the political godfathers were, it is a fact that these fellows have been used to bring down the sugar industry. Miwani, as I speak now, is under receivership. While it is under receivership, some Asian who was given a management contract to manage the factory managed to make ways in such a way that over 10,000 hectares of land in Miwani which was forming the nucleus estate for Miwani Sugar Factory, was left without the protection of the receivership. The end result is that this land is now being sold without the protection of the receivership. This Government assured us that, when Miwani was put under receivership, it was to protect the farmers and the assets of the Miwani Sugar Mills so that creditors would not have a field day taking the assets and yet the farm is being sold.

Mr. Temporary Deputy Speaker, Sir, this a bitter issue for me because that land belongs to my forefathers. These fellows who now claim ownership to this land came here only the other day in 1901 with the railway line and yet they are now taking 10,000 hectares and my forefathers, grandfathers and everybody who originally owned this land, are landless. It is a shame and I would not name names because I know it might be unparliamentary. However, there is a certain Judge who is being used by this particular Asian. Whether the Judge is located in Bungoma, he will bring him all the way to Milimani Commercial Courts so that he can obtain a judgement favourable to him. It is a shame that we can allow this to happen in our country and yet our people are landless.

Mr. Temporary Deputy Speaker, Sir, in fact, I want just to refer a little to what my brother, Paul Muite, said that this land ought to have been trustland. This is because the lease on this land was 999 years and I believe there is no land in Kenya with that kind of lease like we have in Miwani schedule zone. I wish my brother would come up with a point of information to just clarify that issue; if there is any land in Kenya which has got a 999 year lease and not 99 as we know it. If it was a 99-year lease, then the lease has already expired and this land ought to have been forwarded back to the Government and, therefore, should have been distributed to the people of

the area.

Mr. Temporary Deputy Speaker, Sir, the worst part of it is that land in Miwani schedule zone, other than the nucleus estate, belongs to absentee landlords, most of whom had migrated back to India. A good part of this land is either being farmed by people by proxy rather than by real ownership. There are farming lands which belong to people who either died or went back to India. A lot of the land is lying idle. That is why we have had problems with cane production in the Miwani zone. That is why the factory has had problems producing sugar because it did not have enough cane. A lot of the land which is fertile and which I think ought to have been farmed has been lying fallow because of questionable ownership. When we are addressing this Bill, we must look at the question of ownership and corruption that has brought this industry down. I want to say that it is timely and right that we now, in fact, should pass this Bill because it should provide protection to farmers.

The establishment of the Kenya Sugar Board is of immense importance, but let us look at the structure of that organisation. Regarding the membership of the Board itself, there are only four farmers as opposed to eight Government-appointed members of the Board. I would like to appeal to the Minister that maybe at the Committee Stage, we look at this issue so that we give farmers adequate representation in this Board. This Government has to, at least, decide whether it is going to liberalise or not; whether it is going to maintain Government control or not. We realise that the tight Government control that has been exercised in this industry and other industries has contributed to their falling standards, production and general collapse of the industries.

I think it is important that we look at the question of protecting the farmers when it comes to cane delivery. Farmers deliver cane to the industry after spending 18 months using their finances, sweat, children for labour, or other forms of labour which they pay for. That undertaking is expensive. They also spend money on agricultural inputs like tractors. After 18 months, this cane is delivered to the factory and sometimes they have to pay the transporters directly. When that is done, it will take three years to pay. Who on earth can afford that? No wonder the factories ran out of cane for crushing because the farmers could no longer afford to produce what they are not paid for. Therefore, this Bill must address this issue properly.

I think that the rates paid to the farmer are important even when it comes to the question of liberalising the sugar sector; either selling this factory, or privatising or liberalising it. But even if that is the case, we must give farmers some protection. If we were to sell all these factories in Nairobi, then, the farmers would be left unprotected because they may not have enough money to buy some of the stakes in these factories and leave them unprotected, yet they are the people producing the cane. This has happened in Mumias as it were, although I understand that the issue was not completed, maybe, because of lack of interest. This is because of the fact that people are still not sure whether the Government is serious about liberalising and giving the people control of these factories. I want to say that this Government ought to make up its mind, whether it is going to liberalise or tightly control this. If it is going to be liberalise, then, it must be able to establish the proper way of giving the governance structures, and a mode through which farmers and stakeholders can have a say in the management of these factories.

Talking about that, the most important thing, in my opinion, as far as this Bill is concerned, is the question of the Sugar Development Levy. We have looked at this issue over and over again during Question Time. In Motions and in various fora in this country, the original intention of establishing a levy was so that some funds could be set aside for the development of the industry, for helping the factories, farmers and developing infrastructure like roads. Although farmers in sugar belt have been paying 7.5 per cent Sugar Development Levy, none of the infrastructure that ought to have been provided for by this Fund has been given. For example, the roads in the sugar belt, Miwani Muhoroni and even in Mumias are non-existent. These are the roads which they use in transporting the cane. So, farmers incur heavy expenses transporting their cane to the factories because the roads are poor. Sometimes, a tractor pulling a trailer of cane has to go all the way round, thereby increasing the costs to the farmer. That is extremely unfair.

When Miwani and Muhoroni were about to fall, we had meetings and we pleaded for just about Kshs300 million, if my memory serves me right, so that it could, at least, carry out the necessary maintenance and repairs so that it could go on. Yet, this did not happen. Where did the money that was collected as the Sugar Development Levy go to? This is why we say that the farmers must be properly represented in the Kenya Sugar Board so that these issues can be tackled at the right place rather than bringing them to Parliament. Parliament ought to be debating laws here and not every little thing that occurs in a factory or in an industry. I would like to appeal that farmers be heard when it comes to the usage of the Sugar Development Levy and other things that affect this industry.

There are many issues that we could talk about; for example, the enforcement mechanisms. We have had cases of people importing sugar illegally into this country, and yet there is sugar lying idle in our factories at Mumias, Chemelil and Sony. They are unable to sell because some unscrupulous individuals have imported so

much sugar at a cheap price from Kenana Sugar Factory or wherever it is. Then, since COMESA came into being, they bring it duty-free. Therefore, they undercut the price of our own sugar which is produced at high cost because of problems in this country. Then, you say that there should be a fine of, for example, Kshs500 million for somebody who has, probably, imported sugar worth billions. Then, what is the incentive? Is there real punishment there? He would make a clean profit and go and pay the fine and say goodbye and be a happy man.

The enforcement mechanisms, for protecting this industry, must be looked at in more careful times. No country can afford or develop without protectionism. It was something that was developed to protect industries in various countries which are coming up. Kenya is still a developing country and we need to protect our industries for the benefit of our people. Look, for example, at unemployment. The unemployment figures are unprintable because we are not even building factories or the economy so that our people can get employment. With the sugar industry, you have a way of keeping people at home, so that they can produce their own sugar. When they take it to the factory, they have some money, and with four other backup linkages, the economy grows. But here is a case whereby, if you do not help them, then, we are going to go backwards. That is why they say that our economy is in doldrums because of things like sugar.

Our people are not having money in their hands. Therefore, the enforcement mechanisms are important so that we can protect our industry and these crooks, who bring in sugar illegally, can be rightly punished in a proper way befitting the crime that they commit against this country.

I do not want to speak for the whole day because we want to make sure that we go to the Committee Stage as soon as possible.

With those few remarks, I beg to support.

Mr. Donde: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me time. I will be very brief because the Minister carried us through the Bill the day he spoke, and I had the opportunity to understand fully the implications of the Bill. I am glad that it was done in a detailed way. The only thing that I would like to tell the Minister is that the story of the sugar industry is a very sad tale. Most farmers have had a dream which they have not managed to fulfil. So, through this Bill, we could be telling them that the dream that has been traumatising them is about to come to an end.

Mr. Temporary Deputy Speaker, Sir, it is, therefore, important that we listen to each other as we discuss this Bill, because we have people who have suffered so much. People have supplied sugar-cane to industries that have collapsed with their money; families have suffered a great deal as a result. So, we are looking upon this House to provide a solution. It is, therefore, important that we listen to, and advise each other since we have the relevant information from the ground. This is not a problem that has taken us by surprise; we have watched it develop over the years. It is, therefore, not difficult for us to find a solution to it. It is a process we have observed, and we know what has taken place.

My request to the Minister is, therefore, that he listens to what hon. Members are saying, especially with regard to the amendments they intend to move at the Committee Stage. We are talking out of the experience of the farmers. So, the Minister should take hon. Members seriously when they talk about introducing amendments to this Bill. If we do not correct what is wrong in the sugar industry now, we may not have another chance to do so. We want sugar-cane farmers to have confidence in the sugar sector. We want them to start cultivating sugar-cane again. We would like them to realise that the provisions contained in this Bill will enable them to recoup the losses that they have made over the years. I would, therefore, request that, during the Committee Stage, hon. Members try to listen to each other. I believe that no hon. Member, especially on this side of the House, will come up with an amendment to this Bill, which will not have come from the ground. We are all hon. Members; we have our constituencies. We are experienced in the problems of the people on the ground. Some of have travelled to the sugar belt quite often, and we understand the situation on the ground. We know the issues farmers would like addressed. It is now upon us to make it possible for them to realise their objectives.

Mr. Temporary Deputy Speaker, Sir, I now want to talk about sugar importation. There were suggestions that the Board should be given the right to decide on the amount of sugar it may import, any time when there is shortage, so that we can balance the market forces, rather than leave that decision with people who are used to taking advantage of such situations to flood our market with imported sugar, and people who may want to use the opportunity to make wealth for themselves, especially when they realise that they can import the commodity and evade paying duty.

In respect of sugar-producing areas, where the people depend on sugar-cane farmers, we should agree to allow the industry to pick up again, because the industry does not evade paying duty. So, when there is a sugar shortage, players in the industry should be given the opportunity to import sugar. We know that they will not evade paying duty; they will pay. So, we should get out of this practice of allowing individuals to import sugar, who then use the opportunity to flood the market with cheap sugar and making wealth for themselves by evading

paying duty.

If we agree that the Board should be the one to import sugar when there is a shortfall, duty for such imported sugar will be paid to the Government and the market will not be flooded with cheap sugar. That way, we shall have a lasting solution for Kenyans. But if we allow Mr. Donde and everybody else to import sugar whenever they want, they will not look consider the interests of the local sugar industry. They will only concentrate on ways of evading paying duty so as to import sugar cheaply. Individuals do not really consider whether there is a shortfall in the supply of sugar.

I would, therefore, like the Minister to give us a lasting solution. I know that he is capable of doing so. He has read about agriculture in the course of his duties. So, I know that he can deliver a solution to farmers. I would like to encourage him to just do that. If he does so, he will be remembered for many years to come. So, I would encourage him not to lose this opportunity. He need not get messed up by civil servants. We saw the officers who were sitting on the Civil Servants' Bench when we were scrutinising the Finance Bill at the Committee Stage. They prepare a Bill and, three months later, they come up with proposals for the amendment of half of the provisions contained in it. This means that they do not do their job well at the initial stage.

I do not think that civil servants have a solution to the problems facing the sugar sector. Really, why should civil servants prepare the Finance Bill only for the Minister to come up with proposals to amend half the provisions in it three months later? That means civil servants are not serious in their duties. So, the Minister should not listen to them. They do not travel upcountry. They do not know the problems the people are facing in the field. We know the people's problems, and we can advise the Minister better on what to do in order to help the farmers. As much as we know that the Minister has civil servants to help him, let them help him to implement the policies that we approve here. But they should not take up our job by pretending that they know what is happening on the ground. We know better, and we can advise the Minister better.

With those few remarks, I beg to support.

The Assistant Minister for Trade and Industry (Mr. Ekirapa): Mr. Temporary Deputy Speaker, Sir, I can see that the Minister is pleading with us to be short in our contributions. So, I am going to be very brief in my contribution to this Bill.

I just want to request for advice from the Minister. Farmers in my constituency have been encouraged to grow sugar-cane, and they have grown a lot of it. It was assumed that a sugar factory would be built in Busia District and start operating but it has not, and we do not know whether it will ever start operating. Farmers' sugar-cane has matured, some of it for the last three years, and the farmers do not know what to do with it. Perhaps the Minister will investigate this matter. I wonder whether it is proper for us to advise farmers to grow a crop for which we have not got a market.

Who will compensate these farmers? They feel that somebody ought to compensate them. They are, of course, looking upon the Government to do so. I will very much appreciate if the Minister looks into this problem. Every time I go home, the farmers ask me: "What do we do with this sugar-cane? You can see that it has dried up. Some of it is being used as firewood, while some of it is getting wasted". It is a great pity that, that is happening. So, I will appreciate if the Minister addresses this issue when he replies to this debate.

There is also the issue of the same farmers not being represented. There is an organisation in which farmers ought to be represented. The sugar-cane growing area has been divided into zones, which are supposed to be represented by somebody who has been elected by the farmers. Sugar-cane farmers in that area are not represented, and they do not know where to take their problems to. So, they take them to their Member of Parliament, thus burdening him. Perhaps the Minister will also look into this issue.

We have talked very much about the high production costs of our sugar. We have not tried to establish why the cost of production of our sugar is very high. Is it because of the cost of fertilizers? If it is so, I would like to appeal to the Minister to look into the possibility of this country producing its own fertilizer, because fertilizer is a key input not only into sugar-cane, coffee and tea growing but also into every other crop that we grow.

Mr. Temporary Deputy Speaker, Sir, regarding the coffee sector, hon. Members were very happy with the Coffee Bill that was passed here. I did not have an opportunity to contribute to the debate on the Bill, but I think you realise that new coffee producers are now coming up. Vietnam is now the second largest coffee producer in the world. That country never used to produce coffee in large quantities before. So, Kenya will now have to look into new methods of producing the crop cheaply. We should look into ways of producing a particular quality of coffee, so that we can compete on the world market. Otherwise, in terms of volumes, Kenya may have to say goodbye to coffee growing in future.

This is something the Minister may want to look into, but it relates to the issue of production costs. What should the Government do to enable farmers acquire agricultural inputs cheaply? Should we produce our own fertilizer?

We should manufacture our own fertilizer. I gave up growing maize four years ago and I am now growing wheat because it is just impractical to grow maize with the cost of fertilizers as it is at the present time. That is me because I have an option. I am an hon. Member of Parliament and I can also do something else. I can start a business or something else, but what about the farmers at home, who depend entirely on maize growing? How will they survive? It is very important that the Minister looks into this issue.

Mr. Temporary Deputy Speaker, Sir, the third issue is the question of land, which an hon. Member casually mentioned. In many countries in the world, foreigners are not allowed to own land. In this country, any foreigner can come today and buy land tomorrow. Can we not pass a legislation in this House prohibiting any foreigner from owning any land in this country? If a foreigner wants to start a business here, he can lease land from the Government or from individuals. But the idea of this country allowing foreigners to own land is totally unacceptable, does not work anywhere else and we are just being funny.

Mr. Temporary Deputy Speaker, Sir, I want to talk about sugar-cane growing. In many cases, it is assumed that outgrowers are people who live and grow sugar-cane around the factory. In my case, because we do not have the Busia Sugar Factory that was supposed to have started, farmers are supposed to deliver sugar-cane to Mumias Sugar Factory, which is a long distance away. The cost of transportation is almost 50 per cent of the price that the sugar-cane fetches. This does not make sense. Can we find a way in which sugar-cane can be transported reasonably, so that a producer of a tonne of cane, whether he lives one kilometre or 20 kilometres away from the factory, can be paid the same price for his tonne of sugar-cane? I think this is very important. Farmers are discouraged from growing sugar-cane because of the low price that it fetches and, in fact, some of them suffer a loss.

I am being reminded that with those few remarks, I should stop, but let me make one more point. The sale of shares to the growers in Mumias has been received very well, indeed. I want to congratulate the Minister and the Government for this. However, although farmers have requested that they get some additional shares later, there is the issue of how those shares will be owned by the farmers. In company law, there may be a stage sometimes in the future when it will be important for the shareholders to vote by the use of poll. I would like to suggest to the Minister to advise the new farmers who have bought shares that they should own those shares through maybe Mumias Outgrower Company (MOCO) or through another organisation, so that their representatives, if they must vote on an issue, will use their block vote. They will use the total shares that they own for voting. Otherwise, it is very difficult to put the farmers together for their voice to be heard. The Minister is looking at me and he wants me to finish. But I have made the main points--- If you will allow somebody else to contribute, let me continue talking then.

With those few remarks, I beg to support.

Mr. Ndwiga: On a point of order, Mr. Temporary Deputy Speaker, Sir. What we are hearing now is total repetition and there is nothing new coming out. Therefore, I beg to move that the Mover now be called upon to reply.

The Temporary Deputy Speaker (Mr. Muturi): Yes, it sounds as if what we are hearing is really a repetition of what we heard before. Probably, some hon. Members were not here and I would agree with you that the Mover be now called upon to reply.

(Question, that the Mover be now called upon to reply, put and agreed to)

The Minister for Agriculture (Dr. Godana): Thank you very much, Mr. Temporary Deputy Speaker, Sir. Let me thank all hon. Members who have contributed to the two days' debate on this Bill. Understandably, this is a subject which is very close to the hearts of hon. Members, in particular, hon. Members who represent rural agricultural communities, and those from western Kenya, both Nyanza and Western Provinces, where the principal income-earning activity in many areas is actually sugar-cane growing.

Understandably, the story of sugar which has become, to quote Mr. Donda himself "a very sad tale", is very emotive and elicits passionate comments and pleas. Hon. Members have commented on virtually every provision of the Bill. Whereas they have welcomed the introduction of the Bill at this stage, they have been positively critical. There are areas where they have suggested other amendments. Indeed, I must say that in the Departmental Committee on Agriculture, Lands and Natural Resources, we have already discussed some of the Committee's proposed amendments and have come to consensus on the basis of the principle of give-and-take. There are some of the proposals which we have accepted and others which we have agreed to drop, and I hope that when we come to the Committee Stage, the same spirit will prevail.

Let me say that I only wished that the Committee hearings were as we designed them. I take pride in the fact that in my capacity, in the past, as the Chairman of the Standing Orders Committee, I contributed, along with four or five other hon. Members of that Committee after a long tour of Commonwealth Parliaments, to designing the Committee system. Whereas it is evolving, we are under-using the Committee system. The Committees are supposed to be open-ended. They are not exclusive houses. Whereas if there are issues on which hon. Members have to vote, it is only the Members of the Committee who can vote any hon. Member of this House can go and give views. I was a bit surprised, to be frank, that both for the Coffee and Sugar Bills, the attendance was very low. Perhaps, if the attendance was better, may be some of those criticisms which have been advanced here would not have been advanced.

I realise that many hon. Members feel very strongly about the membership of the Board. They feel that farmers should be a majority on the Kenya Sugar Board, as is the case on the Coffee Board of Kenya in particular, and, therefore, hon. Members are unhappy with the slot of four positions. I would want to make an appeal, and I made an appeal to the Committee Members, that we have to look at every sub-sector in its context. Sometimes it is necessary to try to sit back and look soberly at it and ask: "When is this really a case identical to that of coffee". We have got to appreciate that the sugar sector is unique in many ways. Every case is unique in its own way, and certainly coffee is not a particularly appropriate comparison. This is because in the coffee sector, farmers produce coffee and the principle is that they own it until it is sold. Even through the mill, the identity of that coffee has been reserved to underline the principle that it belongs to the farmer until it has been sold and the farmer has been paid for it. That principle cannot apply in the sugar sector. Farmers grow sugar-cane. The sugar-cane has to go through the mill, and as it does so its identity and ownership change. The product that comes out is sugar.

Dr. Ochuodho: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Ministry seems to have a problem with farmers in the tobacco and sugar-cane growing areas because they are not being adequately represented on the Board. I want to put it to the Minister that it is wrong to deny farmers adequate representation. I want to appeal to him that the slots that will be provided for farmers should be occupied by members of the newly-established Sugar-cane Farmers Union, but not the other bodies that purport to represent them.

The Minister for Agriculture (Dr. Godana): Mr. Temporary Deputy Speaker, Sir, as I said, I understand that this is a subject which is very close to the hearts of many people in areas that are represented by hon. Members, including the hon. Member who has made repeated appeals to me. It is, perhaps, the single and most important economic activity and, therefore, I can understand the reason for the emotions. But I am just making a plea to hon. Members to understand that sugar-cane is not like coffee although some people have been comparing the two. It is as if we have been discriminative in favour of coffee growing and against sugar-cane growing. Certainly, that is not the case. We have designed a Board with ten positions and only three of those positions are vested in the Government.

Somebody asked what the Permanent Secretary in the Treasury has to do with a Board dealing with the sugar-cane sector. The fact is, for now, the Government is a major investor in all those sugar mills. Even in the case of Mumias Sugar Company, which we have privatised, the Government still holds a significant stake and it has been the policy and practice that, in all Government investments, the Permanent Secretary, Treasury as the ultimate Accounting Officer, has to sit in the Board or be represented in the Board. He does not have to be there in person. In fact, the other two officials from the Government are the Permanent Secretary in the Ministry of Agriculture and Rural Development, who, along with the Minister, are principally responsible for agricultural policy and we are talking about sugar-cane farming.

Thirdly, the Director of Agriculture is the technical expert when it comes to sugar-cane farming. The other two principal seconders are the group of farmers and the millers in the sugar industry. We cannot ignore either of them, yet we have been so fair, in view of that, as to give a slightly higher number of representation to farmers. We have said that for every 40 farmers, there should be two to three millers. We cannot ignore the millers because they have a major stake in the industry. In fact, they can make or break. We are trying to strike a balance by carrying both of them. But as a safeguard, for those who might think millers, even when privatised, and the Government might transpire together, we provided that the quorum shall be seven members. So, six millers and Government representatives cannot try to rub shoulders over the farmers. In fact, if farmers have the power of veto, we do not oppose it. I think it is also important that we do not have an oversize Board, because ultimately, for its survival and for office practices, they live on what would have gone to farmers. So, it is important to have a small manageable and hopefully an efficient Board, which will not be too costly. I am making a plea for understanding from hon. Members in this regard.

Mr. Temporary Deputy Speaker, Sir, with regard to out-grower companies, I think, obviously many of the Members from the sugar-cane growing areas seem not to be in tandem on the importance and utility of these bodies. Today, I have heard that these are important intermediaries. So, let us not think that they have already

exploited farmers. I find it somewhat surprising because when we were privatising Mumias Sugar Company - this is a privatisation exercise which I think has gone fairly well - I did come under pressure from some of my colleagues from that area, that the outgrower company should be the owner of the shares in trust for farmers. We resisted that pressure, taking cognizance of what has happened in co-operative societies and is re-affirmed by adverse comments given against the offer being extended to outgrower companies. Taking cognizance of this fact, I think we could be creating institutions which will become new vehicles for squeezing farmers out of their meagre incomes. I think we have to distinguish between the principle of organising small-scale farmers with small plots and individuals who cannot effectively bargain against the millers, when for example, they want to form a viable organisation which can bargain effectively to protect their rights.

On the other hand, there is question of shoddy management of these organisations. I think the latter is really the reason why some people have begun to get agitated against these organisations and this is the same principle in the co-operative moment. The co-operative societies have contributed tremendously to rural development in this country. When the co-operative societies were properly managed and professionally run and supervised by people of integrity, in the first two to three decades in this country, they accounted for the activities or were responsible for a phenomenal growth of agriculture and of incomes and development in many rural areas in this country; like in Central Kenya, the Mt. Kenya region and, indeed, in other parts of the country. What has happened of late is that, somehow we have lost that conscious attitude towards managing resources which belong to groups. Increasingly, people who take positions in those co-operative societies have turned out to seek those positions not because they want to serve, but because they want to have a bigger share of the team. That is what has worsened the impoverishment of farmers, for instance, in coffee growing areas.

Mr. Temporary Deputy Speaker, Sir, I want to appeal to hon. Members that, when we come to the Committee Stage, we look at some of the proposed amendments very soberly, because part of the problem that we have in the co-operative movement now is due to emotion-led amendments to the law which were introduced against the background of the Inter-Parties Parliamentary Group, by the House and against better advice by the Ministry then. We want now to reverse some of those changes. I think, really, this should be a warning sign to us, that much as this is a very emotive subject, we should try as much as possible to be sober and see the pros and cons of some of these proposals before we rush into them.

With regard to the question of the Minister appointing the Chairman of the Board, I think I made this point very clear when I moved the Bill. The decision to appoint the Chairman rests with the Board. It is the Board which will elect the Chairman. But the Minister, as the person ultimately responsible for any policy on agriculture before the Kenyan public, cannot pass the buck, if something goes wrong. He should make the last word to ratify and say, "wait for a minute, I think I have information about this person" which makes him somewhat appropriate.

So, the Minister's power there is not to impose a Chairman, but to act as venter of the last resort. I think, in most cases, the Board will have the Chairman that they want to have. But I think the chance to correct a mistake should not be taken as a desire to impose controls. That is not the case.

Mr. Temporary Deputy Speaker, Sir, quite a number of hon. Members have rightly commented about the area of production and the need for us to have proper research carried out so as to develop seeds and have the right quality of sugar-cane. I fully agree with those comments and, I think, I made this very clear again when I moved the Bill. This is the whole purpose for having a re-organised institution of the Sugar Research Foundation, which we referred to and for which we have provided for the charge of a levy. Then the other revolutionary change which we have introduced, and which seems to be facing quite some opposition, here, surprisingly, is with regard to the method of making payment to farmers. We have decided, after a very careful consideration, that it is in the long term interest of the industry, and indeed of farmers, that we pay farmers not according to weight, but according to the quality of their produce, according to the sucrose content. The point is, where you are giving a blanket payment for weight, there is no encouragement. You are not giving an incentive to better crop husbandry and you are not encouraging farmers to make a difference with their neighbour to try and compete. I think it is important that we introduce this method in the sugar industry.

As I said earlier on, there have been cases where some farmers have resorted to all kinds of unscrupulous methods to increase the weight of sugar-cane, for example, by throwing stones into the bundles which have been tied, as I said, at a great cost to the machinery. But I think ultimately the farmer suffers in that kind of situation because the company will always find a way of passing on the cost to him.

Dr. Ochuodho: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Minister does not seem to be aware that once sugar-cane has been cut, it is transported to the factory by the companies themselves. During the transportation, a lot of sugar-cane is dropped and rots along the way. Who should meet that cost? The method the Minister has proposed, of not taking weight at the source where the cane is cut, is rather unfair. In this case, the loser is the farmer. Could he consider explaining to the House who should meet the cost of the loss when

sugar-cane is being transported to the factory?

The Temporary Deputy Speaker (Mr. Muturi): Indeed, that is a question!

The Minister for Agriculture (Dr. Godana): Mr. Temporary Deputy Speaker, Sir, it is a question. On the cost, I think it depends on its scale. Obviously, there is the natural spillage when you carry this kind of bulky stuff. But some of the hon. Members whom I talked to this afternoon said, and I hope that I understood them well, that sometimes this is done deliberately because of sugar jaggeries and so on. Precisely, this is the reason why we want a regulatory board in place, so that if, indeed, the spillage is being done in a manner which is meant to reduce the earnings of the farmer, obviously, the industry should be held responsible. I believe that, as we privatise this industry, increasingly, some of these problems will reduce.

On jaggeries, I would like to say that these are sugar factories and they are licensed. It is a criminal offence for a jaggery to operate without a licence, as Mr. Muchilwa said. He said that, more often than not, jaggery operators are arrested and released because of corruption on the part of the police or the courts. This is a problem that the country is facing and it is not really a special problem for the Minister for Agriculture. I think this is a problem which all of us, as Kenyans, and in particular as leaders, will have to face. If courts cannot be relied on to enforce the law, then I think we are on very dangerous grounds. So, I would like to appeal to Kenyans, and particularly, leaders that we work together to suppress criminality. That is what it is. I can only promise that we will, as a Ministry, strengthen the Board, once it is in place, in terms of its supervisory powers.

On the problem of imported sugar, particularly, from the COMESA region, criticism has been advanced that perhaps the Government was not properly on guard when it decided to commit itself to the COMESA regional trading arrangement. But I do not think that this is the case. The fact is that we live in a world, and we are not in an autarchic situation, and there has to be the principle of give-and-take. In particular, COMESA has become our single biggest export market, having overtaken Europe. The same discomforts we feel when it comes to imports of a commodity like sugar from some of these COMESA countries are perhaps felt more painfully by other partner states within the COMESA region, which have much weaker economies relative to ours in terms of industrial sophistication and so on when they see Kenyan goods flooding their markets. I would like to inform this House that the same pressures are exerted on Ministers and Governments in some of those countries that the imports of Kenya's Unilever goods are killing their infant industries. This is an area where we have to tread very carefully. Really, there are two sides to the coin.

Mr. Temporary Deputy Speaker, Sir, Dr. Anangwe lamented that we did not have a Sessional Paper to run before this Bill. This is true but we had a Policy Paper, which was small and grey. I was being faithful to the policy document behind the Bill when I quoted at length from it as I moved the Bill. I do not think that, that has really prejudiced the contents of the Bill.

Finally, on the proposal for the Sugar Development Fund, again, I can understand the concern of hon. Members about lack of credit in view of the failure of the Agricultural Finance Corporation (AFC) and the tendency of the commercial banks to charge inapplicable interest rates when it comes to agriculture. In most countries which I know, unless the prevailing commercial bank rate is very low, there is special arrangement for agricultural credit. We are thinking of this seriously. We are thinking of reforming the AFC, and hope that, in due course, we will come up with something more acceptable. But sugar-cane is a crop which, more than coffee and tea, has lent itself to contract farming. Even if that has been abused by some of those factories, and I hope that those abuses will be over, we have to move very fast to privatise the industry. It lends itself much more easily to contract farming and as such, therein lies an opportunity, especially, if the industry is privatised, for something even better than commercial credit to farmers. That is where the person who contracts the farmer finds that it is in his interest to ensure that the millers are continuously supplied with quality sugar-cane. In effect, it takes the miller into extension services to ensure that appropriate land preparation is made and inputs are available at the right time. I think Mumias Sugar Company has done reasonably better than other sugar companies in this regard. It will be better if we strengthen this.

I have to be very frank with hon. Members. I am not very happy with proposals for us to establish the so-called Sugar Development Fund; for two reasons. First, it can easily become the rallying call for every product. This can easily be politicised. But even more importantly, we know ourselves as Kenyans and we know our recent history. I have just talked about our tendency to look to public funds which are meant for objective reasons for the purpose of "putting fingers" in by individuals in positions. In other words, these kind of funds render themselves easily to abuse and I am scared of this. I think the case of the Sugar Development Fund, that you people have been critical of, should warn us about this. So, where there are alternatives, we should look at them and establish whether, indeed, it is possible to have an option of the farmer accessing resources in terms of inputs and proper services, which agricultural credit should facilitate. I think we should try to strengthen those alternative institutions which are unlikely to be abused than establish a fund of this nature which will be charged on the

farmer in a direct way, and yet there is no guarantee that all of it will assist most of the farmers.

Mr. Temporary Deputy Speaker, Sir, once again, I would like to take this opportunity to thank hon. Members for their contributions. As I said, I do intend to bring some amendments at the Committee Stage. I hope a consensus will be reached on a number of those items in the Committee Stage. There are one or two items on which we agreed we will consult further and bring before the Floor of the House. Above all---

Dr. Ochuodho: On a point of order, Mr. Temporary Deputy Speaker, Sir. I would like the Minister to clarify a few things. If I got him right, he said there is an intention to do away with the Sugar Development Fund (SDF). Will he explain to the House how they will then fund the Board? Also, do they intend to continue collecting Sugar Levy of 7 per cent or it will not be collected any longer?

The Temporary Deputy Speaker (Mr. Muturi): Order! Dr. Ochuodho, Question Time is usually much earlier than now.

The Minister for Agriculture (Dr. Godana): Mr. Temporary Deputy Speaker, Sir, for the benefit of the hon. Member, I would like to make it clear that SDF, which will be established out of the levy for the purpose of running the Board and Research Foundation will be there. What I caution hon. Members against is the idea of pushing for a kind of loan fund or credit pool for farmers because that will be a different kind of fund.

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

(Question put and agreed to)

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

The Temporary Deputy Speaker (Mr. Muturi): Next Order!

BILL

Second Reading

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

The Temporary Deputy Speaker (Mr. Muturi): Where is the Attorney-General to move the Bill for the Second Reading?

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Order Paper reads "the Statute Law (Miscellaneous Amendments) Bill" as the next Order. It is for the Attorney-General to move it for the Second Reading. This issue has been raised time and again. Some of us are waiting here up to 8.30. Why is the Attorney-General not here to move the Bill? The Deputy Leader of Government Business is not here! The Leader of Government Business is not here! I can see the Chief Whip is here. We are entitled, as hon. Members, to some explanation. Why is the Government not ready to move the next Order on the Order Paper?

The Minister for Agriculture (Mr. Godana): Mr. Temporary Deputy Speaker, Sir, I suppose when the Attorney-General comes up next time, he will explain. I think he must have been overcome by some unforeseen circumstances that kept him away.

Mr. Kihoro: On a point of order, Mr. Temporary Deputy Speaker, Sir. Indeed, hon. Members have been waiting for the Attorney-General to move The Statute Law (Miscellaneous Amendments) Bill. This Bill is about the media law. The whole country is waiting to know the position in respect to the media law that is proposed in this Bill. The Attorney-General is not here and hon. Members have been waiting. Very clearly last week on Tuesday, the House passed a Motion for the extension of sitting hours from 2.30 p.m. to 8.30 p.m. Now it is very clear that maybe it was only up to 8.30 p.m. for some of us and not for the Government side. It is important that we get a satisfactory explanation why the Attorney-General is not here because we have been waiting for him to move this Bill. Is it that he is prepared to withdraw this Bill which is very important? That is what we want to hear. If he can withdraw the Bill now, there will be no debate and we will be happy to go home.

Dr. Ochuodho: On a point of order, Mr. Temporary Deputy Speaker, Sir. When this Bill came up for the First Reading some hon. Members raised concern that it addresses matters that are constitutional and likely to violate our Standing Orders. In view of the fact that the Attorney-General himself is not here, could the Government seriously consider the proposal by hon. Kihoro and withdraw this Bill because it is not in the interest

of this country that this Bill goes through this House?

The Minister for Agriculture (Dr. Godana): Mr. Temporary Deputy Speaker, Sir, I am standing only in the spirit of the principle of collective responsibility. I am not in a position to accede to that far-reaching request, but I will certainly convey the message to my colleagues, the Attorney-General and the Leader of Government Business. We can expect this Bill to be prioritised in the next session of the House Business Committee meeting, if indeed, it is not moved tomorrow. I hope the Coffee and Sugar Bills will go through the Committee Stage tomorrow afternoon. I want to plead that we give the Attorney-General the chance to come and explain.

Mr. Murathe: On a point of order, Mr. Temporary Deputy Speaker, Sir. The KANU Chief Whip is here, as hon. Muite has rightly pointed out. The Chief Whip is always busy whipping hon. Members of KANU whenever the need arises. I think it is incumbent upon him to tell us why it is not possible to give a viable explanation to this House about the whereabouts of a member of Government at such a crucial moment.

The Temporary Deputy Speaker (Mr. Muturi): Order! I think the Chief Whip does his job in the House. He may not be in a position to know, or even explain, let alone whip the Attorney-General, wherever he may be. It suffices that we appreciate the Bill is of great importance and perhaps that is why some hon. Members have been sitting here, waiting for it to be moved. It has far-reaching implications in various matters that it proposes to amend. It is also important to appreciate that the House requires a satisfactory explanation from the Attorney-General himself as to why he is not present today to move this Bill, or take whatever action that he may deem necessary. I, therefore, direct that the Attorney-General be informed that the House requires his explanation tomorrow and that the Bill be considered in the next session of the House Business Committee on a priority basis. Whether it will be withdrawn or moved, that is neither here nor there.

I direct that we move to the next Order!

Mrs. Mugo: On a point of order, Mr. Temporary Deputy Speaker, Sir. I respect your ruling, but in view of the fact that the Leader of Government Business, his Deputy and the Attorney-General are not here, it is a clear indication that this matter is not important to this Government. Since it is the practice of this House to drop a Motion if the Mover is not present, could the Chair drop this Bill?

(Applause)

QUORUM

Mr. Sungu: On a point of order, Mr. Temporary Deputy Speaker, Sir. We cannot proceed because there is no quorum.

The Temporary Deputy Speaker (Mr. Muturi): Yes, there is no quorum. Ring the Division Bell.

(The Division Bell was rung)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Muturi): Hon. Members, even after the Division Bell was rung, we cannot raise quorum. The House is, therefore, adjourned until tomorrow 6th December, at 2.30 p.m.

The House rose at 8.00 p.m.