

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 15th November, 1995

The House met at 2.30 p.m.

[*Mr. Speaker in the Chair*]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.495

NUMBER OF SECOND WORLD WAR VETERANS

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

- (a) how many Kenyans served in the 1939/45 Second World War;
- (b) whether these war veterans were paid terminal benefits by the British Government; and
- (c) whether he is aware that these war veterans from Kisii and Nyamira districts have hitherto not been paid their terminal benefits and do not even benefit from the financial assistance given by the Kenya Armed Forces Old Comrades Association (KAFOCA) in the Department of Defence.

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

(a) There are 80,000 Kenyans who served in the 1939/45 Second World War. As their records were manually done, as when they were recruited and as they were discharged, it is not possible to give a district break-down of the 80,000 soldiers. Such an exercise will take many months to give a district breakdown for each of the 80,000 Kenyans. If extension of time was granted, the district breakdown will eventually be made for each of the districts which was in existence at that time.

(b) No, the war veterans were not paid terminal benefits by the British Government but they received their pay allowances and their just demands up to the time of discharge or demobilisation. In any case, the war veterans could not have qualified for any pension for the period they served during the Second World War, 1939-45, as that period was not long enough to qualify for the pension in accordance with the pension

regulations in force then. The exception is that if a war veteran was wounded while serving during the war, then, on discharge, such a soldier would be entitled to a disability claim which, if confirmed and approved by the Medical Board then, the wounded soldier would qualify for a draw of disability pension.

(c) Yes. As I have said in (b) above, I am aware that war veterans from Kisii and Nyamira districts, like all other war veterans were not paid any terminal benefits. However, war veterans from Kisii and Nyamira districts do receive financial assistance from the Kenya Armed Forces Old Comrades Association (KAFOCA) as evidenced by the following statistics. In 1991, eight of them received a total of Kshs16,000. In 1993, 12 received a total of Kshs24,000 and in 1994, widows of ex.veterans received Kshs4,000.

Mr. Anyona: This is an important Question because a large number of Kenyans took part in the war that was not their own. Is this Government satisfied that our people were treated fairly in the same manner as other people who took part in the war were treated and particularly the British themselves? Have you been assured by the British Government that they were treated in the same way; or were they discriminated against because they were black?

Mr. Manga: The Government might not be satisfied but the Government is bound by the regulations or the contracts that the soldiers signed with the British Government when they went to serve.

Mr. Obwocha: One of the veterans is my father who fought in the Second World War. But I want to ask a Question on one of the veterans called Nyang'au Atera. He is one of the *wazees* who approached me on this particular issue and I am happy hon. Anyona has raised this Question. Now that the Assistant Minister has told

us that some of the war veterans were paid in 1991/1992 and 1993 by KAFOCA, could he consider paying this *mzee*, Nyang'au Atera, some little money to enable him to survive? What criteria did you use to pay these other war veterans that you have enumerated in your answer?

Mr. Manga: Mr. Speaker, Sir, as I said, if he avails himself to KAFOCA, they will tell him what to do and I am sure he will be paid.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, Europeans who served in this war for five years some of them were young boys and they served for five years--- When they came back and settled in Kenya, they were given land and those who did not like land were given houses in the urban areas. The Africans got nothing. Would the Assistant Minister be kind enough to ask whether these people could be helped by the British Government because they were not fighting for anybody else but the British Government? Could he ask the British Government to try and help these very old fellows? Most of them are 80 years old.

Mr. Manga: The question of whether these people were given shambas, the hon. Member will not even be able to prove that and I would also not be able to prove that, because, these people, the settlers, and all these people, we do not know how they were given the shambas. I do not think he will also be able to do that.

Mr. Anyona: Mr. Speaker, Sir, the Minister has said that some of these people were paid salaries and all that. I have had a large number of veterans coming to me with their documents and they have said that, they were not paid anything. In addition, I have also seen applications to KAFOCA for assistance which have not been honoured.

Mr. Speaker, Sir, could he give assurance that these people can be paid their benefits, if they indeed provide evidence that they were not paid and they have not been considered by KAFOCA?

Mr. Manga: Mr. Speaker, Sir, I have a very long list of the people who have been paid and if those qualify, they will be paid. The list contains their names and when they served.

Question No. 841

EXTENSION OF MATERNITY LEAVE

Mrs. Ngilu asked a Minister of State, Office of the President:-

- (a) if he is aware that women in this country are entitled to only one month's maternity leave; and
- (b) if the answer to (a) above is in the affirmative, if the Government could consider extending the maternity leave to three or more months.

The Assistant Minister Office of the President (Mr. Manga): Mr. Speaker, Sir, the Floor is still mine, I beg to reply.

(a) I am not aware that women in this country are entitled to one month's maternity leave. I am aware, however, that women are entitled to two months maternity leave, which I want to emphasise here - 60 working days.

(b) Terms and conditions of employment are under continuous review and questions raised by the hon. Member for Kitui Central will be taken into consideration in reviewing the leave aspect of the employment contract.

Mrs. Ngilu: Mr. Speaker, Sir, I thank the Minister and I also want to say for the second time that I have not got a written reply. However, it is true, it is legal for every working woman to have 60 days leave. But, everybody in this country, whether man or woman, is entitled to annual leave, and when we get our 60 days we forfeit our annual leave, which leaves us with only one month. Women have enormous problems, especially before and after delivery and, therefore, 60 days is not adequate. Can the Minister review this at once, especially because, this is very discriminative once again?

Mr. Manga: Mr. Speaker, Sir, you will notice what the Member wants is actually 90 days. That, means 60 days plus the usual annual leave. That will affect the planning of the work. If somebody goes away for 90 working days, that is amounting to about five months or four and a half months, this will disrupt the planning of the actual work.

Mr. Wamalwa: Mr. Speaker, Sir, does the Minister not realise that the act of women delivering children is a very important and essential act and there would be no nation without that act and mothers, therefore, should not be denied their annual leave because, they had 60 days maternity leave? That is a right, they should be entitled to the 60 days and still get their annual leave. If the Minister agrees with me, the act of procreation is an important act.

Mr. Manga: Mr. Speaker, Sir, I quite agree with the hon. Member, otherwise I would not be standing here, I would not be born. But, as I said before indeed this process is being reviewed.

Mr. Magwaga: Mr. Speaker, Sir, can the Minister tell the House why the Government reduced the three months to two months when we know that women are expected to deliver and that is not sickness? It is the usual thing, three months to take care of the kid. Why did they reduce the period?

Mr. Manga: Mr. Speaker, Sir, I have said it already. Maybe the Member was not very attentive. I have said that the employers have complained that it is going to disrupt their working plan. So, that is the reason.

Mrs. Ngilu: Mr. Speaker, Sir, we are aware that, the process of having a baby is not "one-sided". If---

(Laughter)

Mr. Ndicho: On a point of order. Mr. Speaker, I am very concerned by the hon. Ngilu's assertion that giving birth is "two way." Can she elaborate what she means by that?

(Laughter)

Mr. Speaker: Order! Order! I think we all perfectly understand what Mrs. Ngilu means. Proceed!

Mrs. Ngilu: Mr. Speaker, thank you very much, I think everybody understands. But, what I am trying to say is that, can we even if we cannot get that extra one month, can we have "one month taken off from the husband's leave and put on the wife?"

(Laughter)

Mr. Manga: Mr. Speaker, Sir, that will be quite a good thing, but sometimes it happens---

Mr. Orenge: On a point of order, Mr. Speaker, Sir, I was wondering whether the Questioner was right in her last statements. I would rather she clarifies whether she wants this extra one month to be "put on" or "added to"?

Mr. Manga: Mr. Speaker, Sir, I understood the question that one month be taken from the man who helped the woman to be pregnant, but I am saying this, that, that would be a very difficult situation because some pregnancies do not come from people we can trace.

(Laughter)

Prof. Mzee: Mr. Speaker, Sir, this is a very serious matter and I am sure, Dr. Wameyo, will confirm that. I do not know where this magic number 60 days came from, I can assure you and I am sure, Dr. Wameyo will confirm that, a woman who is about to deliver requires one month before, and probably six months of maternity leave after. My question is, will the Minister, if he cannot consider giving an extra one month to make it three months maternity leave, consider two things; one, to give women leave of absence during that period of time or they can come to work part-time during that period of time and also consider giving a man one month's maternity leave when the wife has produced?

(Laughter)

Mr. Manga: Mr. Speaker, Sir, leave of absence cannot be made a regulation but it can be worked between the employees and the employer, if it is necessary. As regards part-time work, that is the same because the employer and his employees should work out that.

Mr Speaker, Sir, one month for men, again, I do not want to say it again, it will be very difficult to distinguish who is to be punished.

Question No. 891

MOLESTATION BY POLICE

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

- (a) whether he is aware that the right of Kenyans to privacy and liberty is often disturbed by the police through unnecessary and arbitrary night raids and searches, particularly in the rural areas; and
- (b) what procedures he has to put in place in accordance with the law, to ensure that innocent

citizens are not disturbed and molested by police.

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Speaker, Sir, I beg to give the following reply:-

(a) What I am aware of is that police may occasionally make such raids and searches for maintenance of law and order in accordance with Section 2(1) of the Police Act, Cap.84, of the Laws of Kenya.

(b) Arising from the above (a), this part of the Question, therefore, does not arise.

Mr. Orengo: Mr Speaker, Sir, I am surprised by this reply. Section 2(1) of the Police Act is an interpretation section, it defines who the Commissioner of Police is, what a gazetted officer is, what a reserve police officer is. So, I am just wondering whether the Minister is aware of the section he is talking about, Section 2(1) has nothing to do with any powers given to the police.

Mr. ole Sunkuli: Sorry, Mr. Speaker, Sir. I meant Section 20(1).

Mr. Orengo: Mr. Speaker, Sir, the hon. Minister knows that the right to privacy is a constitutional right. A fortnight ago, on 2nd November, while I was travelling to my home, together with an entourage which included the Chairman of Ford(K), we met two trucks of police officers, apparently they were looking for our whereabouts and, thereafter, they raided almost every home in the vicinity demanding that they be shown receipts for sofasets, radios and so many people were arrested without any basis at all or without any justification. Can the Minister assure the House that such raids will not be encouraged by the police in whatever circumstances?

Mr. Sunkuli: Mr. Speaker, Sir, I said the police do conduct raids for the sake of maintaining law and order. I am fully aware that the right to privacy is a constitutional right and the police in conducting their duty, are also exercising the right given to them under the Constitution and the laws that are derived from the Constitution because the hon. Member knows that the Kenyan law allows the police to conduct such raids and that there is perfectly nothing that is illegal in what the police do.

Mr. Busolo: Mr. Speaker, Sir, while the police maybe empowered through some constitutional means to search, are they also empowered to confiscate property? I have asked this question because I am a victim of these searches and right now, three cartons of my books are lying in the police custody since April. Also, during the raids on FERA in Bungoma, so much properties of these people was destroyed in the process of searches, while others were confiscated. Is that correct?

Mr. Sunkuli: Mr. Speaker, Sir, whereas I will investigate the particular case of the hon. Member, which upto now I am not aware of, I must say that, of course, in some cases, the law allows the police to confiscate property which they reasonably suspect that it has been obtained illegally or stolen.

Mr. Wamalwa: Mr. Speaker, Sir, I am glad the Minister is using the words "if they have reason to suspect," because this is what is in Section 20 of the Act. But what the hon. Questioner was complaining about was these rampant and random raids without any real reason at all. They will be looking for *chang'aa*, they will be looking for anything and they just burst upon every house. Could the Minister undertake to caution police officers that they must go strictly by the provisions of this Section 20 of the Act?

Mr. Sunkuli: Yes, Mr. Speaker, Sir, I wish to caution the police to go strictly by the law and not to break the law in trying to get what exactly they want.

Mr. Speaker, Sir, I also, in the same breath, wish to ask the hon. Members to co-operate with the police and to educate their constituents in this sense that what the police do in Kenya may be different from what they do in other countries because our laws are different and our police can do nothing, and I can do nothing outside the law. We have got to say this to our people, that that is what that law allows the police to do and we may not like the law, but that is what the law says.

Mr. Speaker: Prof. Anyang' Nyong'o's Question.

Question No.879

PAYMENT OF TRAINING LEVY

Prof. Anyang'-Nyong'o asked the Minister for Finance:-

(a) whether he could explain to the House why the insuring public has been made to pay the training levy, contrary to the Insurance (Amendment) Act (1993); and

(b) what he is doing to ascertain that individuals insured are refunded the money they have already illegally paid with respect to this training levy.

The Assistant Minister for Finance (Mr Koech): Mr Speaker, Sir, I beg to reply:-

(a) I am not aware that the insuring public has been made to pay the Insurance Training Levy contrary to the Insurance Act (1993). However, I am aware that the insurance companies are required to pay the training levy at the rate of 0.35 per cent of their gross direct premium.

(b) If any individuals insured have been directly charged for this training levy, they may claim for a

refund from their respective brokers and underwriters.

Prof. Anyang'-Nyong'o: Mr Speaker, Sir, arising from the answer that the hon. Assistant Minister has given, and given the contents of the Insurance (Amendment) Act (1993) contained in the *Kenya Gazette Supplement No.77 Act No.5* which introduced this levy, knowing that the Minister has several times been made aware of these problems by the Association of Insurance Brokers of Kenya, and noting that the conflict between the Association of Insurance Brokers of Kenya and the Association of Kenya Insurers over this issue has systematically been brought to the attention of the Minister. I would like to ask the Minister the following question:- Given the fact that the contention of the Association of Insurance Brokers is that this levy should be paid by the insurers themselves, as the Act provides, and yet the insurers are passing down this Levy in the same manner in which the Hotel Levy is paid which is a different type of Levy, is the Minister not aware that this amounts to unauthorised taxation by the Kenyan insured public and this, indeed, is without the legal authority by this House?

Mr. Koech: I believe that the hon. Member has read the Insurance Act and it is very clear. It is the insurance company which needs to pay. I have said that if there is any individual who has been aggrieved, he or she should request for a refund and it will be paid. **Mr. Speaker:** Another Question, Prof. Nyong'o?

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, the Assistant Minister's answer is not practical. The reality is that there are thousands and thousands of Kenyans who take insurance policies, but this percentage is a repetitiously passed to the insured.

Mr. Speaker: I think we are repeating this, Prof. Anyang' Nyong'o.

Prof. Anyang'-Nyong'o: No, Mr. Speaker---

Mr. Speaker: Order! He has said that if there is anybody who has been charged training levy, he should get it back. This means that if the insurance company does not pay, you should sue it.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, let us be realistic. I am trying to say what is practical. Thousands and thousands of the insured are not going to claim from the insurance companies. There is an orderly way of insuring. We have the Kenya Association of Insurers and the Kenya Association of Brokers. If these two bodies can come to an arrangement with the Ministry of Finance, this problem would end. There is no need passing this down to Onyango, Otieno or Okoth in the countryside. They are not going to do so. So, I would like the Ministry of Finance to face their responsibility and sort out this thing out with the Association of Kenya Insurers and the Association of Insurance Brokers once and for all.

Mr. Koech: Mr. Speaker, Sir, I know the hon. Member is aware of what has been going on, on this particular Bill. This Act was enacted in 1993 and had been a query as to whether the insurance companies should pay. It is very clear that it is the companies who have got to pay. This problem has been going on, and I want to assure the House, that this one has been clarified, and I do not think there is any problem. As I said before, if there is anybody who has been aggrieved, he should seek redress through the right channels.

Mr. Rai: Mr. Speaker, Sir, I beg to ask Question No. 951.

Mr. Speaker: Is it the one that we have left unanswered? We have already passed that. We had already passed it and we had another Question.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. What about hon. R.K. Mungai's Question?

Mr. Speaker: I will come back to that.

Question No. 951

PAYMENT OF NSSF DUES

Mr. Rai asked the Minister for Labour and Manpower Development when Mr. Mangale Chimeru, NSSF No.80879-020 will be paid his dues.

The Assistant Minister for Labour and Manpower Development (Mr. Ali): Mr. Speaker, Sir, I beg to reply.

Mr. Mangale Chimeru will qualify for payment of his NSSF dues in 1996 on attaining the mandatory age of 50 years.

Mr. Rai: Mr. Speaker, Sir, I think the Assistant Minister has not collected the data in respect of Mr. Mangale Chimeru because as of now, Mr. Chimeru is 57 years old. He was issued with a Kenyan Identity Card No. 2217898/65 and was born in 1928. He is now 57 years old.

Mr. Ali: Mr. Speaker, Sir, records in my office indicate that Mr. Mangale Chimeru will be 50 years in 1996, having been born in 1946.

Mr. Rai: On a point of order, Mr. Speaker, Sir, I have just indicated to this House that the Assistant Minister has not collected the correct data for Mr. Mangale Chimeru because he was born in 1928, and issued with a Kenyan Identity Card No. 2217898/65. He is still continuing to say that Mr. Mangale Chimeru will attain

the age of 50 in 1996. Is he in order to give that information to this House?

Mr. Ali: Mr. Speaker, Sir, it will be appropriate for the hon. Member to provide us with the latest information he has.

Prof. Mzee: Mr. Speaker, Sir, can the Assistant Minister confirm to this House, that because of huge uneconomic investments NSSF has done and lost, they are unable to pay their claims and as such, they have delayed payment of claims for most of the people? The result is that in every constituency, people are coming to us and saying that the NSSF have not paid their dues for many, many years back. Can the Assistant Minister confirm to this House, that NSSF has insufficient funds to pay and they are not deliberately withholding this payment because they do not have the money to pay?

Mr. Ali: Mr. Speaker, Sir, it is not true that we do not have sufficient funds. NSSF has sufficient funds to pay its claimants.

Mr. Speaker: Last Question, Mr. Rai?

Mr. Rai: Mr. Speaker, Sir, I need clarification from you because I have put it to the Assistant Minister that Mr. Mangale Chimeru is 57 years old. I want him to go back to his Ministry and make a clarification and come to the House, and tell this House when Mr. Chimeru is going to be paid. He is now 57 years old and has been issued with an identity card and I have given him the number, and the date when he was born. Can he just come and clarify that one.

Mr. Ali: Mr. Speaker, Sir, I think it will be proper for the documents to be brought to NSSF office for further verification.

Question No. 849

COLLECTION OF COFFEE CESS

Mr. Ndicho, on behalf of

Mr. R.K. Mungai asked the Minister for Local Government:-

- (a) what is the Government policy on the collection and disbursement of coffee cess money;
- (b) whether he can confirm to the House that the said Government policy was being followed in all cases; and,
- (c) if the answer to "b" above is in the negative, can he explain the exceptions to the rule and what action he does take when such rules are flouted.

The Assistant Minister for Local Government (Dr. Wameyo): Mr. Speaker, Sir, I beg to reply.

The Government policy on collection and disbursement of coffee cess money is guided by Section 192A (1) of the Agricultural Act (Cap 318). The policy outline is strictly followed by the Local Authorities. I am not aware of any exception.

Mr. Ndicho: Mr. Speaker, Sir, I wonder why the Assistant Minister has refused to read the whole answer as provided here.

Mr. Speaker: If he refers to Section 9, you can see that it is not Section 9.

Mr. Ndicho: It is okay, Mr. Speaker, Sir. My supplementary question to him is this: In 1993, Kakuzi Limited which is in hon. Mungai's Constituency, submitted Kshs.15.6 million to Murang'a County Council. In the same year, Sospinus Limited, a coffee growing company in Juja Constituency submitted Kshs.18.3 million to Kiambu County Council in the written answer, Dr. Wameyo has said that 80 per cent of produced cess has been put in a special account specifically for road maintenance and improvement. Our concern is that this money is being taken to the local authorities, but since it is under the guidance of the DC, none of this money is put into use.

Can the Assistant Minister now tell us why this money is taken to the DC's office, and why he is refusing to maintain roads which these people are using? **Dr. Wameyo:** Mr. Speaker, Sir, what I know is that the money is put into a special account specifically for road maintenance and improvement, I am not aware that it is put into the DC's account, but in a special account.

Mr. Anyona: Whereas the Assistant Minister is right in saying that, that section of the Act governs the management of the cess money, in practice, what is going on is that 80 per cent of the cess money is kept in the district treasury. Only 20 per cent is passed to the county councils, urban councils or whatever it is. Could he tell us, in view of the clear provisions of the law, under what law this new arrangement has been made, which has given the DC these powers, since now they are misusing this money?

Dr. Wameyo: Mr. Speaker, Sir, if I am told of a specific local authority whose money has been put into the account of the DC, and nobody knows what has happened to it, I will then investigate and take action.

Mr. Michuki: On a point of order of, Mr Speaker, Sir. As far as we know, under the law, the monies realised through the coffee cess are supposed to be paid to the relevant county councils. It happens that there are

certain administrative instructions which have been allowed to supersede the law to the extent that the DC is paid 80 per cent of this money, and 20 per cent to the local authority, instead of all of it being paid to the county councils concerned.

Dr. Wameyo: Mr. Speaker, Sir, I said 80 per cent of the money is put in special accounts, specifically for the roads maintenance. Now, if the information hon. Members have that instead of being put in special accounts, this money is put in the District Treasury, under the District Commissioner, I would like to know.

Hon. Members: Point of order Mr. Speaker, Sir.

Mr. Speaker: Order! If you want to name your county council, can you say it straightaway?

Hon. Members: Yes.

Mr. Speaker: Mr. Anyona, what is the name of your county council?

Mr. Anyona: Mr. Speaker, Sir, the Assistant Minister wanted specific evidence that this is happening. I want to give him the case of Nyamira County Council, where some Kshs.4 million was placed in the District Treasury and the District Commissioner, then Mr. Kerario, misused the full amount of over KShs.4 million and up to this day the money has not been accounted for. Is he not aware of that fact and what is he going to do about it?

Dr. Wameyo: Mr. Speaker, Sir, I will investigate and come with information to this House.

Mr. Speaker: With that I think, all of you now can give him the names of the councils. Last one Mr. Ndicho, very brief!

Mr. Ndicho: Mr. Speaker, Sir, the officer from the Ministry who prepared this answer for the Assistant Minister had done a very good research on this answer. It is only that the Assistant Minister, through his arrogance, is refusing to tell this House what is in the written answer. In part (a) of the answer, he says that there is a cess monitoring committee, that ensures that all coffee cess revenue is utilised as indicated above. Can the Assistant Minister tell us who comprise this cess monitoring committee?

Dr. Wameyo: Mr. Speaker, Sir, it is true, there is a Cess Monitoring Committee, but unfortunately, I do not have the names of the members of that committee but I will find out and bring the information tomorrow.

Mr. Speaker: Very well, next Question.

Hon. Members: Point of order, Mr. Speaker, Sir.

Mr. Speaker: We must leave that now. Mr. Otieno Mak'Onyango!

Question No. 880

EXTENSION OF POWER LINE

Mr. Mak'Onyango asked the Minister for Energy whether he could consider extending the electric line at the source of Bondo Water Supply on River Yala to Tin'g Wan'gi Market, to serve the hospital and the business community at the Centre.

The Minister for Energy (Mr. Mbela): Mr. Speaker, Sir, I beg to reply:-

Rural electrification projects are planned for and prioritized by the District Development Committees (DDC). The Ministry will consider this project for funding and implementation after the Siaya DDC has given its priority rating.

Mr. Mak'Onyango: Mr. Speaker, Sir, indeed, as the Minister says, this particular project alongside that of Ahero and other areas around Siaya Township have been so prioritized. What is the Minister then going to do to ensure that these projects are indeed implemented?

Mr. Mbela: Mr. Speaker, Sir, the Siaya DDC has given us three priorities. One, is the extension of the electricity supply to all schools, market centres and other public facilities in Usonga Location; two, in Wagai Location; and three, in Usigu Location. That is where we expect the KShs. 5 million set aside for Siaya District to go, towards this year.

Mr. Speaker: Mr. Mak'Onyango, last one!

Mr. Mak'Onyango: Mr. Speaker, Sir, any Government worth its salt, will always maximize the use of its meagre resources. We have a situation here in which the distance between one market and hospital are only a stone's throw away from the source of Bondo Water Project.

Mr. Speaker, Sir, would the Assistant Minister, agree with me that if the Government did maximize the use of this particular resource, then it will make a lot of sense that this particular market and hospital, should be covered?

Mr. Mbela: Mr. Speaker, Sir, I agree entirely there is need to have electricity supply for this area, but I would rather be guided by what Siaya District leaders say. The money is voted and they give us the priorities. In this particular case, they have given us the priorities, which did not include this particular area.

Mr. Speaker: Rev. Ommani's Question!

Question No. 632

EXPANSION OF HOSPITAL MORTUARY

Rev. Ommani asked the Minister for Health:-

- (a) what urgent action the Ministry is taking to expand the mortuary at Kakamega Provincial Hospital, in order to accommodate the increased number of dead bodies; and
- (b) why the doctors and other attendants are paid by the relatives of the deceased when a post-mortem is carried out, while this is part of their job.

The Assistant Minister for Health (Mr. Criticos): Mr. Speaker, Sir, I beg to reply:-

(a) The Ministry has no immediate plans to expand the mortuary at Kakamega Provincial Hospital where the Government put up the 24 chamber mortuary during 1997/8/79 financial year and was commissioned in 1980.

This is the approved standard mortuary for hospitals the size of Kakamega Provincial Hospital.

(b) The doctors and other attendants in Government hospitals are not paid up by the relatives of the deceased when carrying out post-mortems.

Rev. Ommani: Mr. Speaker, Sir, could the Assistant Minister confirm or deny that Kakamega hospital is a provincial hospital and therefore, it serves the whole of Western Province and as of now bodies are full in the mortuary upto the door? You cannot enter the mortuary without stepping on dead bodies. If he confirms that, would he, consider expanding the mortuary because this is not 1980, it is 15 years since the expansion?

(Laughter)

Mr. Criticos: Mr. Speaker, Sir, I will not be in order to say that, that is not the case, but the solution to this problem can be the Kakamega Municipal Council putting up a mortuary in that area, because the hospital is being over-crowded by bodies which are brought in by the Police and from other areas. The hospital mortuary is not congested by patients who die in the hospital after car accidents et cetera. The normal case should be that the hospital mortuary should cater for the deceased patients of the hospital but not the dead bodies from other areas. So, the problem we have in Kakamega can be solved by the Municipal Council putting up their own mortuary.

Mr. Magwaga: Mr. Speaker, Sir, arising from the Assistant Minister's answer, I am not sure whether he is sure of what he is saying because the hospital mortuary is supposed to cater for dead bodies regardless of whether they are from the municipality or not. Is he implying that we should ask the mortuary in Kakamega Provincial Hospital to refuse bodies which are brought in from outside Kakamega Municipality?

Mr. Criticos: No, Mr. Speaker, Sir, that is not the case. Our policy is to cater for any dead body which is brought into the hospital mortuary, but we should also ask the municipality or county council to build mortuaries for other cases.

Mr. Speaker: Last question, Mrs. Ngilu!

Mrs. Ngilu: Mr. Speaker, Sir, district mortuaries in this country actually have a very small capacity and most of them were built to cater for smaller populations during the colonial days. The Kitui District Hospital, for instance, has a capacity for only eight bodies. The district has a population of 1 million people today, and therefore most of the people are thrown out or taken away by their relatives as soon as they die. Can the Assistant Minister, now assure this House that he will do something about all the district hospitals mortuaries around the country?

Mr. Criticos: Mr. Speaker, Sir, our problem which we have said in numerous occasions in this House is the constraints of finance. We do not have money to expand our hospitals and our mortuaries, otherwise we would like to.

Mr. Speaker: Next Question, Bishop Njeru.

An hon. Member: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: I am sorry, we have left that one now.

Question No.830

COMPLETION OF DISPENSARY

Bishop Njeru asked the Minister for Health:-

- (a) whether he is aware that Mumbuini Dispensary in Murinduko Location which was started in 1974 has not yet been completed; and
- (b) what steps the Ministry would take to have the dispensary completed.

The Assistant Minister for Health (Mr. Criticos): Mr. Speaker, Sir, I beg to reply.

- (a) The Mumbuini Dispensary has been completed.
- (b) The Dispensary has been rehabilitated with assistance of DANIDA through its maintenance unit and it has been functional from 1st July, 1995. Two nurses and one subordinate staff are at the dispensary. What has been lacking is the steady supply of clean water. The community has undertaken to provide for this. Already, Kshs.30,000 has been raised through Harambee by the community. The community has also undertaken to provide some modern furniture.

Bishop Njeru: Mr. Speaker, Sir, you are aware that I raised this Question last week and it was deferred because the Assistant Minister was trying to give the answer for another dispensary which I had not raised a Question on. Can he now confirm or deny whether the answer he is giving is exactly for Mumbuini Dispensary because he said that there are two nurses in Mumbuini and one clinical officer? I was there and there is nobody. There is only one nurse. Can he confirm or deny that he is answering another Question for Murindiko Dispensary rather than Mumbuini?

Mr. Criticos: Mr. Speaker, Sir, this time, we got the right Dispensary that I am referring to. There are two community nurses posted there and one subordinate staff. One of them has been posted to another dispensary, but the replacement will be posted before the end of this month. I cannot give him the names of the three staff.

Mr. Ndicho: Mr. Speaker, Sir, according to hon. Bishop Njeru, he is asking of the dispensary at Mumbuini. This Mumbuini is in Murindiko Location. In Murindiko Location in the other far end there is another dispensary which is called Murinduko Dispensary. So he is not asking about the Murinduko Dispensary which has got two nurses and that is complete. The hon. Questioner is asking about the Mumbuini Dispensary. Can he confirm or deny that Mumbuini Dispensary is not complete and there are no staff?

Prof. Mzee: On a point of order, Mr. Speaker, Sir. It is apparent to me that the Assistant Minister does not know where Mumbuini is. Can he tell us in which district it is?

Mr. Speaker: That, by the way, Prof. Mzee, is not a point of order.

Mr. Criticos: Mr. Speaker, Sir, in Murinduko location, we do not have Murinduko dispensary. So I am not aware what hon. Ndicho is talking about.

Bishop Njeru: Mr. Speaker, Sir, last week he admitted that there is Murinduko dispensary which is there even now. Now, he is also denying that there is no Murinduko dispensary when he already had said that there are two nurses. Of course, there are two nurses and he is saying that there is no Murinduko Dispensary.

Could he answer my question: Is there any nurse in Mumbuini Dispensary? That is my Question, I am not concerned with the Murindiko Dispensary now.

Mr. Speaker: But he has answered that several times!

Mr. R.K. Mungai: On a point of order, Mr. Speaker, Sir. It seems that the Assistant Minister is confused within these two dispensaries. Instead of him really giving incorrect answer can you please direct him to go back and come up in this House with a correct answer?

Mr. Speaker: I have no reason to do that.

Mr. R.K. Mungai: Because he does not know what he is doing?

Mr. Speaker: What do you say?

Mr. Criticos: Mr. Speaker, Sir, I am not confused in any way whatsoever. The answer which I have given is for the right dispensary and that is the way it is. There are two nurses and one subordinate staff and have their personal numbers here in front of me. I researched the answer to this Question, myself personally.

Mr. Speaker: What is it, Bishop Njeru?

Bishop Njeru: Mr. Speaker, Sir, he admitted that there is Murinduko Dispensary and, of course, it is there. If he is not confused, why has he said that there is no Murinduko Dispensary when it is there? Can he answer my Question on Mumbuini Dispensary?

Mr. Speaker: You are asking the same question three times.

We will now, move on to the other question.

SACKING OF KEMRI WORKERS

Mr. Speaker: Is Mr. Mulusya not here? We will leave his Question until the end. Let us move on to the next Question.

Question No.962

ARREST OF MR. KARIUKI

Mr. Mwaura asked the Attorney-General:-

(a) whether he is aware that Mr. Geoffrey Muchiri Kariuki was arrested on 16th February, 1994 at Maragua town; and

(b) whether he is also aware that he has not been convicted to-date, but still held at the remand.

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

(a) Mr. Geoffrey Muchiri Kariuki was arrested at Maragua Town in Murang'a District as a suspect in the murder of Mr. Jacob Nzau who died in 1993 under suspicious circumstances.

(b) Mr. Kariuki has not been convicted because his case is pending before Murang'a Senior Resident Magistrate's Court as criminal case No.392/93.

Committal proceedings in the case to determine if he should be committed to High Court to stand trial for murder were adjourned because he was not mentally fit to follow the proceedings. He was subsequently referred to the provincial psychiatrist at Nyeri Provincial General Hospital for treatment. The provincial psychiatrist is Dr. M.M. Kariuki.

He has now been certified fit to participate in court proceedings in his case and, therefore, he is to appear before court tomorrow, 16th November, 1995.

Mr. Mwaura: Mr. Speaker, Sir, can Attorney-General tell this House how long it takes for a criminal case like this by a magistrate to start a trial of an arrested person? Does it take two years?

Mr. Wako: Mr. Speaker, Sir, it is, difficult to give an estimation, but it could be anything between a year and two years. The delay in this particular case was caused by the mental condition of the accused person.

Mr. Mwaura: Mr. Speaker, Sir, can the Attorney-General also confirm whether it is not true that Mr. Kariuki, by the time of arrest, had some documents from the Mathare Mental Hospital which indicated that at that point, he was already mentally deranged and was it right to try him on murder when he had those documents?

Mr. Speaker: Order! Mr. Mwaura! As it is that issue is before court. If you feel so strong about that, you are entitled to act for him and you may appear in that court and argue that way.

Mr. Mwaura: Mr. Speaker, Sir, what I am saying is the fact that this person had a mental record at Mathare Mental Hospital at time of his arrest.

Mr. Speaker: I know what you are saying and it goes to the merit of the case. We shall not do it here and we shall not judge anybody here. It is up to the court upon which the case is pending to find out, as a matter of fact, whether the person was sane or insane and it is upon the advocate acting for that person, or he himself, to press for that case. But you will not pursue that matter, I am sorry.

Next Question!

Mr. Mulusya: Mr. Speaker, Sir, I have not asked my question.

Mr. Speaker: Oh, Mr. Mulusya, where were you? Now that you are here, can you ask your Question?

Mr. Mulusya: Mr. Speaker, Sir, first, I apologise for coming late and may I request to ask my Question.

Question No. 984

SACKING OF KEMRI WORKERS

Mr. Mulusya asked the Minister for Research, Technical Training and Technology:-

(a) whether he is aware that the services of Messrs John M. Musyoki, Sabeth K. Konza, Elizabeth N. Mwangangi, Joseph Ndilinge and Paul N. Kilonzo, who have been working with the Kenya Medical Research Institute in Machakos Schistosomiasis Project for about 15 years, have been terminated by the Institute (KEMRI); and

(b) why their services were terminated and when their terminal dues will be paid.

The Assistant Minister for Research, Technical Training and Technology (Mr. Kagwima): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware.

(b) The said workers have since been paid their final benefits and the chapter has been closed.

Mr. Mulusya: Mr. Speaker, Sir, arising from that answer given by the Assistant Minister, can he give to this House the cheque numbers which constitute the final payments for these workers and can he also tell us on what basis the final dues were calculated and whether that includes gratuity for the period worked by all these people?

Mr. Kagwima: Mr. Speaker, Sir, as the hon. Member is aware, the workers were employed on temporary basis by the project. Their employment lasted as long as the project lasted and the project has since come to an end. Therefore, their employment also came to an end.

Regarding the payments, these people continued earning their monthly salary and since they were on temporary basis, there were no other terminal benefits. So, when the project ended, they earned their last salary.

Mr. Mulusya: On a point of order, Mr. Speaker, Sir. The hon. Assistant Minister is misleading this House because these people were employed on contract and I have copies of their letters of appointments. One of the terms states as follows:

"On completion of the contract, you will be entitled to payment of 25 per cent gratuity based on your basic salary".

Can the Assistant Minister now tell us whether the employer has deviated from that contract which was signed by both the employee and employer?

Mr. Kagwima: Mr. Speaker, Sir, the number of the workers is a big one and there is no way all of them could have been covered under one contract. I would request the hon. Member to table those documents so that if necessary, I can study them and answer accordingly.

Mr. Speaker: Mr. Mulusya, would you like to table the documents?

Mr. Mulusya: Yes, Mr. Speaker, Sir.

Mr. Speaker: Proceed and table it, then.

Mr. Ndwiga: Mr. Speaker, Sir, did you hear properly what the Assistant Minister said? He said that the employees were employed on temporary basis for 15 years. Was that a slip of the tongue? For 15 years on temporary basis? That is slavery and it should not be referred to as employment.

Mr. Kagwima: Mr. Speaker, Sir, I am still waiting for the documents that hon. Mulusya promised to table.

(Mr. Mulusya laid some documents on the Table)

But I would like to tell the hon. Members that the employees were: John Musyoki, Sabeth K. Konza, Elizabeth Mwangangi, Joseph Ndilinge and Paul N. Kilonzo.

An Hon. Member: Give the answer!

Mr. Kagwima: Mr. Speaker, Sir, I am saying that one contract cannot cover all these people. Hon. Mulusya has tabled two letters out of eight, but I will have a look at them.

Mr. Speaker, Sir, what happens in terms of projects most of which are funded with donor funds is that one would be employed for initially three months and after the three months, your contract may be renewed or not. Others may be employed for one year, but on the basis that the donors' funds or locally funds will be available. If funds are not forthcoming or the project comes to an end, that is the end of the employment and the workers all along are informed that those are the terms of their employment.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, could the Assistant Minister explain his first answer? At the beginning, he said that these people were paid their dues and that is final. When challenged further by hon. Mulusya to give the cheque numbers, he came up and said that there were no payments. Was that not a misleading answer? Was he trying to mislead this House deliberately?

(Mr. Mulusya laid more documents on the Table)

Mr. Kagwima: Mr. Speaker, Sir, just confirm my answer and from the paper that hon. Mulusya has laid here. The first sentence says:

"Your employment will be on contract terms, the period of the contract will be one year, after which it will be renewed depending on your performance and the availability of funds"

Mr. Speaker, Sir, the contracts were renewed on yearly basis and these employees continued earning their benefits throughout. They had their terminal benefits when the project came to an end.

- Mr. Speaker:** Next Question by Private Notice.
Mr. Mulusya: On a point of order, Mr. Speaker, Sir.
Mr. Speaker: Order, Mr. Mulusya. We are out of that now.
Mr. Mulusya: On a point of order, Mr. Speaker, Sir. Please, by the courtesy of the Chair.

(Laughter)

- Mr. Speaker:** Okay, Mr. Mulusya.
Mr. Mulusya: Mr. Speaker, Sir, my point of order is that the hon. Assistant Minister is trying to evade the question. He has seen the contract documents and it is very specific. In the letters it is stated to be one year period renewable, but after every period you are entitled to a payment of 25 per cent gratuity. I would like to know if the 25 per cent is for the accumulated period. Is this accumulated benefit being paid?
Mr. Speaker: A very valid question!
Mr. Kagwima: Mr. Speaker, Sir, the contract does not say after 15 years, but after every year and these workers were paid at the end of the contract for those years.
Hon. Members: Were they paid?
Mr. Kagwima: Mr. Speaker, Sir, they were paid.

QUESTION BY PRIVATE NOTICE

CONFIRMATION OF THE DEAN (NAIROBI UNIVERSITY)

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

Why has the University of Nairobi Senate refused to confirm Mr. Ahmed Nassir Abdullahi as the Dean, Faculty of Law, despite his election as stipulated under the University of Nairobi Act. (Cap.210) Laws of Kenya?

The Minister for Education (Mr. Kamotho): Mr. Speaker, Sir, I beg to reply.

Mr. Ahmed Nassir Abdulahi, who is an Assistant Lecturer at the Faculty of Law, University of Nairobi, cannot qualify to be a dean in accordance with the University of Nairobi Act, Section 16(21) which stipulates that only a professor can be nominated for election by the faculty board to be a dean. The question of his confirmation as the Dean of the Faculty of Law does not, therefore, arise.

Mr. Leshore: Mr. Speaker, Sir, the Minister is misleading this House and the nation. This is a clear case of victimisation of a young brilliant lecturer and a lawyer who comes from a very minor community in Kenya. The previous three deans of the Faculty of Law did not qualify for the position. I would now like the Minister to tell this House why the University of Nairobi has not accorded this young lecturer fair play?

Mr. Kamotho: Mr. Speaker, Sir, I have here the University of Nairobi Act and this is what the relevant section says:-

"The dean shall be nominated by election by the faculty board from among professors and senior lecturers".

It is as clear as all that.

Mr. Arte: On a point of order, Mr. Speaker, Sir. Can the Minister tell the House why the University allowed Mr. Nassir to contest the election if the law did not allow him to do so.

Mr. Kamotho: Mr. Speaker, Sir, it was discovered at the Senate level that the person named was falsely nominated to contest for the post of a dean.

Mr. Farah: Mr. Speaker, Sir, in view of the answer given by the Minister and the precedent that has been set and his absolute hatred for Muslims, unfortunately---

Mr. Kamotho: On a point of order, Mr. Speaker, Sir. Is it really in order for an hon. Member to imply that I have hatred for Muslims, which is really imputing improper motives on me?

Mr. Speaker: Mr. Farah, you are out of order!

Mr. Farah: Mr. Speaker, Sir, with all due respect, the Minister has refused to license an Islamic Teachers' College. Can the Minister now---

Mr. Speaker: Order, Mr. Farah! It would serve you very well if you controlled the emotions a little. Proceed.

Mr. Farah: Mr. Speaker, Sir, this Act was there right from the inception of the Faculty of Law in the

University of Nairobi. Now, a precedent and tradition have been set in the past, where assistant lecturers, who did not qualify for the post, were nominated for the election and subsequently appointed deans. These include Prof. Kivutha Kibwana.

Mr. Speaker, Sir, can the Minister tell the House why the university authorities now want to apply the Act to the letter?

Mr. Kamotho: Mr. Speaker, Sir, in the first place, it is common knowledge that two wrongs do not make a right. Secondly, Mr. Kibwana was a senior lecturer at the University of Nairobi when he was elected to be the Dean of the Faculty of Law.

Mr. Speaker, Sir, thirdly, I would like the hon. Member to know and appreciate that this involves the internal management of the university and that a law passed by this House exists and it must be respected by the House.

Mr. Shidiye: Mr. Speaker, Sir, with all due respect to the Minister, it is not only the Faculty of Law that set this precedent. In fact, 30 deans in the University of Nairobi are not qualified in their positions. A precedent has been set by the University where whoever was elected a dean would be allowed to become a senior lecturer while in office and then be confirmed in that office. Would the Minister consider calling for another election to prove whether Mr. Abdulahi is popular enough to act as the Dean of the Faculty of Law?

Mr. Kamotho: Mr. Speaker, Sir, first of all, we do not have 30 faculties in any of our public universities and there cannot be. Secondly, even if another election was to be held the person in question would not qualify to stand for it.

Mr. Anyona: Mr. Speaker, Sir, in this era of multi-partism and given the fact that the post of a dean is democratically elective, what right does this Minister have to impose restrictions on the humanity community as to whom it may elect to the post? In that case, would he consider scrapping those provisions and leaving it open for the university to elect whoever they please?

Mr. Kamotho: Mr. Speaker, Sir, it is not for me to pass any judgement over anybody. But it is not me, as the Minister, who is imposing anything. I have referred to the statute which governs the administration of the University and the Senate is there in accordance with the laws which have been passed by this House.

Mr. Isaack: Mr. Speaker, Sir, can the Minister confirm or deny that two previous Deans of the Faculty of Law had the same qualifications as Mr. Nassir?

Mr. Kamotho: Mr. Speaker, Sir, unless I am given any person who has been a dean when he was not qualified I cannot confirm that.

Mr. Murungi: Mr. Speaker, Sir, as a matter of fact, there is no dean of the Faculty of Law who was qualified at the moment of his appointment. The deans included Professors Munoru, Mutungi, Okoth-Ogendo and Kibwana. All of them were elected when they were not qualified and were appointed in an acting capacity and were later appointed deans after they qualified while in office. Can the Minister confirm or deny that the only reason why Mr. Nassir is not being confirmed as dean is because he is closely associated with Prof. Kibwana, who has been "persecuted" by the university for his political views?

Mr. Kamotho: Mr. Speaker, Sir, I totally deny the allegation by hon. Murungi.

Mr. Wamalwa: Mr. Speaker, Sir, I wonder whether the Minister has heard of the old adage that "people deserve the leader they get." Now, the Faculty of Law, consisting of professors and other very learned people elected Mr. Nassir to be their dean. Does the Minister really have the power to deny the people the leader they deserve?

Mr. Kamotho: Mr. Speaker, Sir, there is no need of politicising non-political things. I was not aware of this matter until it was raised by hon. Members here. It is not the responsibility of the Minister to appoint deans of universities. Therefore, that is not my responsibility.

Mr. Falana: Mr. Speaker, Sir, when answering Questions in this House, Ministers should gauge the interest and the mood that a Question has across the Floor, and this is no exception. Is the Minister aware that when the election was carried out, Mr. Nassir whom he considers not qualified, polled 23 votes against 8?

Mr. Kamotho: Mr. Speaker, Sir, we believe in the rule of law. I gave reference to the statutes governing the appointment of deans of faculties in universities. By virtue of the laws passed by this House, our public universities are autonomous institutions. The appointment of deans or chairmen--

Mr. Anyona: On a point of order, Mr. Speaker, Sir. The Minister has insisted that this matter is being politicized here in Parliament, and yet Parliament is a political body. Now, he is saying that the university is autonomous and beyond the control and scrutiny of this House. Are you satisfied that this Minister is in order and that he is not hiding something from this House?

Mr. Kamotho: Mr. Speaker, Sir, every year, I bring Estimates for the running of the Ministry of

Education, including public universities. The laws governing universities are enacted by this Parliament. The internal management of universities is left to the universities in accordance with those laws. If surely we respect the rule of law, until we change the relevant section of the laws governing the universities, we cannot raise the kind of questions we are raising now.

Hon. Members: On a point of order, Mr. Speaker, Sir!

Mr. Speaker: Order! Order! Whatever has a beginning must have an end and it does not matter how popular the Question or the subject is.

We must now proceed with the rest of our business.

Next Order!

BILL

Second Reading

THE CO-OPERATIVE COLLEGE OF KENYA BILL

(The Minister for Co-operative Development on 9.11.95)

(Resumption of Debate interrupted on 14.11.95)

Mr. Busolo: Thank you, Mr. Speaker, Sir, for giving me the---

(Consultations)

Mr. Busolo: Mr. Speaker, Sir, there is so much distraction that I can hardly get on with my points.

Mr. Speaker: Order! Order! Proceed, Mr. Busolo.

Mr. Busolo: Mr. Speaker, Sir, thank you for the opportunity granted to me to contribute to this debate on The Co-operative College of Kenya Bill. I would like to open my remarks by looking at Clause 2 which talks about the establishment and functions of the college. Clause 2 (a) states that:

"The College shall include any constituent training centres that may be established from time to time by the college".

(Consultations)

Mr. Speaker: Order! Order, now! The Question by Private Notice is now over and out. We are now on the Bill on the Co-operative College. So, can we listen to the hon. Member on the Floor? Proceed!

Mr. Busolo: Mr. Speaker, Sir, I was referring to Clause 2(a) of the Bill which states that the college shall include any constituent training centres that may be established from time to time by the college. While supporting this Bill, I would like to suggest that any consideration of some of these constituent colleges should include some famous colleges in Bungoma like Sang'alo and Mavanga. When we pass this Bill, I suggest that the Ministry or the Government should consider Sang'alo and Mavanga Farmers Training Centres to be part and parcel of the constituent colleges that may be part of the Co-operative College.

Mr. Speaker, Sir, Clause 5 (i) deals with the functions of the college, and item (a) refers to provision of co-operative education and training for various categories of personnel of the co-operative movement and Government officers, and to serve as the centre of excellence in the co-operative movement in general. I believe that this is a very important function that the college is carrying out. While saying that, I would like us to remember the current status of the co-operative movement. My colleagues who spoke earlier talked about corruption, interference from the Provincial Administration and financial malpractices within the co-operative movement.

When this Bill is finally passed, I would like this college to take consideration of some of these issues, like those of the current mismanagement, corruption and financial malpractices so that when officers go for training, perhaps a course will be established to look into some of these matters.

Clause 6 deals with admission of candidates. It says that:

"Admission of candidates should be without regard to race, place of origin or residence or other local connections, political opinion, colour, creed or tribe".

This clause is in tandem with clause 7 (i) (a), which states:

"The Chairman of the Council of the College shall be appointed by the Minister".

On this Council are also Permanent Secretaries, representatives of the co-operative movement. This is politics. Therefore, then the claim in clause 6 that admission of candidates will have no regard for political opinion is self-defeating if, in the appointment of members of the Council, the Minister is involved. I would like to suggest that there will be a lot of politics in the college and my opinion is that the Council of the college should have nothing to do with the Minister because, a Minister, by virtue of his position, may not have the requisite professionalism or qualifications of the co-operative movement. If anything, a Minister is appointed politically and, therefore, his being a political appointee may interfere with the professional college. It is my considered opinion that a council of a professional college should have nothing to do with a Ministry. If anything, they should just be appointed by a professional body, perhaps, a firm of consultants of professionals dealing in such an area could be much more helpful in getting the right persons, than the Minister. The question of appointment to councils of colleges of this kind by higher authorities, particularly at Ministerial level, has given us a lot of problems and it should not be allowed to be part and parcel of the formation of the Co-operative College.

Mr. Speaker, there is also Clause 7 (2), which a member of the council other than an ex-officio member shall hold office for a period of three years, but will be eligible for re-appointment. I believe that such a short time for a member of the council to acquaint themselves with the tasks and functions of the college, we could assume that for the first year, a member of the council is just hardly getting to know what they are supposed to do.

In the second year, they are setting themselves up to understand what their functions are and probably in the third, and fourth year, that they will be well acquainted or well versed with what their members should entail, so that they can execute it in a better way. Mr. Speaker, it is my considered opinion that three years may not be enough time for a member and, as such, I suggest that perhaps council members should hold office for a period of five years instead of three years.

There is also the question of the functions of the council. In Clause 8, here again, it is claimed in (E) that the council, with the approval of the Minister, will determine scales of fees payable by students at the college etc. Why should the Minister here again be involved in the fees that the college will set? Mr. Speaker, currently we have an example of schools whereby Ministerial interference in terms of the fees they charge has led to the deterioration of a lot of the facilities. In fact, in the so-called high cost schools in this country, to use them as an example, the physical structure is so bad that only a fee raised will assist them. But Ministerial intervention blocked the well maintenance of structure facilities in such places. So, in this Clause 8 (E), I suggest that there should be no Ministerial interference, if anything, it should be left to professionals to determine their requirements to their needs which will accord the kind of fees necessary to maintain those facilities.

Mr. Speaker, Sir, there is also the question of the principal and deputy principal. In Clause 10 (1), here again, in the Act, it is stated that the principal shall be appointed by the Minister on the advice of the council. Once again, in line with my opposition to Ministerial interference, I do not see the point why the Minister should appoint the principal, if anything this is supposed to be a professional college, and a professional body should look for a principal with due regard to his or her capacities and capabilities within the field of co-operative education and training procedure. A Minister may not necessarily know what co-operative education and training entails, if anything, a Minister may have been appointed through political patronage and that kind of patronage might interfere with the appointment of a really professional person to run such a college.

Mr. Speaker, Sir, I would like also to comment on Clause 12 section (6), regarding academic and administrative staff of the college. Here, it claims that there maybe established with the approval of and in accordance with such rules that may be made by council, a college welfare---

Mr. Speaker: Mr. Busolo, you are reading a speech, I thought this was a debate.

Mr. Busolo: Thank you, Mr. Speaker, within this section of the academic and administration staff of the college, it is stated that a college staff welfare association maybe formed. We have the example of the university staff welfare association, which brought in a wide section of the university academic community wanting to form a union. That kind of demand by the academic staff went contra to what was provided in the provision. And it caused a long strike at the university. I thought we should learn from history so that this kind of section should be left open so that if the staff want to form a union, they should be free top do so, if they want to form a welfare association, they should be free to do so. But as this Bill reads currently, it is kind of a closed cheque, and I think that may bring up problems in the future which would otherwise be solved while passing the Bill.

Mr. Speaker, there is also section 13 which deals with the performance of functions in the absence of office holders. Again here, it states that the Minister, after consultation with the chair of the council, may appoint somebody to act. Here, I would also like us to leave out the Minister, if anything, the college academic body itself

or the council, should be well qualified to appoint somebody, since they understand what goes on and, as such, I think, the Minister should not be involved.

Mr. Speaker, much more important for me in this Bill, is the financial provision of this college. In Clause 17, item two, there is a question of how the funds and investment of the college should be utilised. It is claimed that the council may invest any of the funds of the college in securities in which trustees wish by law, for the time being in force invest as trust funds. If the case of NSF is anything to go by, the kind of complaints, in fact, funds that have been made in this House, I am sorry, Mr. Speaker, by hon. Members, about the investments of funds, I think, this Clause should not be left that open. I do not think that it is correct for us, if we read correctly from the history of the past of what has happened in terms of the use of funds of colleges or parastatals, that the funds of the college that this Bill seeks to establish should just be left to the trustee to invest as they want. I think here, there should be a section specifying exactly how those funds should be utilised instead of leaving it open so that they could invest anywhere, because that could lead to the case of NSF type of investment of which we have had a lot of complaints about.

Mr. Speaker, I suggest that here, we should restrict the funds of such college to the Co-operative Bank and not any other bank because if we say that they go to any other bank, there could be a lot of interference, particularly by politicians or some people who have interest in the college and they may misuse the funds of that college.

Mr. Speaker, Sir, I would like to finally comment on what is stated under the Memorandum of Objects and Reasons of this Bill. It is claimed that the funds for the enactment of the Bill will be provided through the annual estimates. I do not see why the Government should spend a penny on this kind of college because the co-operative movement itself is a very rich movement in terms of finance. I thought that a college of this kind could be run through the funds of the co-operative movement instead of taxing the people. I believe that it is the co-operative movement that should be given the responsibility to run this college. I think the Government should keep off from it and if anything, only assist with the aspect of the performance of the college and not provide a budget for it.

I will not take any more time but thank you, Mr. Speaker, Sir, for the opportunity you granted me to comment on this Bill. Thank you, very much.

Mr. Speaker: Mr. Mutere, you can contribute to the Bill.

The Assistant Minister for Local Government (Dr. Wameyo): That is another Luhya!

(Laughter)

Mr. Mutere: Thank you very much, Mr. Speaker, Sir, for giving me this opportunity to comment on this very important Bill on the Co-operative College of Kenya.

I happen to have been involved in the initial stages of this college's inception right from the time that it was being run as one of the departments at the Kenya Institute of Administration (KIA) when it was plucked out of the KIA, it started on a very humble beginning at one of the houses at the Valley Road until it reached its present status where it is being run from Karen.

[Mr. Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, I do agree in principle on the establishment of this Act but there are few observations which I would like to bring up, particularly right from the Memorandum of Objects and Reasons.

Under "a" where they are providing for co-operative education and training for various categories of personnel of co-operative movement, I think that this in itself is a concept that ought to be changed. When you talk of the co-operative movement you are only referring to the officials of the various co-operative societies but the college per se should not concentrate on the members of the society or the officials of the society only but hopefully also train officers of Government who are involved in the co-operative sector. So, rather than use the phrase "co-operative movement", I would have preferred that we use the phrase "co-operative sector" so that it encompasses all the facets of the co-operative sector and not necessarily the movement thereby covering both the Government officials and the members of the co-operative movement itself. This is because the way it stands there as one of the objects it would give the impression that it will only confine itself to the movement but that is not the case. The case is that it will be an institution which will be involved in the training of the co-operative sector, both

for the movement, and the officials of Government.

Under the same Memorandum of Objects and Reasons, I would say that in part "c" where it reads, "undertake research into disciplines related to co-operative management either directly or through approved institutions", I would probably have suggested that the Minister puts up a schedule indicating what he considers to be approved institutions because by imagination, one would imagine that we are talking about institutions that are related to the co-operative sector. I think for the purposes of clarity, since this is the Bill that will strictly be talking about the Co-operative College, it would be appropriate if we had a schedule outlining the approved institutions for which this particular clause will be dealing with.

I hope that this college in terms of its curriculum will be based on the level of education that is almost at par with the university level. I am thinking of situations whereby the various centres which have been mentioned in the Act will be undertaking the preliminary education and that this college will then undertake the specific higher type of education in the co-operative sector which will be just below the university level thereby facilitating both the officers within the department of co-operative sector and the movement to work effectively for the promotion of the co-operative development in this country.

It is rather unfortunate that most of the people in this country when they think of the co-operative sector they tend to think that basically this sector is mainly for the farmers because the original basic idea which gave birth to the co-operative movement was based on consumers co-operatives. That was the original concept upon which the co-operative movement was established although we know that the countries which are dependent on agricultural economy have developed co-operatives on those lines but unfortunately we have tended to rely so much on that line and we have more or less given up the consumers aspect of the co-operative movement. This is rather unfortunate because even in a place like Nairobi where we ought to be having very strong consumers co-operative shops and movements you find that most of these shops are being run by individual foreign owned entrepreneurs. This ideally should not be the case because most of the people who work in Nairobi are the same people who go and buy these commodities from these shops. It is fitting that if the same workers were at the end of the year to benefit through the bonus scheme which will be paid by the consumers co-operative movement, then it will be most beneficial to the various families particularly in the middle class. I am thinking of a situation whereby in Nairobi here at one time they had established fairly strong Consumers' Co-operative Movement and it had been hoped that in time with its development some of the big supermarkets that have now sprung up in various places would have been run by this co-operative movement but the situation is quite different right now.

We have had a situation whereby almost 95 per cent of most of the supermarkets are either in private hands or in some multi-national co-operatives and this is the concept which I would plead with the Ministry of Co-operative Development to correct because much as we know the much work that farmers co-operatives have done in this country, I think it is fitting that particularly for urban areas that we should develop very strong consumers' co-operative societies which can compete with other well established private owned co-operatives. At the same time, I would also like to plead with the Minister that in this institution which is going to be established that in part of their training and syllabus they should also incorporate the various facets of the co-operative sector like housing schemes.

In a place like Nairobi here, the cost of housing is prohibitive and it will be fitting if strong housing co-operative societies could also be established in Nairobi. I know for instance, that there was a National Housing Co-operative Union (NACHU), which for some reasons does not seem to have given impact that was required because with some of the private developments that are coming up, I think, the housing co-operatives which would be run by the workers themselves, would have been very beneficial in bringing this one up. I hope that in coming up with various syllabuses that the college will be undertaking that some of these special areas that have unfortunately lagged behind in terms of the development would be brought up so that they can go along the other areas which we have tended to concentrate on.

Mr. Temporary Deputy Speaker, Sir, I do realize that, for example, the SACCO societies have done very well in the country and it has been a success story as far as the co-operative movement is concerned. Even in Nairobi it has succeeded, but it has not gone far enough. I think, it has already been mentioned by other Members that we need to have an appropriate enabling environment whereby some of these SACCOs can now move and use the resources which have already been mobilised to move into other areas of production. They can go to processing areas, they can go to manufacturing to be able to manufacture some of the commodities so that, particularly in urban areas, we can also benefit from the resources that have already been mobilised. Mr.

Temporary Deputy Speaker, Sir, I also want to mention something about the fisheries co-operatives. I am saying this because, I know the College will be an umbrella body as far as the various disciplines under the co-operative sector is concerned. I would like to mention that apparently, this area has not quite been properly co-ordinated to benefit the members. You will find that the members are the fishermen. They go fishing, they bring the fish on

land and then they hand the fish over to some private entrepreneurs who then come and do the processing in Nairobi and export the fish to outside markets. I think, the Department of the Co-operative Development should be able to educate these members and tell them that it is at the export level that actually there is the cream of their efforts, because as it is at the moment, it is just like the fishermen are now working for the private entrepreneurs. The fishermen should be encouraged to go all the way right from the fishing level up to the export level by being facilitated by the basic infrastructures like having refrigeration facilities at the various beaches which the Co-operative Bank at the moment has enough resources to be able to finance the various fishing co-operatives to be able to instal, and also, to give them the necessary funds so that they can bring all the fish from the Lake to Nairobi and, if need be, have some cold rooms in Nairobi for processing this commodity which is a very very perishable commodity so that it can then be exported and the fisherman will get maximum return for his efforts. I am saying this because this is another area where I believe that the movement has done some good work but it has not done quite enough.

Mr. Temporary Deputy Speaker, Sir, turning to the various clauses of the Act, I would say that in section 7 where we are talking about the constitution of the Council of the college, there is a provision there where there will be a chairman who shall be appointed by the Minister. I have no quarrel with the appointment by the Minister if that is the wish of the management of the College, but I would go a head and put some rider there so that the person that is going to be appointed should be somebody who should be knowledgeable about the co-operative sector mechanism. Not just because for some reasons or rather, either for political considerations or other considerations that he is appointed the chairman. I would prefer that the person who is going to be appointed as the chairman should be somebody who is versed and acquainted with intricacies of the co-operative sector economy. That is as far as Section 7(a) is concerned.

While listening to the debate here, Mr. Temporary Deputy Speaker, Sir, one of the colleagues here did wonder how the movement would be able to select its representative to be represented in this body. I did sympathise with that individual because he happened to have been a Cabinet Minister, but I would understand why because not all of us are proficient in all the areas. But the mechanism here is that the Kenya Federation of Co-operatives is the umbrella body of the various co-operative societies, co-operative unions and it is the apex body from which you can get proper representation. I am glad that in 7(e), there is a representative, that is the chairman of the Federation of Co-operative. But coming down to (h), we are only providing for three members of the co-operative movement. I think, as I said earlier on, we really need to understand the co-operative movement. The role of the Ministry was basically to develop the co-operative movement and the co-operative economy. It is only to develop, not to own it. The co-operative is owned by the people. It is not owned by the Government institution. Therefore, for all intents and purposes, it is logical that it is the one that should have ---

Mr. Orenge: On a point of order, Mr. Temporary Deputy Speaker, Sir. Did you see what hon. G.G. Kariuki has done? He has crossed from one side of the House to the other side without moving to the Bar and bow!

The Temporary Deputy Speaker (Mr. Wetangula): Order, hon. G.G. Kariuki! You just crossed from the right side to the left side without bowing at the Bar. Carry on Mr. Mutere.

(Laughter)

Mr. Mutere: Thank you, Mr. Temporary Deputy Speaker, Sir. What I am saying here is that as far as the composition of the Council is concerned, consideration should be given to the possibilities of having more members of the co-operative movement within the Council, because the College is going to serve the movement. So, it is for them to be in this council so that they can partake of the decision making that will be taking place there. But to give them only three representatives in a council which is composed of 11 members whereby all other eight members would be representing other interests. I would recommend that consideration should be given to having more membership of the movement representation rather than other representations.

Coming down to Section 10, I am rather uncomfortable with this combination of one principal with two deputy principals being incorporated into the Act. I would suggest that you have a principal who would be the overall administrator of the institution and then under him, allow him/her to have many heads of departments who will be running the various functions under the principal without necessarily creating in an Act of Parliament, two statutory offices with duties which might conflict. Once we pass this, it will be law and it might be difficult to implement but for the purposes of proper administration I thought that the ideal situation would be where you have the principal and under him, various deputies that he thinks will execute various functions to make this college to be properly operational without necessarily having to insert this provision because there is a bit of conflict as far as their roles are concerned.

Coming to Clause 14, where we are talking about the Academic Board, under (d) we have the heads of constituent training colleges and here without having named the various constituent training centres, we might end up with a situation whereby this academic board might be too big to manage. In any organisation where you have a board to run the organisation, it is not supposed to be too big; it should just be manageable but if we are to have the heads of the constituent training centres and we do not know how many they are going to be, assuming that there are going to be one constituent college in every district and with the new districts coming up, you are talking about 50 constituent colleges to be part of the board. That would be a very big board. You are literally going to have a general meeting every time you are calling an academic board meeting. I would prefer that this particular Clause be reviewed so that we can come up with a manageable board without necessarily having it being too big.

The next observation I would like to make is just in passing. I believe that this is a Bill that is just transferring the properties from an Act of Parliament and from the Co-operative Societies Act to the college itself. I would also like to say that as far as the properties are concerned, I hope that the necessary registers are already in place because through experience, we have found out that this is an area where sometimes in the absence of the registers, certain pieces of land tend to disappear quietly before you have known where your beacons are. You try to do evaluation and you end up in a situation whereby the assets register is not quite up-to-date. I would recommend to the present principal that when the transfer takes place, the proper assets register should be taken care of.

The other one is as far as the admission and the exclusion of the students is concerned. I hope and I believe that appropriate rules and regulations will be put in place to specify the criteria for admission and also expulsion of students so that we do not end up in a situation whereby students are expelled unnecessarily. I hope that the Minister will come up with the rules and regulations regarding specifically the admissions and expulsions without just leaving it open.

There is also the issue of the custody of the common seal. Clause 4 talks about the common seal and significations of documents, I would prefer if we could incorporate here a section which will specifically indicate who would be the keeper or custodian of the common seal because this is a very important document and needs to be taken great care of.

The other comment I also want to make is about the examinations and diplomas. There is a general provision about the examinations and diplomas. I think that we should have some specific schedule altering the mode of the various examinations and diplomas that will be awarded by the College. I also would have preferred to have a Clause or maybe to come under the regulations, whereby we should know the calibre of the inspectors of the various training centres which will form the constituent part of the college because if we just leave it like that, then we will not have the linkage. We need to have a linkage whereby we have inspectors who will now be identifying the various constituent centres to be part and parcel of the main college.

I also want to take this opportunity to invite Members tomorrow for our Parliamentary SACCO general meeting. As you are aware, we have done very well and since it is an occasion that takes place only once in a year, I take this opportunity to invite all MPs for the meeting tomorrow, which I am the chairman, and you will be pleased to hear the good results that have taken place so far. The meeting will begin at 12.00 in the Old Chamber.

With those many remarks, I beg to conclude.

Mr. G.G. Kariuki: Now I can speak from here because the notorious ones are not in. I would like to make a few remarks on this Bill. I am sure that everyone in this House agrees with the establishment of the Co-operative College of Kenya as an independent body from the Ministry of Co-operative Development. The only thing which we want to do here is to make sure that whatever establishment of a college will be made in future, we need to see that that college is not just aimed at producing graduates, diploma holders or certificate holders without being involved in the co-operative movement because I believe that according to the Ministry there are over 3.3 million co-operators. Among these people, we can get people who can be trained and later on, they can manage some 6,000 registered co-operative societies. If the co-operative movement in this country is given the support it deserves, this country will be transformed from a capitalistic society to a socialistic society based on African values. That is why I feel very strongly that since we all in agreement with this Bill, there should be no need for me to go through it clause by clause because we all seem to agree on it. But after the Bill goes through, I feel that it will be used with an idea of transforming this country into an economy which cannot be claimed by a single group of people. As things are today, the economy is held by a few people of whom some are foreigners and a few locals who control the industries and hence they control the economy of this nation.

The people in co-operative movement have managed to organize a bank for themselves and this is a clear indication that a lot can be done if we follow the establishment the way it is. An hon. Member here yesterday

said; and I concur with his remarks, that co-operative officers should be there just to guide and to advise the co-operators and not to become masters of those co-operative societies like it was the case some years ago where you would find a co-operative officer would come in and ordinary people would stand for him and he thinks he has come as a master to direct these people on what to do. There was corruption those days and I hope the Minister has curtailed some of those corrupt practices which have been taking place in the co-operative movement especially in land buying companies. We have had problems. In fact, that is why you see even today, in KCC and all other related organizations like co-operative societies--- Time has come when we need to transfer the management and the authority of these societies to the members; to be controlled by the members themselves. If it is a farmers' cooperative society, it has to be managed by farmers themselves. If the co-operative movement has about 3.3 million members, definitely, they have all the personnel they require who belong to these families of these co-operators. After the Bill has been passed, then you find that people are selected on tribal basis. We need to bring in people who are cooperators so that others who are not members of co-operative societies can be attracted by those who are in the societies. I think this is the time to ensure that even the Board which is going to be an academic Board is independent from all other influences. It should be independent to be able to transform those who are in the co-operatives to be good people who can be relied on. We should not aim very much at the diploma courses. We should aim at seminars and spend most of the money on people who are managing those co-operatives especially the committee members. The committee members of these co-operatives should be the people to occupy majority of the positions in the Co-operative College. If we need co-operative officers who are graduates, they are available in this country from the existing universities. They are also available from outside universities and they are all Kenyans. A co-operative college like this one needs to take a different approach with a view to assisting the members of these co-operatives on how they can manage these co-operatives with confidence and without fear. The problem here is that when an officer is given a position, he appears like he owns not only these people but also company. This is what we want to tell the Minister who is a very active Minister, I have known him for many years and if he means some good job, he will definitely do it. I agree with him when he says when this Bill is passed, he is going to make sure that what Members have said here is taken seriously.

On research programmes, a lot of research has been done in this country. There is no paper that is not available in this country. If you want to study about the co-operative movement in this country, you will find all the papers available. If you appoint somebody to research on this co-operative movement, he will just go round and collect and file them together and produce a paper. They are all available and therefore we should not spend more time and money on doing research for co-operatives. These are available. If you go to places like Israel and look at the Kibbutzim there, you will find that these people are the best example of how people can do a good job but not the *Ujamaa* like we had in Tanzania. *Ujamaa* as an idea and concept was very good because it was to put people together, give them all the human requirements like shelter and hospitals. But when all these things are done, you find that there are people who come in with their corrupt motives to destroy what may have been good for a certain situation. Therefore, I agree when we say we shall have a clause which will be talking about the academic Board. We agree that an academic Board must be there and also research programmes.

Diploma certificate is for which officers? This needs to be put clearly here as to whether diploma holders are going to be assisted by those who hold certificates or what will happen. There is nothing much in this kind of business. What I think should be done is to make sure that from the grassroots the cooperators are given the opportunity to know basic accounts so that they can afford to read their statement of accounts, they are able to understand what is going on and get to know what is happening. Again here, there are other people in this country like women groups. The Minister should come forward with some kind of programme to make sure that these women groups are organized in form of co-operatives so that money can be found to support these groups.

Mr. Temporary Deputy Speaker, although what I am saying may be outside the Bill, but, it will be the result of this business we are talking about. That the women, the men who are forming co-operative societies, the Jua Kali group should be advised how to form co-operatives with the aim of achieving even more economic returns than what they are doing today. I am saying this because there are many officers and the tragedy in this country is that you have so many officers with a minimum return. Majority of the people who are now working in the Government, even if you take out 50 per cent of these people, the system will continue, because there is a lot of manpower. Like the officers we have today for co-operative societies, they are so many, such that, we can do without even this college at a very advanced level like it is being proposed here. What you need here is not something so sophisticated and complicated, it is a simple thing that people should be together, agree to do a business, move on and do the business. But, when we are solving things here academically putting them to look like it is "extracting something from the moon", I do not believe in that. We need to be simple, simplify our language, our understanding to be able to approach the ordinary person in the village who should be told, you

alone will never get anywhere unless you collect so and so, sit together form a co-operative, go to the Co-operative Bank, go to other banks and you will be supported to be able to achieve something.

Before I finish, I would like to commend those who have been doing this job in co-operative movement since Independence. There was a time when it was a big, big problem to understand the role of a co-operative officer, but up to now, although I am not very familiar, I think they now do understand us. Maybe they do understand that, they are not supposed to be the rulers or authoritarians of the members of the co-operatives. These people in the co-operative society like KPCU, like all other co-operative movements, should have all the power, they should have absolute power to employ any person provided they are capable of paying their commitment with the bank.

With these few remarks, I beg to support this Bill.

Mr. Munyasia: Thank you, Mr. Temporary Deputy Speaker, for the opportunity to contribute on this Bill. I have been trying for a long time to catch the Speaker's eye, to contribute on a Bill and I had never had the chance. So, I am very happy that I have now got this chance.

Mr. Temporary Deputy Speaker, Sir, the first thing that I would want to look at in this Bill, is Clause 2, which I think is on interpretation. The purpose of that Clause 2, I think, is to avoid ambiguity by giving specific means to certain terms that are used in the Bill. When I looked through, I found that there was one in particular, that I think was seriously omitted and that is the word "co-operative" movements or movement. These are words that are used in that Bill starting with small letters. We have been told here that in Clause 7(1) (h), which says, the co-operative movement shall nominate three persons to be on the council. We have been told by hon. Mutere, that, that movement should refer to the Kenya National Federation of Co-operatives. I do not know whether that is the meaning that should be given in Clause 2. So, I am proposing that the Minister does include that particular definition. But, since KNFC may be changed and perhaps replaced by any other body to represent the co-operative societies in this country, maybe what should be said is co-operative movements or movement in this Act refers to any organization that the Minister shall see represents the co-operative movement. If that is done, he will have avoided ambiguity in Clause 7 1(h).

Mr. Temporary Deputy Speaker, Sir, I go to section 3. This is on the establishment and functions of the college.

The Temporary Deputy Speaker (Mr. Wetangula): Before that, there are clauses.

Mr. Munyasia: Okay, there are clauses, Sorry, Mr. Temporary Deputy Speaker. It is said under Clause 3(2) that the establishment of constituent training centres will be:-

- (a) By the College; and
- (b) By the Minister.

And the Minister is given the power to convert any institution into a co-operative education centre. I do not know which institutions these are, at the disposal of the Minister for Co-operative Development that he can later convert to the use of the co-operative college. I was going to propose that, instead of having two centres, some to be established by the Council of the Co-operative College and the other by the Minister, that, we remove this one by the Minister and have only the Council of the College deciding when to establish a co-operative education centre.

Mr. Temporary Deputy Speaker, Sir, while talking about these constituent training centres, I am reminded that Western Province has for a long time been ignored whenever institutions of higher learning have been established. We have the University of Nairobi establish constituent colleges. First, it was Kenyatta University College in Central Province, then Kikuyu campus in Central Province. We have had Egerton University establish constituent colleges, I think in Laikipia and in Kisii now. Then, we have had Moi University establish constituent colleges in the Rift-Valley and in Nyanza. Has it ever occurred to those who are establishing these constituent colleges, that there is a populous province - Western Province - which also deserves some of these constituent colleges? It is on that basis that I am appealing to the Minister for Co-operative Development that when such constituent training centres for this particular co-operative college are to be established, that, Western Province gets first priority.

I know many people have had an unfair share, a disproportionate share of what the country can give now, on the basis that, they had been discriminated against earlier. We have been discriminated against all along, and we are saying that, we need those constituent training centres when they are established.

Mr. Temporary Deputy Speaker, Sir, I am concerned more with the functions of the college. It will be important because I am told that they will decide that in clause 5(1) (a). It says that one of the functions of the college is to provide co-operative education and training for various categories of personnel of the co-operative movement and Government officers. I am hoping these various personnel will include, especially for those constituent training centres that it will include the ordinary membership, the general membership of the co-operative societies because these are the people who are exploited, these are the people who do not have the

education. Many times when we are thinking of co-operative education, we are thinking of training those officials that have been elected to head the co-operative societies and many of them have been criss-crossing the country every year allegedly or purportedly for co-operative education. But the general membership has been ignored and that is why they do not realise when they are being exploited. So, I think, these constituent training centres should take after the version of the farmers training centres.

Mr. Magwaga: On a point of order, Mr Temporary Deputy Speaker, Sir. My point of order is that, since it seems that everybody has had a talk on this, can we cut-off this debate and the Mover be called upon to reply?

(Applause)

The Temporary Deputy Speaker (Mr. Wetangula): I will put the Question after hon. Munyasia's contribution.

Mr. Munyasia: I am grateful, Mr Temporary Deputy Speaker, Sir. I am most obliged and my friend should not defect any more.

Mr. Temporary Deputy Speaker, Sir, I was saying that these constituent training centres should take after the version of the farmers training centres, which open themselves to seminars that hon. Kariuki has been talking about, so organised seminars or courses preferably even on a weekly basis, so that more and more of the general membership, the ordinary membership of the co-operative societies, can be given education too. So, that way, I think, the corrupt officials and officers will find the general membership of the co-operative societies difficult to manipulate.

Mr Temporary Deputy Speaker, Sir, I come to Clause 7 and this is a very important section, it is talking about what the council of the college will do. Sorry, I am on clause 8 (2) (d), it says that the council shall determine the terms and conditions of service, including the appointment, dismissal, suspension, interdiction and retirement benefits of the members of the staff college. It says nothing about how this is going to be done. There is no schedule that outline what will be done, or what will be the discipline procedure, for instance. But before we come to that, I am concerned with the membership of this council. If one of the council's functions is going to determine the terms and conditions, including the appointment, dismissals, suspension etcetera, is it not only proper that either an officer from the Ministry of Labour and Manpower Development is included on that council or one from a union representing the teaching staff in that college, that he may also, sit on the council? If that is not done, then, it will only be fair again, to say the staff must be allowed to organise themselves or maybe a kind of body equivalent to the Teachers Service Commission Remuneration Committee (TSCRC) should be established, so that it does represent the teaching staff and the supportive staff at that college, to negotiate terms and conditions of service at that particular college. The purpose will be to ensure that there is order in that college, unless we allow for that representation of members who are going to feel the power of the council, we shall find in the end that these people are suppressed and, then, there will be unrest.

While on that matter, I was particularly concerned with the sections on students. Clause 8 (2) is talking about the power, it says notwithstanding subsection (1), the council shall have the power, and, then, it goes to (f), he says the power to provide for the welfare of the students of the college, etcetera. The Bill is talking about the council having the power to provide for the welfare of the students. That particular statement is frightening. I would have expected that they will say that the council of the college, shall provide for the welfare of the students, but if they have the power to provide, that appears authoritative. It is no wonder that throughout the whole Bill, we do not find any provision for the establishment of the student association or the students union, and yet, if we are working for good order, especially if we are going to emphasise the democratic aspect of the Co-operative College or the co-operative society, at the college itself, we must be democratic. All the interested parties must be represented, we cannot have the power to provide for the welfare of the students, but we have the obligation. That is not the same as saying that we have the power, we have the obligation to provide for the welfare and if we changed it that way, I am sure, we will, then, for the students to organize themselves, so that when they think, they are not receiving the best from the Council as far as welfare is concerned, they will be able to put the matter over to those that are concerned.

Mr. Temporary Deputy Speaker, Sir, we go to Clause 10, that is the appointment of the principal and deputy principal. I am happy that this has already been mentioned by some of my colleagues. I was not here last week when the Minister moved this Bill, so I went over to the library, and I have looked at what he said. He has not given us any good reason why he should be the one to appoint the principal of the college. I think, what we should do, is to have the principal of the college appointed by the council or by any interviewing body on behalf of the council, and that should be enough. That is the only time when we know that merit will have been followed. We are talking about the Minister that we know. We are talking about a Minister who has appointed a man who

was rejected for incompetence to the Kenya Co-operative Creameries (KCC). We have been told this and he reinstated that fellow for political purposes, I am sure. So, that is why I am sure that since we know, it is not fair to have the Minister again, to interfere with the appointment of the principal.

Mr. Temporary Deputy Speaker, Sir, Clause 14, is on the Academic Board. We are told in Clause 14 (1) (b), that there will be two deputy principals, one of whom shall be the secretary. I do not know whether those who drew this Bill realised that in Clause 10 (4), they had categorically said that the Deputy Principal in charge of academic affairs appointed under subsection (2) shall be the secretary to the Academic Board. So, Clause 10 (4) is saying the Deputy Principal in charge of academic affairs shall be the secretary to the Academic Board. They are using the word "shall". So, we cannot, again talk in Clause 14 (1) (b) about any of the two deputy principals being secretary to the Academic Board. So, that is the contradiction that I wanted to point out.

Mr. Temporary Deputy Speaker, Sir, a lot has been said about the abuse of this particular co-operative movement. I would like to talk about it too, because Bungoma has not been left behind. In fact, I had been thinking before I heard colleagues here talking about their own districts yesterday, that Bungoma was the only unfortunate one. In the years 1989 to 1991, under a DC called Mr. William Changole, all the co-operative societies and unions in Bungoma were ruined. I do not know what was done, but the Minister was expected to follow this up. Kitinda Dairy was ruined when the DC was appointed chairman of that particular commission running the co-operative society. Malaba-Malakisi was ruined; Bungoma Co-operative Society was ruined. The banking section of Bungoma Co-operative Union was ruined, and the man got away free. We are wondering what the Minister for Co-operative Development is going to do to help the people of Bungoma recover, because the man is still there. I think he has got some promotion or something in the Provincial Administration. I wish he had been listening because the man is there and the people of Bungoma have been making these presentations and we want him followed. The co-operative movement has to do with bringing people together for a common purpose. It has been said here by hon. Kariuki that even women groups should be converted into co-operatives. I think that is an important point that we should pursue. Many of the women groups have been formed mainly by politicians and all we see every now and then is hon. Members organising Harambee for them. You begin giving money to these women groups and you think that you are encouraging them to enter business. The experience that we have had is that all this money will just be consumed. When you put a political element to any contribution, that money will be consumed and none will feel guilty about it. We had Kshs.12 million given to Bungoma District as money for Rural Enterprise Fund. It was supposed to be a revolving fund. The money was given out in 1992, the year of the General Elections. It came to be understood that, that was money being given by politicians to eat. Up to now, recovery has been extremely difficult.

So, if we have got to continue doing these Harambees, organising Harambees for the women groups, we should consider whether we are really helping them to be self-reliant. Are we really encouraging them to do hard work, so that they can also contribute, or are we merely doing that for political support?

In my Constituency, there is a fund called Sirisia Constituency Youth Development Fund which I do not know about. I have been telling the people not to raise any money for this fund because I do not know about it. It is said that it is going to be a revolving fund. But we are saying that these youth groups had better be advised to form themselves into co-operatives, so that they make contributions to that particular society. Then, we direct them to go for credit either from the Co-operative Bank, or whatever other credit facilities there will be. We are not doing them any good if we are going to tell them just hold on; we are bringing the money. This must stop. We are developing a bad trend of thinking that we the few that have the money are going to improve the welfare of our people by running around to give out money. People should work for it. People should learn to contribute. That is what the co-operative movement is all about; it is not about getting free political money.

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

The Assistant Minister for Commerce and Industry (Mr. Barmasai): Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this Bill.

I will start with Clause 5(1)c which is about one of the functions of the college on the provision of consultancy services. I think this is one function that needs really to have very qualified people so that they can help the co-operative societies in consultancy services. We have known of co-operative societies or unions which have gone to private organisations for consultancy services and it has been very, very expensive. So, I hope this function of the college should be the one that should assist mostly the co-operative union and co-operative societies which have problems and should be able to give recommendations on how to solve the problems that have befallen some of the co-operative societies and unions. So, I think this will be one of the functions which should be of great use to the co-operative societies and unions.

With regards to Clause 7(1)h it deals with the composition of the members of the governing body. It says that there will be three other persons representing the co-operative movement nominated by the movement.

We hope that these three members will also be selected by the co-operative movement to be able also to represent the co-operative societies in various areas of the country. I hope we will not come to a situation whereby the three members in that governing body will come from one section of our country. I think the Minister should bear in mind that various areas of this country should be represented by these three members of the council.

The other point I would like to talk about is on Clause 8(2)c which is on the admission of students to the college. The people that we are going to train will serve our co-operative societies in various parts of the country, and I hope what should be borne in mind is that in the admission of students, all areas of the country should be taken into consideration, so that we do not have to select students from one section of the community, or one section of the country in order that when we have people trained in co-operative movement, each part of this country should have somebody who has been trained on co-operative matters.

Clause 9(1) talks of the council having meetings at least three times in a year. I think that is a bit too few because I thought at least four meetings could have been better. If they have to meet three times per year, and maybe on one or two occasions there is no quorum, it means that for a whole year, they will have met once.

The Temporary Deputy Speaker (Mr. Wetangula): Mr. Assistant Minister, it says at least three times. They can meet many more times.

The Assistant Minister for Commerce and Industry (Mr. Barmasai): I know that, Mr. Temporary Deputy Speaker, Sir; I am talking from experience.

The Temporary Deputy Speaker (Mr. Wetangula): Okay.

The Assistant Minister for Commerce and Industry (Mr. Barmasai): Mr. Temporary Deputy Speaker, Sir, you will find that a lot of co-operative movement will stick to what is in the Act. They can meet as many times as possible, and we will encourage them to meet as many times as possible, but not to stick to the minimum requirement that is in the Bill. That is what I am trying to say.

Mr. Temporary Deputy Speaker, Sir, Clause 10 talks about the appointment of the Principal and his deputies. What I think we should do in such a college or in most of our parastatals is that when we have certain position like that one of the principal and the deputy principal, after putting up the minimum qualification, I suggest that the next thing which should be taken into consideration is that these positions should be distributed to various communities, so that there is no situation whereby the principal and the two deputy principals come from one community. But the first thing is qualifications and I am sure almost every community in this country have people who meet those qualifications. Once those qualifications have been met, let us distribute these positions to the various areas and communities. What I am saying is that, let us stick, first of all, to the qualifications.

Mr. Temporary Deputy Speaker, Sir, Clause 19 talks about the presentation of the accounts to the Auditor-General (Corporations). It talks of three months after the financial year, but what I think we have seen in practice is that a lot of organisations and parastatals, presents their accounts to the Auditor-General (Corporations), when it is very late. I hope that those in authority in this college, should ensure that those books of accounts are presented to the auditors in time, so that the council can make decisions where things have gone wrong early enough to be able to correct the mistakes. This is because what we have come across, are situations whereby books of accounts are audited several years later and when a mistake is discovered, it will take a long time to rectify or even the person who made that mistake could have even resigned or retired. So, I think they should stick to what is in the Bill, that within three months, those books of accounts should be presented to the Auditor-General (Corporations). This will help the organization a great deal. This applies to Co-operative College, but it should also apply to all our parastatals. They should present their accounts in time, so that mistakes can be corrected early enough.

Mr. Temporary Deputy Speaker, Sir, I hope our giant co-operative unions will take advantage of this college and be able to train their staff at all levels, including the training of the committee members and, directors and so that they understand the accounts for their unions, so that when final accounts are presented to the Board, the members of the Board should be in a position to interpret those accounts. As the situation sometimes is, when the books of accounts are presented to the Board for approval and presentation to the annual general meeting, if the members of the Board are not conversant with these accounts, they can give the wrong information to the members during the annual general meeting. So, this college should train the directors and committee members of the co-operative unions to know exactly what they should be presenting and how they should interpret the accounts of their unions and co-operative societies, so that the co-operators get the right information.

Mr. Temporary Deputy Speaker, Sir, I would also like to suggest that, I think it is a high time that---

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

The Temporary Deputy Speaker (Mr. Wetangula): Yes, Mr. Sankori.

Mr. Sankori: My point of order, Mr. Temporary Deputy Speaker, Sir, is whether we should not call

upon the Mover to reply to this Bill?

The Temporary Deputy Speaker (Mr. Wetangula): If that is what you want, you will have it.

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

Mr. Obwocha: Nooo!

The Temporary Deputy Speaker (Mr. Wetangula): Hon. Obwocha, you are grossly out of order. You do not have to stand up to say "No", especially when the Temporary Deputy Speaker is on his feet. Minister!

The Minister for Co-operatives Development (Mr. Munyi): Thank you very much Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to reply to this very important Bill.

Mr. Temporary Deputy Speaker, Sir, I would also like to take this opportunity to thank all, the hon. Members who have contributed to this Bill. I have also seen that many have been wanting to contribute towards this important Bill and I want to thank them all. Those who have spoken from both sides have done a good job because they have given very good ideas and I would like to say that I have made some observations on what the hon. Members have said.

One, I would like to assure the hon. Members, and the House, that all their suggestions and their opinions will be taken very seriously. Also I would like to inform the hon. Members about the auditing of accounts. This will be done in accordance with the provisions of the law.

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

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

Mr. Temporary Deputy Speaker, Sir, I would also like to comment on what other hon. Members did say. First of all the Bill was seconded by the Vice-President who is also the Leader of Government Business, hon. Prof. Saitoti. He did give some very good suggestions about the co-operatives. Those suggestions have been taken very seriously. There is a suggestion which was put forward by hon. Mwaura, Member for Kigumo. He did give a very good suggestion that the co-operative movement should go right inside the rural areas. That is what we should do and we have been doing, so that the majority of people in rural areas will benefit in all provinces in Kenya, starting from Rift Valley, Western---

An hon. Member: Embu, Meru!

The Minister for Co-operatives Development (Mr. Munyi): I am talking about provinces, Mr. Temporary Deputy Speaker, Sir; Nyanza, Coast, Central, Eastern, North Eastern and also Nairobi Provinces. The issue of SACCO Societies is very important. I can give an example of what a SACCO movement is, within the co-operative movement I have done research about SACCOs in Nairobi. There are Reli and Posta SACCOs. A lot of skyscrapers which are coming up in Nairobi have been put up through the co-operative movement.

Hon. Mutere, when he was contributing to this Bill a few minutes back gave an example of what should be looked into. I will see to it that the officers concerned will be checking the auditing and also take care of the money belonging to the farmers, wananchi and SACCOs. That is very important. I would like to urge the hon. Members to tell co-operators that whenever they want to elect officials in their co-operatives they should elect sincere people who will be willing to do something for their own people. They should not elect an official for the sake of electing him and then in the end he misappropriates funds. I am sounding a warning to co-operators that when they want to elect officials, they should elect good ones.

Mr. Temporary Deputy Speaker, Sir, the co-operative movements are everywhere in the country. Therefore, what I am talking about is that in whatever part of the country, when the Co-operators want to elect officials they should elect officials who have got integrity. An official should not be a person who will misappropriate funds of the wananchi and, therefore, integrity is very important. Mr. Temporary Deputy Speaker, I am informing the hon. Member that he should not tell me what I am supposed to talk about. I am telling him, that I follow democracy. Therefore, hon. Mulusya, should follow what I am telling him. When he wants to elect people in co-operative movements as officials in Kangundo, he should elect good people. This is what I am talking about!

Mr. Mulusya: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Minister in order to impute improper motives on me that I elect people in Kangundo in co-operative movements? Does he not know

that it is not the hon. Member of Parliament who is supposed to elect an official of the co-operative but by the co-operators themselves? Can he be fully informed?

The Minister for Co-operative Development (Mr. Munyi): Mr. Temporary Deputy Speaker, Sir, I am talking about the co-operators in Kagundo and not an hon. Member of Parliament.

Suggestions have been given by hon. Munyasia, about the co-operative movement in Western Province. I would like to assure hon. Members that Western, Rift Valley, Coast, Central, North-Eastern and Eastern Provinces will not be forgotten. All parts of Kenya will be considered in a democratic way because our Government is democratic. I am telling hon. Members that Kenya is a very democratic country and we should be proud of our own country, Government and our President. That is very important! Therefore, since this Bill is important and every hon. Member has supported it, I thank you very much for supporting this Bill.

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)

Second Reading

THE COPYRIGHT (AMENDMENT) BILL

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Copyright (Amendment) Bill, 1995, be now read the Second Time.

This is a very highly technical Bill. I would like to request your leave to refer extensively to the notes as I move this Bill for the second reading.

*(The Temporary Deputy Speaker
(Mr. Ndotto) left the Chair)*

*(The Temporary Deputy Speaker
(Mr. Wetangula took the Chair)*

Mr. Temporary Deputy Speaker, Sir, the aims and purposes of this Bill are clearly set in the Memorandum of Objects and Reasons. (i) The purpose of this amendment Bill is to make our Copyright Law compatible with Bern Convention to which we became a party in 1993; (ii) The other purpose is to take into account the latest technological advances and application; and, (iii) to update the Copyright legislation generally.

Mr. Temporary Deputy Speaker, Sir, as I have just said, the first purpose is to make our copyright law compatible with Bern convention to which Kenya became party in 1993. The Bern Convention for the protection of literary and artistic works was adopted at the Diplomatic Conference in Bern in 1886 and revised in 1971. The Bern Union, of course, is administered by a specialised agency of the United Nations called World Intellectual Property Organisation.

Mr. Temporary Deputy Speaker, Sir, issues relating to intellectual property are issues which have not been given sufficient importance that they deserve, particularly by the Third World countries. These are the issues of Copyright, patent law and so on which are at the very heart of technological development. I know that you yourself you are a lawyer, a member of the legal profession, but in the law you know that you went through, the legal studies at the university important subjects such as copyright, patent laws and so on, were legal touched on by our lecturers and professors. Mainly, because they did not realise the importance of these subjects, but also we did not have experts who could give us lectures in these fields. Therefore, I am glad that at the Faculty of Law at the University of Nairobi now, at least, issues of copyright, patent laws and so on, are being taught. They are very important and crucial as I have said earlier in our technological development.

The legal protection of the rights of the authors of artistic and literary works is achieved by the laws of copyright. Copyright does give moral and economic rights to create us of their creation. It is only when their rights are protected, properly and effectively, both nationally and internationally, that they can reap the benefits of their creations through royalties. It is only when they can reap the benefits of their creation through royalties and et cetera, that they can get the incentives to be more creative in many other fields.

That they can get the incentive in many other fields, and hence the importance of ensuring that the

copyrights of these people, if effectively protected, first in the nation itself. But protecting it in the nation itself, without protecting it internationally, does not achieve the intended purpose. If somebody has a copyright and is only protected in Kenya, if it is taken out of Kenya, and it is not protected, he will, in fact, lose much more royalties because chances are, that particular book may even be bought more overseas more than here. Hence, the importance in issues of copyrights and patent law, that there be an international system which can protect the copyrights of people also internationally, and hence the importance of the Bern Convention.

The principle advantage for a country, whether it is developing or industrialised, of adhering to Bern Convention, is that the country becomes a party to an international system for the protection of authors rights, and this is particularly important for the authors themselves. As far as the publishing activities are concerned, also the publishing firms, even locally, do stand to benefit there is that effective system of protection of copyrights.

The Bern Convention also contains a fairly detailed minimum standards for copyrights protection in all countries of the world, therefore, becoming party to that convention is an indispensable condition for meeting those world-wide copyrights standards. The membership of the Bern Convention also provides a country with an opportunity to participate and play an active role in the future important developments in international copyright matters.

Therefore, Mr. Temporary Deputy Speaker, Sir, the Government decided to ratify and become party to the Bern Convention in order to give international protection to our own Kenyan writers, authors and literally people. Now, to become a member of that convention and to enjoy the advantages of the membership of that convention, it is an obligation, under international law, that the member countries must ensure that the copyright law is consistent with convention. So, all the member countries who are parties to the Bern Convention and they are more than 120 or so, have an obligation to ensure that their copyright laws are the same, and that they are consistent with the Bern Convention. This is the way in which, in fact, the international protection of authors, rights and so on, can also be protected in other countries because all countries must have more or less the same laws for these rights to be effected in those other countries. So, the purpose of this amendment is to bring our law to be consistent with the Bern Convention. Also, as I had stated earlier, to bring our laws to take into account the latest technological advancement.

Mr. Temporary Deputy Speaker, Sir, with that general introduction, I would then wish to go step by step in explaining this. It is proposed that the definition of the author which is now there, should be changed to take into account the latest technological advances, and also to do away with other obsolete phrases which are in that definition. The current definition does refer to what is called, "programme carrying signals". Now, programme carrying signals, was introduced as part of the definition, of the author in 1973. Members may recall, some of you, I think, were in school and some were doing business and so on. But in 1973, in fact, Nairobi was the venue of the World Property Organisation, and at that meeting the programme carrying signals was an issue which was relevant and material at that time. But now, in the right of the advanced technology and so on, that has now become obsolete and, in fact, it is not necessary. Therefore, it is proposed to remove the programme carrying signals from the definition of the author, as appears in section 2. That will affect whereas programme carrying signals appears in the entire Act, that is section 2(1), section 3(1), section 4(2), section 5(1)(C), section 3 and section 11 of the Act. Both programmes at work are already protected by the copyrights and, therefore, the specific provision in respect of signals is not required.

Mr. Temporary Deputy Speaker, Sir, I now come to the definition of broadcast. Since 1966, with the actual Act that is the current Copyright Act, the copyright did not include a number of technological advances that have happened. Therefore, the definition of broadcast is now made more to take into account the latest development by including, transmission by wireless means, and by satellite.

I then come to the word "copy". We are still in Clause 2 of the Bill. It is important that the definition of "copying" today, cover the input of work into computer system or any other medium by electronic means. The definition as such does not include that clearly and, therefore, the amendment is to ensure that the definition of "copy" does include the input of work into a computer system or any other medium by electronic means. Therefore, as you can see in Clause 2(C), we have added those aspects, that any permanent or transient storage of work in any medium by computer technology, or other electronic means. This is just again, as I said, to take into account the latest development in this area.

We then come to the definition of "literally work". As you can see, in the current definition of literally work, again it does not cover all the fields and, therefore, taking into account the latest developments, we are making two amendments there. We are replacing the word "means" with the word "includes".

Mr. Temporary Deputy Speaker, Sir, in other words we do not want to close the category of what amounts to literary work. When you use the word "means" then you are confined to the words which are appearing in the current definition. You are confining it mainly to novels, stories, political works, plays, stage

directions, films, stationeries, broadcasts, scripts, text books, treaties, histories, biographies, essays, articles, encyclopaedia, dictionaries, letters, reports and memoranda. So, when you use the words "it means this" you are confining the meaning only to that whereas we know - and technology is advancing very fast - that there can be other categories which can be included. Therefore, other than use the word "means" we are now using the word "includes" so that if any other categories arise it can also qualify because it is not everything but just includes those items. But specifically, in addition to the change of phraseology, and so that we can cover a wider area, we are specifically mentioning two items which are not in the definition. We are specifically mentioning charts, tables and computer programmes as part of the definition of what amounts to literary work. I have already referred to Clause 4. It refers to the programme carrying signals and other areas.

I now come to Clause 5, which appears at page 774 of the Bill. In this Clause we have very important additions. The provision currently confers copyright on sound recordings which are made in Kenya but does not include, strangely enough, sound recording first published in Kenya. So, we are now proposing to include also sound recording first published in Kenya. This is to close a very major loophole that has been in our laws. For a subject that is first published here somehow it is not clear whether or not it is covered by the law in Kenya. Therefore, you end up actually covering in Kenya other productions produced elsewhere. But for the first time, we think that it is very important that the first recording published in Kenya should be covered in Kenya.

Clause 6 is really closing a distinction between the length a copyright by the Government can be held. Whereas other copyright holders held their copyright for 50 years the Government held its copyright for 25 years. We are now putting everything at par at 50 years. Any other issues I will be able to explain later if hon. Members do not follow what is in this Clause. But at the end of the day, that is what all those words mean. Perhaps, at this junction, I may elaborate a bit on Clause. This Clause seeks to amend Section 6 of the Act in relation to:- "copyright on works made by or under the control of the Government or prescribed international or other inter-governmental bodies which would otherwise not be entitled to copyright because of the lack of the qualifications of the author or the place of first publication. It also provides for the extension of the periods of the copyright protection in the case of such literary, musical or artistic works other than photographs from 25 years to 50 years in line with Section 4 of the Act".

Mr. Temporary Deputy Speaker, Sir, we then come to Clause 7 of the Bill, which is another very important clause which strengthens the right of the author. In keeping with the Bern Convention, Clause 7(1) of the Bill seeks to amend Section 7 of the Act in order to expand the categories of exclusive rights of the author to include the right of the author to control the translation, adaptation, importation or exportation of his work.

Currently the rights of the author are not such as to cover the translation, adaptation, exportation and importation of his work. Now we are strengthening the rights of the author to cover those situations. Of course, one of the most important rights which a copyright gives to its owner is the publication right. That is the right to decide how the work is first to be released to the public, that is whether it be for commercial purposes or not. If distribution rights are limited as currently provided for in the Act for commercial purposes only, then this right is seriously reduced.

In other words, currently under the Act the right to publish and release that publication to the public is only confined if you are releasing that work to the public for commercial purposes. In this case, the author has a right to the royalties. But there is a loophole where people publish and release to the public works and then say that these works are not for commercial purposes. They may say that they are for charitable purposes. Now we are saying that this is a loophole which must be closed. The author must control publication of his works whether or not the release of the publication is for commercial purposes. It is, therefore, proposed to amend sections 7(1) and 9(1)(b) of the Act to ensure that the copyright holder has the power to control the first releases of his works to the public, whether for commercial or other purposes.

Also, under Section 7(1) of the Act the broadcast or reproduction and use of copyright works for purposes of scientific research are excluded from the acts over which the owner of the copyright has exclusive control. In the proposed amendment to this subsection, which is effected by Clause 7(d) of the Bill, it is provided that such use of copyright works should be made only with sufficient acknowledgement of the source of the work. In other words, we do not want a situation where the work is used by somebody for scientific purposes without giving due recognition to the author. Therefore, we are saying that if you are going to use that work for scientific purposes, then you must do so with sufficient acknowledgement of the author of the work.

Mr. Temporary Deputy Speaker, Sir, the proviso to paragraph (k) of Clause 7 is another very important addition because, currently, the reproduction of the work by a broadcasting authority can only be done if there is authority under the law. This has been interpreted to mean that, that broadcasting station has the authority under the law to broadcast. However, we do feel that the authority of the copyright owner is also very important and,

therefore, it is now being made clear that, that broadcast can only be done with the authority of the copyright owner. The other proposals are to Section 93 of the Act, in terms of which is not an infringement of a copyright if a person makes a single copy of a sound recording for private personal use, as long as the person paid the royalty under that section of the Act on the audio-recording equipment or on the blank tape at the point of first sale. It is proposed that Section 96 be amended to clarify that making available any audio-recording equipment for purposes of enabling any other person to make a single copy of a sound recording for his private personal use without payment of a royalty levied under sub-section (iii) is an offense.

Mr. Temporary Deputy Speaker, Sir, the other clause that we seek to amend is Clause 10 of the Bill which seeks to amend paragraph two of the proviso to Section 13 (1.2) of the Act, to make it explicit that where a copyright work is made during the course of the author's employment, under the contract of service, the copyright vests in the employer, subject to any agreement to the contrary with the author. This is really to take into account situations where, in research stations and so on, one is employed to do research and so on. The copyright has to belong to the employer unless, of course, under the contract of employment, arrangements to the contrary are provided. I am aware of some situations where an employer of persons who are likely to produce work which can be protected by the copyright laws do enter into agreements with such employees that if they do produce such work, then, may be, they can share part of the royalties because, without the employer having provided the facilities, that particular employee would not have produced the work which can be subject to copyright protection.

Now, Clause 11 of the Bill amends section 17 of the Act. Currently, particularly, with the licensing body and authority, if there is a dispute, it has not been very clear as to what happens. Now, the amendment to section 7 of the Act is to make it obligatory to the licensing authority that if there is a dispute referred to the competent authority, that competent authority should give most parties the opportunity to present their respective cases in person or through representatives. We do intend, in the substituted legislation, to put in place the rules of procedure for the competent authority which is there under the Act, to consider matters of this nature. However, we felt that in the Act itself, the rule that both sides must be given the opportunity to be heard must be clearly stated.

Mr. Temporary Deputy Speaker, Sir, those, in the main, are the broad amendments which this Bill seeks to bring to the Copyright Act to make our laws, not only consistent with the Bern Convention, but also to make our laws be more up to date and, more important, to give even more effective protection to the copyright owners and to ensure that there are no loopholes to go round it and that the copyright owner does get the royalties which are due to him so that he can have the incentive to even discover more things, to write more literary works and discover things which can, in fact, be the catalyst for our economic and social development.

I cannot close my submission before I pay tribute, particularly, to the World Intellectual Property Organisation. The World Intellectual Property Organisation has organised two regional seminars in Nairobi which were attended by all the English-speaking countries of Africa, South of the Sahara. The purpose of this seminar was, basically, to, first of all, sensitize governments in the region on the importance of copyright laws and on ensuring that copyright laws which can give adequate protection to the authors, both nationally and internationally. I do thank them for the assistance, in particular, that they made to my office by sending experts who looked at our laws in relation to the Bern Convention and in relation to the latest developments in technology. These experts came up with some recommendations which have been incorporated here on how all those objectives can be achieved.

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

The Minister for Research, Technical Training and Technology (Dr. Onyonka): Mr. Temporary Deputy Speaker, Sir, I rise to second this important amendment.

In the area of copyrights, we have a situation which rather closely resembles what we have in the area of patents. First of all, as pointed out by the Mover of this Bill, the idea is to bring it in line, or, in conformity with the provisions of the Bern Convention. Now, the Bern Convention is important in the sense that it does provide a broad framework within which we are able to work together internationally in handling matters pertaining to copyright. It has come up quite clearly from the Attorney-General's comments that, first, because of the very rapid change in technology, we accordingly need to revive or amend the existing laws to fall in line with others. If that was not done, what, first of all, would happen is that we would have a situation where as a country, we would be operating in a framework that is not in conformity with what is provided for under the Bern Convention. So, there is a need for us, periodically, to up-date our copyright laws.

In addition, these are changes which also seek to provide adequate protection for our people in an area such as this one of copyrights. Some hon. Members will recall when we discussed our amended Bill or patents. This is one area where we have definitely lost heavily in the past because the existing law did not give adequate protection to local people with respect to patents. A lot of things have happened which hon. Members know and

it is, therefore, important that we have in our books laws which are revised periodically in order to bring us in line with what is provided for under the Bern Convention.

Mr. Temporary Deputy Speaker, Sir, it is an important Bill in this respect that without an adequate framework, we would end up with disputes that become rather messy in the sense that one does not then have a sort of framework under which the issue could be sorted out especially when it concerns even foreigners or the other way round, where our people are involved, and yet because of the existing law, we cannot adequately cater for their needs. I think the hon. Minister has highlighted the different sections of the Bill that have been proposed for amendment.

The first of the changes are really to provide clarity to an existing situation that is rather vague and when it comes to the interpretation of the law, it is sometimes very difficult to do it adequately when the existing framework itself is faulty. It is for this reason that it is important that we incorporate these proposed amendments which serve to clarify the situation as it is or ought to be in 1995 and beyond. It does not mean that these are the last amendments. As I pointed out, it is going to be necessary from time to time to propose and suggest further amendments in order to bring our legal framework in line with what is supposed to happen under the Bern Convention or what may be necessary to cater for the needs of our people.

With those few remarks, Mr. Temporary Deputy Speaker, Sir, I beg to second the Bill.

(Question proposed)

(Mr. Mulusya stood on his feet)

The Temporary Deputy Speaker (Mr. Wetangula): Mr. Mulusya, the practice is that you only stand up when the Speaker is on his Chair. We cannot both be standing.

Mr. Mulusya: Thank you, Mr. Temporary Deputy Speaker, Sir. I only happened to be very agile. I stand to support this amendment Bill.

It is true that these amendments should have come a long time ago. The Attorney-General should have been faster in bringing in these because the people affected have lost a lot of revenue which could have been accruing to them through royalties which have not been properly remitted to them. This has been so because there has been a practice in the country of dumping materials by people who know that this is illegal. The truth has been that most artistes have found it very difficult to trace the culprits and action taken against them. But even then, the penalties imposed on the culprits infringing copyright rights have been too lenient and, in fact, that should have been part of the amendments.

Mr. Temporary Deputy Speaker, Sir, I will now come to a point which has made Kenyan artistes lose a lot of money and these are the audio-recording equipment. The duty payable on imported and on audio-recording equipment is very high, making it almost impossible for local Kenyan artists to venture into the industry such that the industry is now totally and fully controlled by foreigners. Mostly Indians and Europeans are the ones using very highly sophisticated equipment in recording artistic material. If Kenya has to grow and promote the local artists and the local entrepreneurs who like to invest in this industry, it would be necessary for the Attorney-General to request the Minister for Finance to look into means of lowering the duty payable on imported equipment for audio-recording. I can see the two Ministers are sitting next to one another and I hope they are exchanging notes on this issue. So, I hope in the next Budget we shall see a reduction on duty on these imported materials.

The duty payable on music equipment which these artists use in recording and airing their views is also very high. If the duty on these equipment such as guitars and other material used is reduced, then this country would benefit a lot because our local artists would then produce many records and give more materials which eventually would go out of this country and would enhance the level of foreign currency earnings. Right now, we depend on imported material and cassettes. This country should also encourage local entrepreneurs to produce these cassettes locally. At times, local composers are harassed whenever they compose songs which have some political connotations by either praising an individual who is considered to be anti-authority at a particular time. Eventually, the musician is arrested and eventually charged with sedition. This is a practice which should not be allowed to take place and the Attorney-General should make sure that some things which have taken place without the knowledge of his office are stopped. Such frustrations have scared some artistes who would have been very good in their art and this has made them not exploit their talent to avoid "rubbing shoulders" with somebody in the powers that be.

In 1992, we saw musicians who had composed songs either in praise of hon. Matiba, hon. Kibaki and others being harassed and taken to court and charged, but later released without any charges being brought

against them.

Mr. Temporary Deputy Speaker, Sir, this discourages the ability of the local artistes to go out of their way and do research on local issues. Unless local issues are properly expressed, our country cannot benefit much from these people. It is only those who have the talent that can go ahead and exploit their talents through, for example, songs, plays and so on. In this way, people in this country can get to know what is happening. Unless people who have interest in certain fields get to put their minds there and come up with something for example, in writing or poetry, this country cannot advance. We have seen cases where authors of novels, not only in Kenya but also elsewhere, have had to be politically exiled because the Government of the day feels threatened because of their works. We have very good people in this country, for example, Ngugi wa Thiong'o and others who have gone on self exile. They are writing books and those books are being published outside this country and in this way, these materials are not earning this country any income. Those people should be encouraged to work from Kenya. Let them write their works from here. Let us earn foreign currency by selling those books outside this country because when they write those books outside this country and they are sold here, still this country does not benefit because we are importing these books. It is better when we are exporting those works than when we have to import them.

We have cases of people who have talents but because they do not have money to help them exploit their works like, for example, through buying equipment for printing and so on, have to approach people who own such equipment and in the process you find that at the end of the day, they end up being conned because they do not know their rights. We have had cases of very senior people in this country who have become very rich through conning authors, especially through writing of school material. Most of the people who profess to have authored school books which are in circulation and are used in schools today are not the genuine authors. They just write their names when they have actually done nothing to produce those works. This is happening because the law does not protect that person who has produced that work. It is very important that those people are protected.

Mr. Temporary Deputy Speaker, Sir, I would have wanted to see changes in this amendment Bill where the Attorney-General talks about what penalties should be meted out to a person who cheats an author out of his work and professes that that work is supposed to be his. This is something which is being used to enrich certain people and this is something that the Attorney-General should look into. It would be better if before we finish with this Bill and pass it the Attorney-General brings an amendment in those particular sections of the original Act so as to impose stiffer penalties for those people who are going to cheat others. It is very bad when you cheat on one's brain. You are the one who sweat to produce that work and sometimes you even have to sit very late hours of the night composing your material and just because you do not have the financial ability to produce your work, somebody cheats you out of it. It is illegal and doing this is not promoting the thinking capacity of Kenyans and we are not doing---

The Temporary Deputy Speaker (Mr. Wetangula): Mr. Mulusya, you would be of much more help to the Attorney-General if you point out which sections of the existing Bill you want him to amend, but if you talk in general terms, you will not be very helpful.

(Messrs. Wako and Masinde consulted loudly)

Mr. Mulusya: Mr. Temporary Deputy Speaker, Sir, with due respect to the Chair, you have noticed that the Attorney-General is very busy consulting with the Deputy Leader of Government Business.

The Assistant Minister for Agriculture, Livestock Development and Marketing (Dr. Misoi): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member sitting there to interfere with hon. Mulusya as if hon. Mulusya does not know what he is talking about? Is that in order?

An hon. Member: You are out of order, hon. Misoi.

Mr. Mulusya: Mr. Temporary Deputy Speaker, Sir, Dr. Misoi--- I do not want to say that he is a nuisance.

Mr. Temporary Deputy Speaker, Sir, I am referring to Clause 8 (d) where it states, "Any person who for commercial purposes, makes available any audio-visual recording equipment for the purposes of enabling any other person to make single copies or any other shall be found guilty of an offence". What should be the penalty? This should come out very clearly.

Mr. Temporary Deputy Speaker, Sir, there are other areas where the Attorney-General should be very candid. He should come out with enhancement of the penalties because what the Act says about such penalties is not very strict. Those penalties are very low compared to what losses a person whose work has been stolen from him would incur today and this should have come out in this Act.

The other issue which this country would like to hear from the Attorney-General is, as a matter of policy, what the Government is doing to those people who are coming from outside to sell their works here.

We have seen local artistes being denied opportunities to earn a living because the Immigration Department is giving work permits to foreigners who come to this country and flood this country with foreign works while we have people who would be encouraged to grow if competition is among the local people.

An hon. Member: Mr. Temporary Deputy Speaker, Sir, we are liberalizing!

Mr. Mulusya: Yes, we are liberalizing, but at the same time we would expect that the fee for permit that these people pay be high so that the country benefits more. Again, they should not be allowed to come and stay in this country indefinitely working while we have our people who are competing for the few jobs available.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Wetangula): Hon. Members, it is now time for the interruption of business and the House stands adjourned until tomorrow, Thursday, 16th November, 1995, at 2.30 p.m.

The House rose at 6.30 p.m.