

PARLIAMENT OF KENYA**THE NATIONAL ASSEMBLY****THE HANSARD****Wednesday, 13th October 2021**

The House met at 9.30 a.m.

[The Deputy Speaker (Hon. Moses Cheboi) in the Chair]

PRAYERS

QUORUM

Hon. Deputy Speaker: We will require a few more Members. So, I order that the Bell be rung for 10 minutes.

(The Quorum Bell was rung)

Hon. Deputy Speaker: Order, Hon. Members. As I said, we are still slightly short of the required numbers. I, therefore, order that the Bell be rung for a further five minutes. The Standing Orders allow that. I can see the Whip coming in with more Members.

(The Quorum Bell was rung)

Hon. Deputy Speaker: Somebody should ask the Whips to come in now. After the entry of three Members, we will be starting business. Take your seats, Hon. Members. So, we may start business.

NOTICE OF MOTION

APPOINTMENT OF MEMBERS TO COMMITTEES

Hon. Deputy Speaker: The Whip of the Majority Party.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Deputy Speaker. On behalf of the Chairperson of the Committee on Selection, I wish to give notice of the following Motion:

THAT, further to the resolutions of the House of 5th December 2017, 15th July 2020, 11th February 2021 and 4th May 2021, appointing Members to various Committees and pursuant to the provisions of Standing Order 173, this House further approves the appointment of the following Members to the respective Committees specified hereunder—

- (i) Hon. John Munene Wambugu to move from the Departmental Committee on Justice and Legal Affairs to the Departmental Committee on Administration and National Security;
- (ii) Hon. Daniel Kipkogei Rono to be appointed to the Departmental Committee on Justice and Legal Affairs;
- (iii) Hon. Gathoni Wamuchomba to move from the Departmental Committee on Transport, Public Works and Housing to the Departmental Committee on Agriculture and Livestock;
- (iv) Hon. Moses Malulu Injendi to move from the Committee on Regional Integration to the Departmental Committee on Transport, Public Works and Housing;
- (v) Hon. Benjamin Gathiru Mwangi to move from the Select Committee on National Cohesion and Equal Opportunity to the Committee on Regional Integration;
- (vi) Hon. George Ndung'u Koimburi to be appointed to the Select Committee on National Cohesion and Equal Opportunity;
- (vii) Hon. John Njuguna Wanjiku to be appointed to the Select Committee on Implementation;
- (viii) Hon. Mohammed Lokiru Ali to move from the Departmental Committee on Energy to the Departmental Committee on Education and Research; and
- (ix) Hon. Pavel Oimeke to be appointed to the Departmental Committee on Energy.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Next order.

ORDINARY QUESTIONS

Hon. Deputy Speaker: Under this particular order, we have Ordinary Questions. To start us off is the Member for Tigania East, Hon. Josphat Kabeabea.

Question 388/2021

MEASURES TO UPGRADE MIKINDURI-KUNATI-GATITHINE ROAD

Hon. Josphat Kabeabea (Tigania East, KANU): Thank you, Hon. Deputy Speaker. I rise to ask Question 388 of 2021, directed to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) Why is the upgrading of the Mikinduri-Kunati-Gatithine Road in Tigania East Constituency yet to commence over four years since the contract for the works was awarded to one M/S Elite Construction Company?
- (ii) What measures is the Ministry putting in place to ensure the said road, which is currently impassable, is urgently rehabilitated before the rainy season?
- (iii) Are there plans by the Ministry to ensure that the said road is upgraded to bitumen standards?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: The question will be replied to before the Departmental Committee in Transport, Public Works and Housing. Next is the Member for Rarieda, Hon. (Dr.) Otiende Amollo, Senior Counsel.

Question 398/2021

CONSTRUCTION STATUS OF LUANDA-AKADO-KALANDIN ROAD

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Deputy Speaker. I rise to ask Question 398 of 2021 directed to the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works:

- (i) Could the Cabinet Secretary provide the status of construction of the Luanda-Akado-Kalandin Road (RWC 119) under low volume seal tarmacking in Rarieda Constituency, which stalled at Nyandiwa Bridge, with only approximately 4.8 kilometres remaining to completion?
- (ii) Could the Cabinet Secretary state the total amount of money that was allocated for the road, the amount already paid to the contractor and the outstanding amount, if any?
- (iii) What action does the Ministry ordinarily take against contractors who fail to meet their contractual obligations in the implementation of road projects—for instance abandoning sites without having completed projects awarded to them; and could the Cabinet Secretary indicate the action(s) to be taken against the contractor assigned to the said road who has since abandoned the site?
- (iv) Could the Cabinet Secretary state the measures that the Ministry has put in place to ensure that construction of the said road resumes as soon as possible and that the project is completed and state the revised completion timeline?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: That is the ideal way of asking questions. Many Members always indicate different roman numbers as different questions. The Senior Counsel has done it very well. The question will be replied to before the Departmental Committee on Transport, Public Works and Housing.

The next Question is by the Member for Meru County, Hon. Bishop Kawira Mwangaza. Sorry, the Member had made a request to defer this Question, which was acceded to. So I defer the Question to another opportune time.

Question 405/2021

DISASTER PREPAREDNESS MECHANISMS IN MERU COUNTY

(Question deferred)

Let us go to the question by Nominated Member Hon. Godfrey Osotsi.

Question 421/2021

LACK OF INSURANCE COVER FOR KPLC SUB-STATIONS

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Hon. Godfrey Osotsi (Nominated, ANC): Thank you, Hon. Deputy Speaker, for the opportunity to ask Question 421 of 2021. This question is directed to the Cabinet Secretary for Energy. It reads:

- (i) Could the Cabinet Secretary explain why Kenya Power and Lighting Company Limited is operating without insurance of critical assets under Public Liability (with Consequential Loss) insurance cover, and Fire and Perils cover for 122 substations distributed across the country, thereby exposing strategic public installations worth over Ksh37 billion and employees to major risks in case of accidents?
- (ii) Under what circumstances was the procurement of the two insurance contracts contained in Tender No.? KPI/9A.2/RT/001/INS/21-22 not awarded and finalised even after completion of tender evaluation and issuing notification letters to successful bidders?
- (iii) What specific steps is the Cabinet Secretary taking to ensure prompt completion of the procurement process and alleviate potential operational and financial risks that are likely to arise from lack of insurance cover for strategic national installations at the KPLC?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: That Question will be replied to before the Departmental Committee on Energy.

That marks the end of Question Time. What is your point of order, Hon. Gikaria?

Hon. David Gikaria (Nakuru Town East, JP): Thank you, Hon. Deputy Speaker. I want your assistance. I asked a Question in February this year directed to the Cabinet Secretary for Transport and Infrastructure. One of the issues was about roads being done by KURRA in my constituency without public participation. That was the essence of the Question. To-date, the practice still continues. They are doing roads without engaging the public. I want the Committee to explain why the Question has not been answered since February this year?

Hon. Deputy Speaker: Do we have the Chair of Departmental Committee on Transport and Public Works or any Member from that Committee? Of course, this is not on the ones whose notices have just been issued. I am talking about the ones who are active in that Committee. In the absence of the team, please, I would ask the Majority Whip to take it up. Let us get to know why Hon. Gikaria's Question has not been replied to after eight months. That is serious. I am sure we will use other avenues to make sure that the Chair is informed that this question is long overdue and should have been answered much earlier.

Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Deputy Speaker (Hon. Cheboi) left the Chair]

IN THE COMMITTEE

[The Temporary Deputy Chairman (Hon. Patrick Mariru) took the Chair]

THE SUGAR BILL

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, we are in the Committee of the whole House to consider the Sugar Bill (National Assembly Bill No.68 of 2019) by Hon. Wafula Wamunyinyi. We are resuming consideration of the Bill. Last time we did Clause 3 up to Clause 38. We will be starting with New Clauses.

Hon. Benjamin Washiali (Mumias East, JP): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That should be Hon. Washiali. What is it?

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Temporary Chairman. In as much as we have moved up to Clause 38, we had some clauses that we had not resolved. I am speaking on behalf of Hon. Oundo, who had pointed out some typos in Clause 36 and he was very specific. We left the matter hanging, but Standing Order No.152 (3) gives us a solution in terms of what we need to do because it is very clear. It reads as follows:

“At any time before the certification of the Bill, the Speaker may correct formal errors or oversights therein without changing the substance of the Bill and thereafter submit the Bill to the President for assent.”

I was thinking that this would be the best time for us to point out the matter so that we have it corrected. The errors in this case are in Clause 36 as proposed by Hon. Oundo. In line 1, there is a repetition of “this.” It was repeated twice. Also, this clause says: “Subject to Sub-Section 2”, but this sub-section is no longer in the Bill.

Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Washiali, that is fair enough. As you have rightfully said, that is action to be taken administratively. Typographical issues are resolved by the Office of the Clerk. It is good you have pointed it out. It was also pointed out last time. When there is an issue on a clause that has been dealt with, that is substantive and requires the House to re-look... That is why we have the re-committal procedure. I am aware that there are two clauses that would be subjected to re-committal later.

However, on the typos, you are right. You have gone on record again on the same. The matter will be dealt with by the Office of the Clerk administratively, but it is good that you are on record again on the same.

Hon. Members, we shall proceed with the New Clauses, starting with New Clause 4A. Chair of Departmental Committee on Agriculture and Livestock, Hon. Tiren, you can move Second Reading of the New Clause.

New Clause 4A

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, the Bill be amended by inserting the following new clause immediately after clause 4—

Functions of

county governments 4A. The County Government shall—

- (a) issue sugar cane nursery certificates;
- (b) offer and coordinate extension services on sugar production and milling in the respective county;

(c) in collaboration with the Board and law enforcement agencies, enforce regulations within the county;

(d) monitor and report incidences of pests and disease outbreaks and take appropriate action in collaboration with the Board and other relevant government agencies; and

(e) establish an efficient road network for the movement of sugarcane, delivery of other services and general development of the sugar industry.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Give the justification for the introduction of New Clause 2(4) (a). By the way, it is not New Clause 2(4) (a). It is New Clause 4A, as indicated in the Order Paper. What Members are waiting for is the import or rationale of the new Clause so that we carry them along.

Hon. Silas Tiren (Moiben, JP): Okay. Is it New Clause 4A?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes.

The justification is that county governments have been assigned functions related to agriculture and trading under the Fourth Schedule of the Constitution. It is, therefore, imperative to assign specific roles and functions to the county governments. The New Clause 4A, therefore, assigns those functions to the county governments as proposed in paragraphs (a) to (e).

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Sankok. We can have one Member contributing and then we make progress.

Hon. David Ole Sankok (Nominated, JP): Hon. Temporary Deputy Chairman, New Clause 4A(e) states:

4A. The County Government shall-

(e) establish an efficient road network for the movement of sugarcane, delivery of other services and general development of the sugar industry.

Our Constitution very well prescribes which roads fall under county governments. Sometimes the sugar belt can be situated next to roads that fall under the national Government. Will the national Government now maintain all the roads that are next to any sugar plantation or factory?

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Is that Hon. Oyoo?

Hon. Onyango Oyoo (Muhoroni, ODM): Thank you very much, Hon. Temporary Deputy Chairman. The roads that my friend is speaking to are well-defined as sugar roads. They are within the provisions of the sugar factories. They are always maintained by the sugar industry. Now that county governments will take over and are being given the role, they must also take charge of those roads.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. Very well. Hon, Wafula Wamunyinyi, you can have one minute.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you, Hon. Temporary Deputy Chairman. Clearly, county governments have been assigned functions by the Constitution. Agriculture is one of the devolved functions. At the same time, roads in the area within which cane is grown and collected from farms must be maintained. Therefore, it is important that other than the others, county governments must have functions to deal with the particular area.

Therefore, I support the amendment, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, let us make progress on this one.

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

(The new clause was read a Second Time)

*(Question, that the new clause be added to
the Bill, put and agreed to)*

New Clause 5A

The Temporary Deputy Chairman (Hon. Patrick Mariru): Mover, please move the Second Reading of New Clause 5A. Let us have Hon. Tiren.

Hon. Silas Tiren (Moiben, JP): Thank you Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 5—

Term of appointment of **5A.** (1) A person appointed as chairperson or a member of the Board under section 5(1) (b), (c) and (e) shall serve for a term of three years renewable for one further term.

(2) Members of the Board under section 5(1)(b), (c) and (e) shall be appointed at different times so that their respective expiry of terms of office shall fall at different times.

The rationale behind New Clause 5A is that there is need to provide a duration within which a Board member can serve. The Clause provides that the term of a member of the Board shall be three years.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let me propose the Question first.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Chris.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Chairman. I rise to support the provision for the duration of the term of the Board member as three years. That is also consistent with the provisions for State corporations because this will be a State corporation. The Mwongozo Guidelines provide for three years. It is good for the purposes of consistency.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Let us have the Member for Tinderet. Member for Tinderet, please proceed. You are not on record. Use that borrowed microphone. It is your sin for not coming with a...

Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Temporary Deputy Chairman. As espoused by the Member for Kiminini, the key is to follow the Mwongozo Guidelines and ensure that the Board does not collapse with the expiry of the terms of all the members. We should stagger it to ensure that there is sufficient membership and that the Board shall continue working even when one member retires.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. Hon. Members, please take one minute or so. I will have to balance so that we also make progress and give Members an opportunity to say something. Let us have the Majority Whip.

Hon. Emanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Chairman. I support the introduction of New Clause 5A. There are people who want to be board members forever. We do not want to encourage people to become permanent board members. Therefore, let us give a caveat of the period, so that new entrants can come in, as and when the three years expire.

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

(The new clause was read a Second Time)

*(Question, that the new clause be added to
the Bill, put and agreed to)*

New Clause 5B

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairman, let us have the Second Reading of New Clause 5B.

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 5—

- Vacation of office.
- 5B.** A person shall cease to be a member of the Board of if the person—
- (a) is absent from three consecutive meetings of the Board without notifying the chairperson in writing;
 - (b) becomes an officer, agent or member of staff of the Board;
 - (c) resigns in writing addressed to the Cabinet Secretary;

- (d) is convicted of a criminal offence and sentenced to a term of imprisonment of exceeding six months without the option of a fine;
- (e) is declared bankrupt;
- (f) is unable to perform the functions of his or her office by reason of mental or physical infirmity; or
- (g) dies.

Let me go direct to the rationale. The intention of New Clause 5B is that there is need to provide for vacation from office for persons serving on the Board. These are instances where one is unable to discharge the functions of their office.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, in principle, I support the proposed amendment. However, we seem to have left out a very critical aspect of, if a member is declared unable to hold office by virtue of Chapter 6 of the Constitution and relevant legislation. Perhaps, that is an area we ought to have picked, so that we make it tidier and cleaner.

As it is, it is okay, save for the issue of New Clause 5B(d) which states:

5B. A person shall cease to be a member of the Board, if the person—

(d) Is convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months without the option of a fine;

That is okay, but it is missing that particular aspect in relation to the Ethics and Integrity Chapter of the Constitution. It could be a big problem.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. Let us have Hon... You do not have your card. I cannot trace you. Proceed. You still have the microphone.

Hon. Yusuf Adan (Mandera West, EFP): Thank you, Hon. Temporary Deputy Chairman. I also stand to support the amendment and insertion of New Clause 5B. If someone is unable to perform his or her duties due to many factors, he or she should cease to be a Member and should be replaced. It is important to indicate that officers of the Kenya Sugar Board should also not become Board members.

I support the insertion of New Clause 5B as it is on the Order Paper.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Pukose.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Temporary Deputy Chairman. I support this amendment, especially New Clause 5B (b) which provides that, if someone becomes the Chair of the Board, they should not become an agent or even be employed by the Board. He or she should cease being a member. In that way, it prevents conflict of interest.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Nyikal.

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Hon. (Dr.) James Nyikal (Seme, ODM): Hon Temporary Deputy Chairman, I rise to support this amendment, but I have a problem with New Clause 5B (d) which provides that a person shall cease to be a member of the Board, if he or she is convicted of a criminal offence and sentenced to a term of imprisonment exceeding six months without the option of a fine. What if there is the option of a fine? He may have been sentenced to six months, but is also given the option of a fine. That means that a person who pays the fine can come back to the Board. In my mind, I think it should be six months with or without the option of a fine. Once you are convicted and sentenced to more than six months, you cannot be a member of the Board. I want to ask the Chair to do further amendments and add, 'with or without the option of a fine', or just say, 'not exceeding six months'. This is to avoid discrimination.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. Let us hear Hon. Wafula Wamunyinyi and then I will come back to the Chair.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you, Hon. Temporary Deputy Chairman. I wanted to raise the same issue. I think this is a matter of concern. If you have noticed, in all the past legislations we have done, there has been a gap. We need to sort this out so that it does not appear like when you are convicted for a criminal offence and you pay a fine, you can then go back to your station. I think we need to correct that. Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair, I hope you are taking note of what the Members are saying because I will come back to you since they are raising fair points. Hon. Kilonzo, as the Chair organises his thoughts.

Hon. Charles Kilonzo (Yatta, Independent): Thank you, Hon. Temporary Deputy Chairman. We do not legislate the obvious. When somebody dies, he is already dead and so you do not need to put (g). I think we should treat this as a typo because once you die, you are dead. That is why we do not legislate to say at this time you can go to the toilet and all that. I think (g) should be treated as a typo and we remove it.

The Temporary Deputy Chairman (Hon. Patrick Mariru): When somebody dies, they are dead. I will give the final one and then we have the Chair. Hon. Osotsi, you also do not have a card.

Hon. Godfrey Osotsi (Nominated, ODM): Thank you, Hon. Temporary Deputy Chairman. The reading of this amendment leaves out a very fundamental issue. If you look at the part on appointment, it is the Cabinet Secretary (CS) who gazettes the members of the Board. What happens when the same Cabinet Secretary is unhappy with some of the members of the Board?

De-gazettement is not listed as one of the reasons for one to cease being a member of the Board. I think it would be clearer if we considered de-gazettement by the CS because there will be moments where the CS might feel that someone has to be sacked. So, that particular member can actually be degazetted. That bit is not listed. So, by dint of this amendment, it means that one can be appointed by the CS and it will be very difficult to remove him or her from the Board membership.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Osotsi, do you want to give a person in the name of a CS the latitude to gazette and degazette? Is that not based on the issues raised in (a) to (g)?

Hon. Godfrey Osotsi (Nominated, ODM): Hon. Temporary Deputy Chairman, since you have given him the latitude to gazette, you should also give him the latitude to degazette because there are moments where it will be tenable for the CS to degazette a member of the Board but, of course, under some conditions.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair, we must make progress.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I want to give one of my members a chance.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Melly. We must make progress on this one.

Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Temporary Deputy Chairman, for giving me this opportunity. I think if we allow the Cabinet Secretary to degazette, we will be usurping the power of the people. It is the people who elect the Board and the CS has no role because his duty is to gazette so that the Board can act independently. If we insert what Hon. Osotsi is saying, this will water down the whole issue of the Sugar Board. This is exactly the same thing we did with the Tea Board. I support because all the issues raised are dealing with deleting and removing typos. Everything will be okay. I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair, you have the space now based on what some Members have raised here.

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Chairman, for giving me the opportunity. I think Members have spoken well. What Hon. Melly has said is very clear. Let the Board decide. We should not give it to an individual because once we give this to the CS, it will be one person making decisions. Once the Board has raised an issue, then it can take that direction.

On the issue of conviction, new clause 5B(d) states:

“(d) is convicted of a criminal offence and sentenced to a term of imprisonment not exceeding six months without the option of a fine.”

I think we need to do a further amendment to this one and capture it well.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Then, you need to go on record and do it now.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I wish to make a further amendment to new clause 5B(d) to state:

“(d) is convicted of a criminal offence and sentenced to a term of imprisonment not exceeding six months with or without the option of a fine.”

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. You need to record this so that I can sign it.

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

(The new clause was read a Second Time)

*(Question, that the new clause be added to
the Bill, put and agreed to)*

New Clause 7A

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, move New Clause 7A.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

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THAT, the Bill be amended by inserting the following new clause immediately after clause 7—

Committees of the Board.

7A. (1) The Board may establish such committees as it may consider necessary for the efficient performance of its functions and the exercise of its powers under this Act.

(2) The Board may co-opt to sit in the committees established under subsection (1), such other persons whose knowledge and skills are necessary for the performance of the functions of the Board.

The justification for New Clause 7A is that it gives power to the Board to establish committees for efficiency purposes. It is also in line with the *Mwongozo* guidelines. This is for ease of operation so that matters are considered by the committees before consideration by the Board. Thank you.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will give Members who have not spoken a chance. There is a Member at the far end. Hon. Emanikor, please. There are Members who are interested and have not spoken. I will give them a chance.

Hon. (Ms.) Joyce Emanikor (Turkana (CWR), JP): Thank you, Hon. Temporary Deputy Chairman. I rise to support this amendment, which is very good for ease of work and efficiency because committees will handle specific tasks in detail.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Chairman. The amendment is right. It is the normal practise nowadays, but there could be some misuse of the New Clause 7A (2) which states:

“(2) The Board may co-opt to sit in the committees established under subsection (1), such other persons whose knowledge and skills are necessary for the performance of the functions of the Board.”

Some of these skills are basically about management. I am not sure what the impact or importance of this is other than getting one's friends and colleagues to come and sit for purposes of earning allowances. Probably, we can leave it as it is but some mischief might arise.

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

(The new clause was read a Second Time)

(Question, that the new clause be added to)

the Bill, put and agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, move new clause 9A.

(Loud consultations)

Hon. Members, I have confirmed there is no New Clause 9A although it is in the Schedule. It is actually New Clause 15A. I can tell the Members are quite alert, which is very good.

Hon. Members: This is sugar.

Hon. Silas Tiren (Moiben, JP): Yes, sugar is sweet.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chair, please, proceed.

New Clause 15A

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after clause 15—

Sugar
Import. **15A.** (1) A person who imports sugar into Kenya shall, prior to importation —

- (a) provide evidence that the sugar they intend to import is not available in the local market;
- (b) provide a sample of the sugar to be imported and pre-import verification certificate from the country of origin; and,
- (c) obtain pre-import approval from the Board.

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

Industrial
sugar. **15B.** (1) A licenced sugar miller shall be licenced by the board to carry out the business of processing industrial sugar.

(2) The Board shall regulate the processing of industrial sugar.

The objective of this New Clause 15A is to regulate sugar that is being imported into the country when there is sugar available in the local market. It is also to put conditions to be met before importation is carried out. The conditions must be met before the Board issues a certificate under Clause 15A(1)(c). Thank you.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have the Member at the far end. Yes, Hon. Janet Nangabo.

Hon. (Ms.) Janet Nangabo (Trans Nzoia CWR, JP): Thank you, Hon. Temporary Deputy Chairman. I just want to support this amendment. It is very important because we do not want to have middlemen in between there.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Next is Hon. Chris.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Temporary Deputy Chairman. We have seen in this country, particularly when we are approaching elections, many people abuse this privilege. They import sugar for purposes of making money to fund elections. We need some measures to be put in place. I remember we discussed it. When we say they must show evidence that the sugar they intend to import is not available in the local market, then we have a challenge. We discussed the role of the Board which, at times, has been conflicting or competing, for instance, with Treasury or the relevant CS. So, as we move forward, I think we need to clean that particular part so that when we say...

I hope the Chairman of the Departmental Committee on Agriculture and Livestock is listening. When we talk about shortage of sugar, who approves the importation? Is it the Board? Again, when you say 'provide' to whom are you providing the evidence? Is it to the Board? I think there must be clarity because many times, CSs have been abusing this privilege whereby they literally issue permits for importation. I think this clause is going to help cure that problem. We support. Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Next is Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Chairman, it says: "...provide evidence that the sugar they intend to import is not available in Kenya". Does it mean there is a type of sugar that is not available? I do not know if there are several types of sugar. I think we should only say, "...provided that the sugar is not available in Kenya". Otherwise, they may create artificial shortage of a certain category of sugar. In any case, sugar is sugar.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear from Hon. Tum Chebet.

Hon. (Ms.) Tecla Tum (Nandi CWR, JP): Hon. Temporary Deputy Chairman, there is need to regulate the sugar which is entering the country. A sample needs to be given so that we do not bring mercury instead. We need to know whether the said sugar is not in Kenya so that we do not kill the sugar industry here. We should not kill our own manufacturers by allowing imported sugar to flood our country.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Before I come this way, let me give to Hon. Oyoo one minute.

Hon. Onyango Oyoo (Muhoroni, ODM): Thank you very much, Hon. Temporary Deputy Chairman. This is the most controversial part of the Bill. Sugar is always imported at the behest of important people carelessly without evidence that there is shortage of sugar. So, we must make this very difficult for those who intend to import sugar. They must give evidence that sugar is lacking and that must be made public. When and if sugar is imported, there must be evidence of when the importer is bringing it in so that those charged with monitoring can do so. They should be able to tell, say, how much sugar a ship contains when it finally arrives. It is not something you can just leave carelessly in the hands of the Sugar Board.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear Hon. Pukose. Chair, I am sure you are taking note of what the Members are raising. Hon. Members, I am lingering a bit here because it is important.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Temporary Deputy Chairman. I want to persuade the Chair to make a further amendment because New Clause 15A(b) says, "...provide a sample of the sugar". Whom are you providing the sample to? I would want him to say, "provide a sample to KEBS" because KEBS is the one that keeps the standards. It will say, "...provide a sample of the sugar to be imported to KEBS and pre-import verification certificate from the country of origin". To whom are you giving that pre-import certificate? It has to be clear. You remember the issue of the mercury sugar. Is KEBS the one which is responsible or the government chemist? That has to come out very clearly. I would want the sample to go to KEBS because it is the one that gives all the standardisation. The sugar can then be deemed to be standard sugar fit for importation.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear from Hon. Mwirigi. We have not heard from him.

Hon. John Paul Mwirigi (Igembe South, Independent): Thank you, Hon. Temporary Deputy Chairman. I rise to support this amendment. It is important to provide evidence with regard to importation of sugar because some of the importers bring sugar into our market even when there is enough of it. Secondly, I would like to concur with my fellow Members. We ought to strengthen subclauses (b) and (c) to provide that samples of the imported sugar must be given to KEBS or whichever body that is supposed to standardise. Sub-clause (c) talks about obtaining pre-import approval from the country of origin. The pre-import approval is supposed to be given and verified.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear from Hon. Wafula Wamunyinyi. I can see the Chair is still consulting. I am giving him time to consult

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Hon. Temporary Deputy Chairman, importation of sugar has not been properly regulated in the past. You saw the last report on investigations done by the Government Chemist on imported sugar. It was said to be unfit for human consumption. It is all because of the failures... It is important that this is dealt with at this time so that we prevent such things from happening. In fact, the only thing which I think we may have to do is to make a provision clearly expressing where testing should be done. If it is KEBS, let it be KEBS; it can also be the Government Chemist or both. There is no harm so long as any department of Government is tasked to do that assignment.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have the Whip.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Chairman. I agree with the amendments as proposed by the Chair and also the further amendment sought by Hon. (Dr.) Pukose. It is very important to be specific to which body we are going to submit. I want to insist on New Clause 15A(a) which is about giving evidence that the sugar they intend to import is not available in the local market.

There is this habit where unscrupulous business people create a vacuum in form of sugar not being available. It is important that we tighten that loophole. They should not import sugar yet when you go to Nzoia and Butali Sugar factories, you find the stores are full of sugar. Let us ask them to produce evidence that the sugar they want to import is not available.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Washiali.

Hon. Benjamin Washiali (Mumias East, JP): Thank you Hon. Temporary Deputy Chair. You will agree with me that New Clause 15 A is attracting a lot of reaction and I think this is where we have had a very big problem from the previous experience. Therefore, I want to request the Chair to be very careful on what he puts here because it will determine how we handle this sub-sector. We have also had an issue with the way sugar is imported and the manner in which it is

handled. Sometimes, we import bulk sugar which is exposed to moisture in the ocean. In the process, even if it would have met the standards at the point of origin, it gets contaminated. That is how we got mercury in sugar.

We must be very specific that sugar must be imported in bags that are marked by the manufacturing company. This clause must be very clear. We should not leave the statement on Kenya Bureau of Standards (KEBS) hanging. I have heard what Hon. Pukose has said. It must be approved by KEBS. It should not be a matter of issuing certificates or whatever. It should be approved by the KEBS before it is imported.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, let me know when you have consulted enough. We cannot be on this clause forever. Let us hear from this side. Hon. Oundo

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman. I also want to join my colleagues in expressing reservations on 15A (1) (a). I think (b), has already been indicated. Ordinarily, one of the mandates or the functions of the Board is to monitor the sugar industry. Before anybody is allowed to import, there must be a report indicating the sugar shortage in this country. That way, we can then have a different approach of inviting bidders, that is, sugar importers, to import based on the recorded or published shortage. That is why I want to request the Chair, if you could allow, that, probably, we recommit this particular new clause so that we do a further amendment to tighten the loopholes that had been exploited and abused in the past.

We should also try to make it clear that a miller should never be given a license to import sugar. That is because that process kills the sugar-cane farmer. Since it is cheaper to import, they will leave the sugar-cane to rot in the farms as they import sugar.

Thank you, Hon. Temporary Deputy Chair.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear Hon. Mutunga. He has not spoken.

Hon. John Mutunga (Tigania West, JP): Thank you very much, Hon. Temporary Deputy Chair. I am a member of the Committee and I want to reflect on the past year when we discussed matters about sugar and the kind of experience we went through.

There are different types of sugar depending on the purpose or the user of that particular sugar when it lands in this country. Before importation, there must be pre-export and pre-import inspection on the other side. We must be satisfied that the sugar meets the required conditions of this country. Secondly, bulk importation and bagging are two issues we need to be very careful about when we legislate. Bulk importation can bring sugar to the port of entry without any contamination. I want to repeat that Chair. Internationally approved vessels for transportation of sugar have the capacity to land sugar in Mombasa or whatever port of entry without any form of contamination. If we block that out, we will be interfering with the international trading system and we shall also make sugar very costly. If you do bagging at the port of export and on the other side, at the source, then you bring in a lot of other issues in terms of increasing the handling aspect of it. That is an issue we need to consider.

The other issue is that it is okay the way the clause is worded in terms of declaring evidence. However, evidence is not given by those individuals; it is given by the Government. Somebody has spoken to the fact that the authority must be monitoring. One of the functions of the authority is to monitor the sugar supply chain so that we are sure that the supplies management meets the records that can probably inform importation.

Thank you, Hon. Temporary Deputy Chair.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kioni has not gotten a chance. Hon. Members, I have lingered on this one.

Hon. Jeremiah Kioni (Ndaragwa, JP): Hon. Temporary Deputy Chairman, just before you put the question. I speak as a person coming from a non-sugar growing area. The concern that needs to be factored, and I am sure it has slightly been captured on the Bill, is the cost of production. It does not matter what kind of law we put in place. If the cost of production is such that the sugar from outside is cheaper than the one from inside, then it beats the purpose of everything that we do. So, we must also address the cost of production of sugar in our country. I believe that the drafters of the Bill should have paid attention to that. Indeed, that alone would negate the whole exercise of doing a Bill. If we do a Bill to protect a product that is more expensive here than it is when it comes from outside the country, then it beats the purpose.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Melly, you have a minute.

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chair, at the outset, I support this amendment. But I want to ask my ranking Member, Hon. Kioni that, as much as our local sugar is expensive, in other parts of the world, governments protect the interest of the citizens. It is not about this country being a market for other countries.

I will just go straight to the point of what Hon. Oundo just indicated. I want to ask the Chair that we do a further amendment stating that a miller should not be allowed to import. I come from a sugar-cane growing area. I know of a number of millers who just build very small factories. They will pick about 600 tonnes of sugar-cane only. Their business is to import sugar. At the end of the day... I think you saw something that went viral in the media a few weeks ago. It was actually in my constituency. There was a fleet of tractors queuing along the road. The miller was picking 150 tonnes of sugar-cane per day!

Hon. Temporary Deputy Chair, Chemilil Sugar Company used to get 4,000 tonnes per day. Now, an individual says he is a miller and yet he only takes 150 tonnes of sugar-cane per day. Another one takes 400 tonnes of sugar-cane per day then he says he controls 40 per cent of the market! How?

So, in this case, we must stop the miller from importing and have somebody else to do so. If we allow millers to import, they will stop the business of manufacturing and now engage in what Hon. Kioni was saying, that is, import cheap sugar. So, I ask that the Committee Chair to look into this and then we can tighten the loopholes in order to save the farmer.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, you have your space now.

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Chair. I just want to add one or two things on what Members have raised. If Members can remember clearly, in the Sugar Board that we formed, we have made sure that all stakeholders are included. We thought that it was going to check some of these issues because it is the Board that will make decisions on what should be imported and who should import. Also, when millers are being licensed, they give their quantities of milling. It is so that where a miller is not able to buy or mill a particular percentage and yet sugar-cane is available locally, then the miller should be checked. The millers are not allowed to mill and import.

On what Members have said, if they feel we need to look into it again, I shall be willing to do so because I want to make sure that we tighten all areas of importation. That is a challenge our farmers are faced with.

(An Hon. Member stood up in his place)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order! The Chairman is on his feet. Proceed, Hon. Chairman.

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Chairman. I wanted to touch on the issues that were raised about the standards by KEBS. It is very clear. I want to ask Members to read Clause 26 that we passed the other day. I may just touch a little bit on the old Clause 26:

THAT, the Bill be amended by deleting Clause 26 and substituting therefore with the following New Clause—

26. (1) All sugar millers and importers shall ensure that all sugar produced locally or imported into the country meets—

(a) Safety and quality standards as set by the body for the time being responsible for setting standards;

I thought KEBS and all the other agencies would be included there. This clause is going to cover all those issues. There is also the issue of safety, health standards, food handlers and so on. Clause 26 (1) (a), (b) and (c) will cover the issues that you wanted to go to KEBS, that is, the area of standards. The Committee sorted out that issue and it should remain as it is.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Order! Members, I will now put the Question. We must make progress. What is out of order, Majority Whip?

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Chairman, for giving me this chance.

The amendments suggested by Hon. Tiren go to the root of the problems in the sugar industry. It is important that the Chairman expresses himself on that because he is the leader of this Bill. That way, we will all endorse it. The problem that was brought to our attention in this House is that millers import sugar on behalf of others. Therefore, let us gag the millers from importing sugar. That way, our farmers will enjoy the benefits of their sweat.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Order! Hon. Members. Let me advise so that we make progress.

Majority Whip, you know that in the Standing Orders, there is nothing that stops you from recommitting so that you get a bit of space to talk, negotiate and agree. Nothing stops us from doing a recommittal at some point so that Members can get an opportunity to discuss this even further. Even when the Clause is approved now, you can do a recommittal when we are reporting; which means we revisit all that. We must make progress.

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

In that case, I will not put the Question to the final part to be part of the Bill because there is a nay.

Hon. Members, I want us to revisit New Clause 9A.

(Loud consultations)

Order! Members.

Hon. Ole Sankok, you are the one who had said that there was no New Clause 9 (A) and the Members seemed to have agreed with you. Actually, there is a New Clause 9 (A). What happened is that the New Clause 9 (A) came much later in the Order Paper. Actually, it is on Page 1277. The proposed amendment is not by the Chairman but by Hon. Wafula Wamunyinyi. In that case, it is fair enough to revisit New Clause 9 (A). We shall revisit that and I will now give an opportunity to Hon. Wafula Wamunyinyi.

New Clause 9 (A)

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you, Hon. Temporary Deputy Chairman. For Members who have not spotted it, the proposed amendment is on Page 1277.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Proceed with the import.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following New Clause immediately after Clause 9—

9. (A) (i) the headquarters of the Boards shall be in Kisumu County;

(ii) the Board may establish offices in other parts of the country as the Board may determine.

Hon. Temporary Deputy Chairman, I came up with this proposed amendment after I was convinced by a number of Members and stakeholders that I consulted. In the spirit of devolution and decentralisation of functions in the country, and for purposes of ensuring effective management and delivery of service to the people, stakeholders and partners within the sector, the headquarters be placed in Kisumu because that is where the major stakeholders and sugar-cane farmers are located. They are in Kakamega, Bungoma, Nyanza and in other parts in that area. Why should we, for instance, have headquarters of maize or the Managing Director of National Cereals and Produce Board (NCPB) sitting in Industrial Area in Nairobi when we know maize is grown in Eldoret, Kitale and Nakuru? Those areas are the granary of the country.

I would also like to request Members to support this amendment so that the headquarters are easily accessible by the players.

Thank you.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will only give two Members, particularly those who have not spoken on this matter.

Hon. Makali.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman. While I support the New Clause, I have reservations about the Board having offices in

other regions. The work of a Board is to offer strategic direction to the organization. I have no problem with it being in Kisumu, but I have a problem with it being given a chance to introduce other offices. So, let us just say that there will be a Board which will be headquartered in Kisumu and we stop it at that. The Board is just for strategic and policy direction and nothing more.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Nangabo Janet.

Hon. (Ms.) Janet Nangabo (Trans Nzoia CWR, JP): Hon. Temporary Deputy Chairman, I support the amendment. It is true that the headquarters must go to Kisumu because it will be easy for the farmers from Trans Nzoia County to go to Kisumu. It is also important because we want to devolve each and every issue so that the growers can benefit from that.

I thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, let us make progress. We must balance between all Members wanting to speak and making progress.

Hon. ole Sankok and Hon. Washiali, I know that you can speak. You will each have a minute because we must make progress. We have to do a balance.

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Temporary Deputy Chairman. One, what is the rationale of having the headquarters in Kisumu and yet, we have 47 counties? Does it mean that Kisumu is a designated headquarter of a certain region?

Two, some of us from Transmara Sugar Factory will not accept to go all the way to Kisumu or be answerable to Kisumu. Lastly, we only have one capital city, that is, Nairobi. As far as we are still one country, our Capital City is Nairobi.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Washiali, have a minute.

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Temporary Deputy Chairman. Quickly, I want to state that the headquarters only handle administrative matters. The Board does not only deal with production, but also the supply of sugar; thus covering the entire country. It will be a very big mistake for us to take the headquarters of Kenya Sugar Board to Kisumu. Let it remain in Nairobi so that it can also access the Government headquarters. Remember, the Ministry is here. For quicker consultations, we would not need to have the headquarters of Kenya Sugar Board in Kisumu. Let it remain in Nairobi where we already have facilities. We do not want to condemn those facilities because we want them to go to the farmers.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I will let the Members decide.

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

(The new clause was read a Second Time)

*(Question, that the new clause be added to
the Bill, put and agreed to)*

New Clause 15B

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairman, on New Clause 15B, you have the Floor. Hon. Chairman, please, proceed.

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Chairman. We are on New Clause 15B.

Hon. Temporary Deputy Chairman, I beg to move:

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THAT, the Bill be amended by inserting the following new clause immediately after Clause 15—
Industrial sugar.

15B. (1) A licenced sugar miller shall be licenced by the board to carry out the business of processing industrial sugar.

(2) The Board shall regulate the processing of industrial sugar.

The purpose of this amendment is to ensure that industrial sugar is regulated through licensing by the Board to avoid instances where it is found in consumers' homes.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is out of order, Hon. Kilonzo?

Hon. Charles Kilonzo (Yatta, Independent): Hon. Temporary Deputy Chairman, in as much as we want to finish this business, we also need time to look at the amendments. There are so many errors. For example, New Clause 15B(1) states that a licensed sugar miller shall be licensed by the Board. They are already licensed. I appeal to you to give us more time, so that we can iron out this Bill and not end up with a product which has too many typos and errors. I ask the Chairman to rule that this is a typo. We cannot have someone licensed being licensed again.

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Very good. That is a typo. Hon. Kilonzo, it is good that you have noted that. I will balance between having Members speak and making progress.

(Question, that the new clause be added to the Bill, put and agreed to)

NEW PART IIIA- ESTABLISHMENT OF THE KENYA SUGAR RESEARCH INSTITUTE

New Clause 16A

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Chairman. New Part IIIA is on the establishment of the Kenya Sugar Research Institute.

Hon. Temporary Deputy Chairman, I beg to move:

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THAT, the Bill be amended by inserting the following new clause in the New Part IIIA immediately after Part III—

Establishment
of the Kenya
Sugar
Research
Institute.

16A. (1) There is hereby established a body to be known as the Kenya Sugar Research Institute.

(2) The Institute is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing and lending money;
- (d) entering into contracts; and,
- (e) doing or performing all other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.

(Loud consultations)

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Hon. Chairman, do not be distracted by Hon. Sankok's consultations. Just proceed.

Hon. Silas Tiren (Moiben, JP): The justification for this one is that it seeks to provide for the establishment of the Kenya Sugar Board Research Institute. Sugar-cane is an important cash crop which has been neglected over time. There is need for a lot of scientific research to be done on the crop and the general ecology that supports the crop such as the soil. Thus, the Committee is of the view that there is need to establish an institute that will carry out research, specifically for the sugar-cane crop and its final products.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Wamunyinyi.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Hon. Temporary Deputy Chairman, you heard Hon. Kioni make reference to the cost of production of sugar. One of the things that we must do is to enhance research and come up with varieties that will mature within a short time. That will ensure that we get more sucrose and, therefore, more sugar. Most important is to ensure that technology is also taken into account as we maintain and service factories.

This is an important amendment that we all agree to support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Melly, you have one minute.

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Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Temporary Deputy Chairman. This is a very important amendment, especially on the establishment of the Kenya Sugar Research Institute. It is very important that we have the right variety that matures early and that has a higher sucrose content, as the Hon. Member has said. That means that we shall be able to fight the issue of cheap and imported sugar.

Just like any other, this Institute will deal with the issue of research and development which is vital in any body or institution in the country. Without research and development, we cannot do much. As the Bill shows, the Institute is supposed to run semi-autonomously from the Board, so that it is more efficient to carry out its duties.

Hon. Temporary Deputy Chairman, I support the amendment.

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

(The new clause was read a Second Time)

*(Question, that the new clause be added to
the Bill, put and agreed to)*

New Clause 16B

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clause in the New Part IIIA immediately after Part III—

Functions of
the Institute.

16B. (1) The Institute shall—

- (a) promote, co-ordinate and regulate research in sugar and sugar diseases; and,
 - (b) expedite equitable access to research information, resources and technology and promote the application of research findings and technology in the development of sugar.
- (2) For the purpose of carrying out its functions, the Institute shall—
- (a) formulate policy and make policy recommendations to the Cabinet Secretary on sugar research;
 - (b) prioritise areas for, and co-ordinate, sugar research in Kenya in line with the national policy on sugar;
 - (c) determine and advise the Government on the resource requirements for sugar research in Kenya both at the national and county level;
 - (d) regulate, monitor and ensure that all sugar research undertaken by other institutions or persons undertaking sugar research is consistent with the national priorities specified in the relevant policy documents;

- (e) formulate or approve medium and long term research plans, strategies and budgets of the Institute;
- (f) provide grants to institutions or persons desirous of carrying out research and training programs which are consistent with the national research priorities and plans of the Institute;
- (g) support and promote the training and capacity building in relation to agricultural research;
- (h) liaise with and ensure the coordination of institutions, agencies and persons involved in sugar research;
- (i) establish platforms for the purposes sharing of research information, advancing research and transfer of technology and dissemination of information relating to advancements made in sugar research;
- (j) conduct training in industry best practice and value-addition;
- (k) ensure continuance of performance improvement in the field of sugar research;
- (l) breed sugarcane varieties suited for various agro-ecological areas of Kenya;
- (m) conduct research on nutritional requirements of sugarcane in order to provide recommendations on the appropriate fertilizers;
- (n) appraise technologies on land preparation, drainage and water management for economical cane production;
- (o) study and monitor of pests and diseases that affect sugarcane and recommending appropriate control strategies;
- (p) develop agronomic packages for sugarcane maintenance and management;
- (q) institute socio-economic investigations to improve human resource management and enhance development of the sugar industry as an agribusiness;
- (r) test, design and evaluate farm machinery and factory equipment for efficient sugar production;
- (s) promote the transfer of sugar technology based on applied research through relevant extension mechanisms;
- (t) foster research on sustainable productivity, environmental issues, human safety at field and factory levels;
- (u) collaborate with the Government, the industry, universities and other national and international

- organizations for the purpose of furthering the Institute's mission;
- (v) analyse soil and plant samples for advisory purposes;
 - (w) offer modular courses on various aspects of cane management and practices; and
 - (x) perform such other function as may be conferred on it by this Act or any other written law.

This has to do with the functions of the Institute. The justification for it is that it provides for functions of the Institute as listed in (a) to (x)

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 16B

The Temporary Deputy Chairperson (Hon. Patrick Mariru): Let us have the Hon. Chairman.

Hon. Silas Tiren (Moiben, JP): I beg to move:

THAT, the Bill be amended by inserting the following new clause in the New Part IIIA immediately after Part III—

Management
of the
Institute.

16C. The Management of the Institute shall vest in a Board which shall consist of—

- (a) a chairperson appointed by the Cabinet Secretary who shall have a background in agricultural research or related field;
- (b) three persons nominated by the farmers from each of the sugar catchment regions under the Second Schedule;
- (c) two persons nominated by the farmers from each of the sugar catchment regions under the Second Schedule;

- (d) the Principal Secretary for the time being responsible for the National Treasury or a representative appointed in writing;
- (e) the chief executive officer of the Board;
- (f) the chief executive officer of the Kenya Agricultural Livestock and Research Organization; and
- (g) the Director-General who shall be an *ex officio* member.

This is mainly on the management of the Institute. The justification is that it provides for the management of the Institute and the provisions to establish the Board of the Institute and its composition.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Oundo. It is still related to what we have just passed. I will give you one minute.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, New Clause 16B(b) states that the management of the Institute shall consist of three persons nominated by the farmers from each of the sugar catchment regions under the Second Schedule. New Clause 16B(c) states that the management shall also consist of two persons nominated by the farmers from each of the sugar catchment regions under the same Schedule. What are we saying? Why not just say five members instead of having two separate parts?

Probably, the Chairperson can explain so that we can understand and it does not become another typo or misstatement.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is actually a fair note. Hon. Chair, what is the difference between (b) and (c)? Why not just say five persons?

Hon. Silas Tiren (Moiben, JP): Thank you. I think it was repeated. It should be five persons and then we cancel one of the parts.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Is that a notice of a further amendment on your part to rectify that?

Hon. Silas Tiren (Moiben, JP): Yes.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. we will consider that. Let us have Hon. Nyikal. Do you want half a minute to contribute to that?

Hon. (Dr.) James Nyikal (Seme, ODM): Just a little bit on that. Maybe, I do not have the details but we may also need to know how many catchment regions are there. It is good to know how many catchment regions are there, so that we can see the equity in the distribution that will take place.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have Hon. Melly so that we can move forward.

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairman, I agree with Hon. Oundo that we should have five persons from the catchment areas. We are talking about nominations. The Board members are elected competitively. On this issue, we are saying that they should be nominated because they are persons with knowledge of the sugar industry. In competitive elections, you may have different ideas and knowledge and then they elect somebody who does not have the knowledge. In this case, we are asking that they be nominated, but from the five regions. The Institute will have its board. Previously, the Sugar Board used to mismanage the Sugar Research Foundation, which is almost next to my constituency in Kibos. When the research foundation gets its own board, it will be semi-autonomous. It will run its affairs efficiently, free from interference from the Sugar Board.

I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair.

Hon. Silas Tiren (Moiben, JP): He has spoken very well on that. Since we had sugar catchment areas, namely, the upper region, the lower region and the coastal region, two will be from the upper region, two from the lower region, and one from the coastal region. That will work.

The Temporary Deputy Chairman (Hon. Patrick Mariru): So, are you moving that in an amended version?

Hon. Silas Tiren (Moiben, JP): Yes. It might be a typo, because we had said five and not three.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

*(Question, that the new clause be
added to the Bill, put and agreed to)*

New Clause 16D

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new Parts immediately after Part III—

Application. 16D. The provisions of Section 5A, 5B, 7, 8 and 9 shall apply to the Board of the Institute with necessary modification.

The justification is that it provides for the application for some of the provisions that govern the Board to govern the Institute. These are provisions such as conduct of business among others.

Thank you.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 16E

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new Parts immediately after Part III—

The funds of the Institute shall consist of-

- (a) monies remitted by the Board from the sugar development levy;
- (b) any monies received by the Institute from grants and donations; and
- (c) monies from any other source as approved by the responsible ministry.

It provides for the source of funds for the Institute.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us have two Members to comment on this one. Hon. Whip.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Chairman. I want to understand the English applied in new Part 16E(a), which talks about monies remitted by the Board. We have two boards, namely, the Board of the Institute and the Sugar Board. I would want us to be very specific that the money we are talking about is from the Sugar Board to the Institute. We have to clarify that because the Institute also operates under a board and we are talking about money from the Kenya Sugar Board.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Oundo?

Hon. (Dr.) Wilberfoce Oundo (Funyula, ODM): Further to that clarification, currently, the Kenya Agricultural, Livestock and Research Organisation is heavily funded to undertake research. Will it not be in order to ask them to give a percentage of that funding to the KEFRI since they sit on the Board? They are heavily funded and are a premier research organisation under agricultural matters. They should be compelled or required to give part of their funding to KEFRI.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Nyikal?

Hon. (Dr.) James Nyikal (Seme, ODM): The research is basically in the sugar industry. It would not be proper to leave it to be funded from the industry only, yet the Board should be a Semi-Autonomous Government Agency (SAGA) in the Ministry of Agriculture. I do not see why we should not make provision that the Ministry should fund it. Take, for example, the Kenya Medical Research Institute (KEMRI), it is a SAGA in the Ministry of Health, and it is one of the bodies that receive money from the Ministry. It looks like it is being left to be purely funded from the industry. Should the industry get into problems, the research institute will also get into problems. We may need to ask if it should not get money from Parliament through the parent ministry.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Is it not there under New Part 16E(c)?

Hon. (Dr.) James Nyikal (Seme, ODM): It is weak.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Under New Part 16E(c), monies from any other source as approved by the... I see what you mean.

Departmental Committee Chair, let us make progress. There is something that the Whip, Hon. Nyikal and other Members have raised. Do you want to respond to them?

Hon. Silas Tiren (Moiben, JP): I want to touch on what Hon. Wangwe raised. The definitions are also in Clause 2 of the Bill where it defines the "Board," among other definitions. I thought that will be captured there.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Melly, you have had a stub on this one. Have one minute.

Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Temporary Deputy Chairman. What Hon. Nyikal said is very important. It is covered in (d), namely, any monies received by the Institute from grants and donations. This talks about the Research Fund. In this country, it is supposed to be 2 per cent of the GDP. So, in this case, it means that it can be from the Sugar Levy and at the same time from grants like the Sugar Research Fund.

Thank you.

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

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 16F

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

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THAT, the Bill be amended by inserting the following new Parts immediately after Part III—

Director
General of the
Institute.

16F. (1) There shall be a Director General of the Institute who shall be appointed by the Board of the Institute whose terms and conditions of service shall be determined by the Board of the Institute in the instruments of appointment or otherwise in writing from time to time.

(2) A person shall be qualified for appointment under this section if the person-

- (a) holds a degree from a university recognized in Kenya in agricultural research, soil and seed research, soil science or related field;
- (b) has at least five years' experience in managerial capacity; and
- (c) meets the provisions of Chapter six of the Constitution.

The part provides for the Director-General of the Institute. The Director-General of the Institute creates the office of the Director-General of the Institute to be in charge of the day-to-day operations of the Institute.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

(New Part IIIA agreed to)

NEW PART IIIB – APPOINTMENT OF CROP INSPECTORS

New Clause 16G

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Speaker, I beg to move:

THAT, the Bill be amended by inserting the following new Parts immediately after Part III—

Appointment of
crop inspectors

16G. (1) The Board may appoint qualified persons to be crop inspectors for the purposes of this Act.

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(2) For purposes of subsection (1), the Board may, by regulations, prescribe the qualifications for appointment as a crop inspector
This is appointment of crop inspectors. It gives the power to the board to appoint crop inspectors.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 16H

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Speaker, I beg to move:
THAT, the Bill be amended by inserting the following new Parts immediately after Part III -

Entry and
inspection

16H. An inspector or a person duly authorized in writing in that behalf by the Board may, at all reasonable times and upon production of such authority to any person so requesting—

(a) enter any land or buildings occupied by the holder of a licence issued under this Act, or a person registered under this Act;

(b) make such inspection and enquiries as the person may deem necessary for ascertaining whether the provisions of this Act or the terms and conditions of the respective licence are being complied with; and

(c) may require any person found thereon to give such information as the person may require.

It provides for the entry of the inspectors.

Hon. Charles Kilonzo (Yatta, Independent): On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is your point of order, Hon. Kilonzo?

Hon. Charles Kilonzo (Yatta, Independent): I do not know if I am the one out of order or whether there is an omission. I did not see us go through 16F. We went to New Part 16G.

The Temporary Deputy Chairman (Hon. Patrick Mariru): We did Part 16F after New Part 16E.

Hon. Silas Tiren (Moiben, JP): We did it. He is a ranking Member. He must have been thinking.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Kilonzo is a hard working Member of this House. He was working on something different at that time.

Proceed.

Hon. Silas Tiren (Moiben, JP): He must have been very busy, but we will explain to him. The entry and inspection gives powers of entry into premises, land and vehicle to crop inspectors for inspection purposes.

Thank you.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 16I

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, the Bill be amended by inserting the following new Parts immediately after Part III-

- Powers of entry
- 16I. (1) For the purposes of this Act, an inspector who has reasonable grounds may-
may-
- (a) at any reasonable time, enter upon any land, premises or vehicle;
 - (b) take such persons and things as the inspector considers necessary;
 - (c) perform the functions or exercise the powers conferred by this Act or any other written law;
 - (d) make enquiries or carry out a search to ascertain if this Act is being complied with;
 - (e) demand the production by a licence holder of the licence for examination;
 - (f) seize and remove any article or thing in respect of which the inspector has reasonable grounds for believing that an offence under this Act is being or has been committed; or
 - (g) do any other thing authorized under this Act.
- (2) The owner or occupier of any land or a person in control of any premise or a vehicle which an inspector has entered under subsection (1) shall render such reasonable assistance as may be required by the inspector.

(3) A person who refuses, unreasonably delays or fails to comply with a requirement under subsection (2) commits an offence.
It gives crop inspectors powers of entry to the premises, land or vehicle for inspection purposes.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 16J

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new Parts immediately after Part

III-

Obstruction of
inspectors.

16J. (1) A person shall not prevent, hinder or obstruct an inspector in performance of the functions, and duties or exercise of powers conferred by this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding two years, or both.

The justification is that the provision creates penalties for acts of obstruction of crop inspectors when they go for inspection.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): What is out of order, Hon. Oundo?

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Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, there is nothing out of order. I just feel that the penalty prescribed under 16J(2) is fairly punitive. The Kshs1 million for a peasant farmer is an overkill. This is probably something that the Chairperson and the Committee can start ventilating on as we proceed.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That is noted. I am sure the Chairperson has noted.

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

(The new clause was read a Second Time)

*(Question, that the new clause be added
to the Bill, put and agreed to)*

NEW PART IVA – ESTABLISHMENT OF THE SUGAR ARBITRATION TRIBUNAL

New Clause 24A

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new Part immediately after Part IV-
PART IVA – ESTABLISHMENT OF THE SUGAR TRIBUNAL

Establishment of the
Sugar Arbitration
Tribunal.

24A. (1) There is hereby established Tribunal to be known as the Sugar Arbitration Tribunal.

(2) The Tribunal shall consist of—

(a) a chairperson appointed by the Chief Justice who shall be a person qualified to be appointed as a judge of the High Court; and

(b) four other members, being persons with expert knowledge of the matters likely to come before the Tribunal and who are not persons with a direct material interest in the sugar industry, all of who shall be appointed by the Chief Justice in consultation with the Attorney-General and the Council of County Governors.

(3) The Chairperson and members of the Tribunal shall serve on a part-time basis.

(4) The members of the Tribunal appointed under subsection (2) shall hold office for such period, not exceeding three years, on such terms and conditions as shall be specified in the instrument of appointment but shall be eligible for re-appointment for one further term of a period not exceeding three years.

(5) A person shall not be qualified to be appointed as a member of the Tribunal if that person is a public servant or takes an active part in the activities of a political party.

(6) A person shall not qualify for appointment under this section unless the person has met the requirement of Chapter Six of the Constitution.

(7) The provisions set out in the Third Schedule shall have effect with respect to the meetings and procedure of the Tribunal.

(8) Except as provided in the Third Schedule, the Tribunal shall regulate its own procedure as to the conduct of meetings.

This is about establishment of the Sugar Arbitration Tribunal. The justification is that it seeks to establish the Sugar Arbitration Tribunal, whose functions will be resolving disputes in matters relating to sugar at the first instance before the party proceeds to court. This is one of the other ones that had issues that needed a replacement, and it is the reason why it has come now. It was in the miscellaneous part, but now it has been put into the main part of the Act.

Thank you.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 24B

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, the Bill be amended by inserting the following new Part immediately after Part

IV—

Jurisdiction of the
Tribunal.

24B. (1) The Tribunal shall determine—

- (a) disputes between sugarcane farmers;
- (b) disputes between sugarcane farmers and the following:
 - (i) out grower institutions;
 - (ii) millers;
 - (iii) growers; or
 - (iv) other interested party;
- (c) disputes relating to cane pricing;
- (d) disputes relating to contract farming.

The justification is that it provides for the jurisdiction of the Tribunal. These are matters that the Tribunal will be handling.

Thank you.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Wafula Wamunyinyi.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you, Hon. Temporary Deputy Chairman. It is good that we remind ourselves that during the last sitting, there was an issue with Clause 31, and Members who were here can remember. We were debating Clause 31, which was in relation to this and we were saying that if it was to be deleted and these New Clauses 24A and 24B do not go through, then we will have a problem. However, if these New Clauses 24A and 24B are carried, then there will be no issue with the deletion of Clause 31.

Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I support that. He has actually put it very clearly. It was an issue with Clause 30, which I was trying to explain the other time that it was under miscellaneous, which is not substantive. We have now put it on the substantive part of the Act, which is going to be Part IVA, which will deal with the tribunal.

Thank you.

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

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 24C

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, the Bill be amended by inserting the following new Part immediately after Part IV—

Determination of disputes.

24C. (1) The Tribunal shall determine any dispute before it expeditiously, but in any case, shall determine a dispute within a period of three months from the date the dispute is lodged.

(2) An Appeal shall lie from the decision of the Tribunal to the High Court on points of law and facts and on points of law to the Court of Appeal.

(3) A decision of the Tribunal shall be enforced in the same manner as a decision of a Magistrates Court.

(4) The Tribunal shall apply the rules of evidence and procedure under the Evidence Act (Cap. 80) and the Civil Procedure Act (Cap. 21), with the necessary modifications, while ensuring that its proceedings do not give undue regard to procedural technicalities.

The justification is that it provides for the determination of disputes. Sub-clause (1) provides for timelines within which disputes can be determined. Sub-clause (2) provides for appeals to the High Court. Sub-clause (3) provides for the enforcement mechanisms by the magistrate courts. The Committee settled on the magistrate courts since these are the courts that are close and easily accessible to the farmers as opposed to the High Court. Sub-clause (4) provides for rules of procedure at the tribunal.

Thank you.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 24D

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chairperson.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, the Bill be amended by inserting the following new Part immediately after Part

IV—

Powers of the Tribunal. 24D. The Tribunal shall have the powers of the High Court—

- (a) to administer oaths to the parties and witnesses to the proceedings;
- (b) to summon witnesses and to require the production of documents;

(c) to order the payment of costs; and the provisions of the law relating to commissions of inquiry in Kenya with respect to—

- (i) the protection of the members of the Tribunal from suit;
- (ii) the form of summonses to witnesses;
- (iii) to giving or fabricating of false evidence;
- (iv) the duty and indemnity of witnesses, and the penalty for contumacy, insult or interruption of proceedings; and
- (v) the appearance of advocates; shall with any necessary adaptations or modifications, apply to the members of, the witnesses before, and the proceedings before, the Tribunal in like manner as they apply to Commissions of Inquiry.

The justification is that it provides for the powers of the tribunal which are:

- (a) To administer oaths to the parties and witnesses to the proceedings.
- (b) To summon witnesses and to require the production of documents.
- (c) To order the payment of costs and the provisions of the law relating to commissions of inquiry in Kenya with respect to:
 - (i) the protection of the members of the tribunal from suit;
 - (ii) the form of summonses to witnesses; and,
 - (iii) to giving or fabricating of false evidence.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, number (c) looks a bit untidy because it talks of different things. We have (a), (b) and (c) in 24D. The first (c) talks about “to order the payment of costs”. Then, there is “and the provisions of the law relating to commissions of inquiry in Kenya with respect to...” Is it relating to the cost or should it have been (d), to specifically cover areas relating to the Commissions of Inquiry Act in Kenya? It is a bit untidy. It needs to have been cleaned up. I am sure Members must have been looking at it. It needs to be cleaned up.

The Temporary Deputy Chairman (Hon. Patrick Mariru): So, it looks like the “and” should be a “d”, but it is now captured as under “c”. It is a typo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Yes; I think it is a typo. It is something that we can clean up without anything.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That needs to be tidied up, really, Hon. Chair.

Hon. Silas Tiren (Moiben, JP): Very well. I can still move an amendment to clean up that and put it as “d”, if that is okay.

(Question of the amendment proposed)

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

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

(New clause 24D as amended agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Thank you, Hon. Oundo, for noting that. I think that is important.

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

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 24E

Hon. Silas Tiren (Moiben, JP): Thank you very much, Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended by inserting the following new Part immediately after Part IV—

Removal of members
of the Tribunal.

24E. A member of the Tribunal may be removed if the member—

- (a) becomes an undischarged bankrupt;
- (b) is convicted of a criminal offence and sentenced to imprisonment for a period exceeding six months without the option of a fine;
- (c) is incapacitated by reason of prolonged physical or mental illness from performing the duties of the office;
- (d) violates the Constitution; or
- (e) is otherwise unable or unfit to discharge the functions of the office.

It provides for the procedure of removal of members of the tribunal with or without the option of fine. I think we might also have to look at the other way with or without an option of fine, so that it captures as we had agreed. I think that is the import. I hope we are together there. I think we will have to do a small amendment there so that it captures “with or without”.

The Temporary Deputy Chairman (Hon. Patrick Mariru): For that, Hon. Chairman, you have done a further amendment to capture “with or without an option of a fine”.

Hon. Silas Tiren (Moiben, JP): Yes.

The Temporary Deputy Chairman (Hon. Patrick Mariru): It is important to take it on record.

Hon. Sankok, let me first propose that Question.

(Question of the amendment proposed)

Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): I think the further amendments from the Chair are not very necessary because (b) says if that person is convicted of a criminal offence and sentenced to imprisonment for a period exceeding six months without the option of a fine... We are putting “without” because if there was an option of a fine and then you pay it, he would be able to discharge his duties in the board. When there is a fine, they will pay the fine immediately and come out. If there is no option of a fine, it means they will not discharge their duties for six months. Or are we saying that any criminal, as far as he is a criminal? Then, I accept “with or without a fine” because they are criminals. So, we treat all criminals equally.

Thank you.

(Question, that the words to be inserted be

inserted, put and agreed to)

(New clause 24D as amended agreed to)

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 24F

Hon. Silas Tiren (Moiben, JP): Thank you very much, Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended by inserting the following New Part immediately after Part IV—

Vacancy. 24F. Where the office of any member becomes vacant, whether by death or otherwise, the Chief Justice may appoint another person to be a member of the Tribunal for the remainder of the term of the member whose vacancy cause the appointment.

The justification is to provide for an instance where a vacancy occurs in the membership of the tribunal and how the same is to be filled by the appointing authority.

(Question of the new clause proposed)

(New clause read the First Time)

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

Yes, Hon. Oundo?

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): I might just need a clarification from the Chair. The words read “where the office of any member becomes vacant, whether by death or otherwise, the Chief Justice may appoint...” It is not compulsory that the Chief Justice appoints. Does it mean that the Committee contemplated a situation where the Tribunal can sit despite a vacancy, in spite of there being a vacancy? Would it have been fair enough to state “the Chief

Justice shall appoint”? That is so that it becomes mandatory. We should not have a vacancy that remains for unnecessarily too long. That is what I was just wondering about.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Kilonzo?

Hon. Charles Kilonzo (Yatta, Independent): Perhaps the Chair needs to explain to us why it is that the new member who has been appointed to replace the deceased will only serve for the remainder of the term of the deceased. What is the rationale of that? In any case, we expect, after a long time, there is no one time when we shall be forced to have a new board at any time for purposes of historical memory.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Mutunga? Then we will have the Chair.

Hon. John Mutunga (Tigania West, JP): We are talking about a tribunal here. Sometimes the term of the tribunal may be coming to an end. We need to give discretion to the Attorney-General. We do not have to say “must appoint” even if it is a few days remaining. So, “may” there does not necessarily mean that he should not appoint.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Makali?

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I think the issue raised by Hon. Kilonzo also needs to be considered. You know it is important that the members leave the tribunal not at one time, but in a phased out manner so that we have institutional memory in place. That is to be considered. It is important.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Yes, Hon. Melly? One minute each.

Hon. Julius Melly (Tinderet, JP): Actually, the issue raised by Hon. Kilonzo is quite important. If a member is appointed for a remainder of the term, we said that the board membership shall be staggered to avoid there being no membership at the board at one time. Therefore, if there is a remainder of six months and a member is appointed, then he is appointed as a new member and shall deserve a full cycle, not necessarily serving for the member who had vacated office. So, that is very important.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. Hon. Sankok?

Hon. David ole Sankok (Nominated, JP): I think there is confusion here from Hon. Kilonzo, Hon. Melly and my good friend from the other side. There is a difference between a board and a tribunal. A tribunal has a limited lifespan. It is only for a certain purpose. Once the purpose is solved, you do not need that tribunal any further. So, it is a board.

(Loud consultations)

I accept the information from Hon. Wangwe. He is my Whip.

The Temporary Deputy Chairman (Hon. Patrick Mariru): The information is obvious, that this is a permanent organ. It is not a commission of inquiry.

Hon. David ole Sankok (Nominated, JP): I accept to be corrected. It is me who has erred. So, the rest were very correct. Hon. Melly, Hon. Kilonzo and Hon. Makali Mulu were correct.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, why do you not speak to the issues raised by the Members?

Hon. Silas Tiren (Moiben, JP): Thank you. I think it is a very good observation. But you see, as we had said, we are also supposed to scatter the board of the tribunal so that they do not enter at the same time. I believe it would be better to be given the remainder of the time, so that it does not clash with others. You can imagine having two or three members and you give them a

full term with the others. Since it is scattered, we should allow just as it is done in other tribunals. I think that is how it is.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Okay. I will let Members have a take on this.

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

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 24G

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair?

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended by inserting the following new Part immediately after Part IV—

Secretary of
the Tribunal.

24G. The Chief Justice shall appoint a Secretary and such other staff of the Tribunal necessary for the proper functioning of the Tribunal.

This provides for the appointment of the secretary to the tribunal, which is to be done by the Chief Justice. The funds for the management of this tribunal in Kenya under the new constitutional order is factored under the Judiciary funds. Therefore, the officer to administer the tribunal is appointed by the Chief Justice.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 24H

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair.

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended by inserting the following new Part immediately after Part IV—

Remuneration of members and staff of the Tribunal. 24H. (1) The remuneration of the staff of the Tribunal and the expenses of the Tribunal shall be paid out of monies allocated by the National Assembly to the Judiciary Fund.

This provides for remuneration of members of staff of the tribunal.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

(New Part IVA agreed to)

New Clause 26A

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair.

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 26-

Inspection for quality and safety. 26A. (1) The Board shall carry out physical inspection of premises licenced under section 15 quarterly to ensure that safety and health standards are followed.
(2) Every person licenced under this Act shall—
a) not discharge any, affluent dangerous materials, substances, oil, oil mixtures into land, water, air, or aquatic environment;

- b) not release smoke or any air pollutant to the air that pollutes the environment;
- c) manage any hazardous waste and materials;
- d) not import any hazardous waste;
- e) not mislabel any sugar or jaggery; and
- f) not aid or abet illegal trafficking of sugar or related substances.

(2) When an offence under this section, is committed by a body corporate, the body corporate and every director or officer of the body corporate who ought to have had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, commits an offence and shall be liable upon conviction to a fine not exceeding five million shillings or to an imprisonment for a term not exceeding five years.

(3) In addition to the sentence under subsection (2), the Court may order for the revocation of a licence.

This amendment seeks to protect the environment against the following:

- a) Discharge of any, affluent dangerous material, substance, oil, oil mixtures into land, water, air or aquatic environment.
- b) Release of smoke or any other pollutant to the air that pollutes the environment.
- c) Any hazardous waste and materials.
- d) Import of any hazardous waste.
- e) mislabel of any sugar or jiggery...

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair, why do you want to read all that? It is on the Order Paper? The Members have the Order Paper. The way I see Members, they have really read this Bill.

Hon. Silas Tiren (Moiben, JP): I stand guided, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): That was the import?

Hon. Silas Tiren (Moiben, JP): Yes.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

New Clause 30A

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Chair.

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after Clause 30—

Representative
of a grower in a
private milling
company.

“30A. (1) Notwithstanding the provisions of any other Act, each private sugar milling company shall have a representative of the growers in its board of directors.

(2) In appointing a director representing the growers under subsection (1), the milling company shall consider in the first instance, the leaders of the out-grower institutions within the sugar-cane catchment area in which the sugar mill is located.

(3) A person appointed as a director under subsection (1), shall serve for a term not exceeding two years.”

The justification is that this amendment takes care of the interests of growers that are in an area where a miller is operating.

Thank you.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Makali?

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I want to support this new clause because it is important that growers are represented in some of these boards. It is a progressive amendment and I support it.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Melly?

Hon. Julius Melly (Tinderet, JP): Hon. Temporary Deputy Chairman, this is an important clause. Most of the millers do not have nucleus estates. The farmers form the basis of their crops and they must have a say because they are the owners of the crops and the businessmen of the company. Therefore, their welfare needs to be looked into by having a representative in that board. As much as the businessman owns the mill, the farmer has a vital say. If the farmer is not there, then the miller cannot exist. It is a mutual existence. This Bill is going to make sure that they have a good symbiotic relationship.

I support.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well.

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Hon. (Dr.) Nyikal?

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairman, I support this. It is necessary for the protection of the growers. However, I have an issue with Sub-clause (3), which states that: “A person appointed as a director under subsection (1), shall serve for a term not exceeding two years.” Most of the board directors serve for three years and we are here putting two years without giving an option of doing another term, which is quite brief. In my view, I would propose a further amendment and say three years, but if we insist on two years because we do not want one person to serve for too long, then we say to serve for one further term. In two years, nobody would have picked the nuances of any industry to serve properly. That is my suggestion.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Oundo?

Hon. Chair, I hope you are noting that.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, when I went to my constituency and held a meeting with the sugarcane farmers, this was one of the areas they greatly emphasised on, especially the way the Busia Sugar Factory has been harassing and intimidating them.

On the issue raised by Dr. Nyikal, this is a private company. Private companies have a Memorandum and Articles of Association that details how often they elect directors. So, we are just trying to harmonise. Many of them require one year and we are trying to harmonise on a yearly basis. At every annual general meeting (AGM), there is normally an election of directors. We are trying to harmonise, so that one person serves for two years before he hands over the mantle to the next person to avoid overstaying.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. K’Oyoo, do you want to say something? You can have one minute.

Hon. Onyango Oyoo (Muhoroni, ODM): Thank you, Hon. Temporary Deputy Chairman. This is in tandem with the Government’s aspiration of people serving for a particular time. The elected director serves for a period of three years. We want these directors to serve for a period of three years, renewable through an election.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Mutunga.

Hon. John Mutunga (Tigania West, JP): Hon. Temporary Deputy Chairman, we came up with this provision in view of what happens not only in this industry, but in most of the industries. If you look at the tea industry, most of the directors appointed by farmers become complacent over time. They are bought off. Therefore, we want to prevent that buying off because when they are changed every two years, they will realise that there is need for them to be strong and remain the representatives of the farmers. The farmers must be given an option to change them every two years. They can even take back the same person.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Very well. Hon. Chair, do you have anything to say?

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Chairman. I want to support what Hon. Oundo and Hon. Mutunga have said. We deliberated on this thing at length during the winnowing process and that is how we arrived at this. It should remain as it is.

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

(The new clause was read a Second Time)

(Question, that the new clause be added to)

the Bill, put and agreed to)

First Schedule

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Chairperson has an amendment.

Hon. Silas Tiren (Moiben, JP): Thank you very much, Hon. Temporary Deputy Chairman. I beg to move:

THAT, the First Schedule to the Bill be amended—

(a) by inserting the following heading:

“PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD”

(b) in paragraph 2 by—

(i) deleting the words “seven members” appearing in sub-paragraph (4) and substituting therefor the words “two thirds of the members of the Board provided that in the case of a tie, the chairperson shall have a casting vote.”

(ii) deleting subparagraph (5) and substituting therefor the following new subparagraph—

(5) The chairperson shall preside at every meeting at which he or she is present but, in his or her absence, the members shall elect one of their members to preside who shall with respect to that meeting and the business transacted thereat have all the powers of the chairperson.

(iii) by deleting subparagraph (6);

(iv) deleting the words “or the vice chairperson” appearing in subparagraph (7) a immediately after the words “the Chairperson”

The reason for this is that the Schedule did not have a title thus the need for inclusion of a title.

(Question of the amendment proposed)

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

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

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

(First Schedule as amended agreed to)

Second Schedule

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Chairperson has an amendment.

Hon. Silas Tiren (Moiben, JP): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Second Schedule to the Bill be amended—

(a) in paragraph 1 by deleting the word “agreements” appearing before the word “define” and substituting therefor the word “guidelines”;

(b) in paragraph 2 —

(i) by deleting the word “agreements” appearing at the opening paragraph and substituting therefor the word “guidelines”;

(ii) by deleting the definition of the “Kenya Sugar Research Foundation”;

(iii) by deleting the definition “Kenya Sugar-cane Growers Association”

(iv) by deleting the definition “Kenya Sugar Research Foundation” and substituting therefor the following new definition—

Kenya Sugar Research Institute” means the Kenya Sugar Research Institute established under Part IIIA of this Act;

(v) by inserting the following new definition—

“sugar lobby group” means a registered group of people comprising of farmers and growers from the sugar catchment areas championing the rights of sugar stakeholders;

(c) in paragraph 3 by deleting sub paragraph (f);

(d) by deleting paragraph 4;

(e) in paragraph 5—

(i) by deleting subparagraph (g) and substituting therefor the following new subparagraph—

(g) make representations to the Sugar Cane Pricing Committee;

(ii) by deleting the words “Kenya Sugar-cane Growers Association” appearing in subparagraph (h) and substituting therefor the words “registered sugar lobby groups”

(f) in paragraph 6—

(i) by deleting the expression “30 days” appearing in subparagraph (d) and substituting therefor the expression “15 days”;

(ii) by inserting the following subparagraph immediately after paragraph (f)—

(fa) ensure that mobile weighbridges are closer to growers;”

(iii) by deleting paragraph (h)

(g) in paragraph 7 in subparagraph 2(b) by deleting the word “zones” appearing at the end of the subparagraph and substituting therefor the words “sugar catchment region”;

(h) by deleting paragraph 8 and substituting therefor the following new paragraph—

Sugar Cane Pricing Committee.

8. (1) There shall be a Sugar Cane Pricing Committee (hereinafter referred to as “the Committee”).

(2) The Committee shall comprise of —

(a) the Chief Executive Officer of the Board;

(b) two persons nominated by the Kenya Sugar Manufacturers Association;

(c) three persons nominated by the sugar cane growers from the sugar catchment region;

(d) one representative from the sugar lobby groups;

(e) the Principal Secretary responsible for matter related to agriculture or a representative appointed in writing;

(f) one representative from county government nominated by the Council of Governors; and

(3) The main objectives of the Committee shall be to—

(a) review sugar cane prices;

(b) provide a mechanism that remunerates farmers for other products delivered from the processing of cane;

(c) ensure adherence to negotiated cane pricing formula;

(d) transition to payment based on quality; and

(e) enforcement of contracts between farmers and millers.

(4) The Committee shall come up with the pricing formula and in doing so shall take into account the—

(a) pricing mechanisms for all other cane related charges paid by the farmer; and

(b) an index that takes into consideration delayed harvesting;

(c) transportation cost per tonne per kilometre of sugar-cane.

(5) The Board shall offer Secretariat services to the Committee

(6) The sugar-cane prices set by the committee under sub paragraph (2) shall be reviewed after every thirty-six months provided that the Committee may, with the prior approval of the Board, undertake an early review of the sugar-cane pricing.

The intention of this Schedule is to give guidelines of entering into agreements with actors in the sugar sector. The proper word would therefore be ‘guidelines’ as opposed to ‘agreements’.

(Question of the amendment proposed)

(Question, that the words to be left

out be left out, put and agreed)

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

(Second Schedule as amended agreed to)

Third Schedule

The Temporary Deputy Chairman (Hon. Patrick Mariru): The Chairperson has an amendment.

Hon. Silas Tiren (Moiben, JP): I beg to move:

THAT, the Third Schedule to the Bill be amended by—

- (a) deleting paragraph 4 and 5;
- (b) inserting the following new paragraph immediately after paragraph 6—
(6A) The quorum of the Tribunal shall be three members”; and
- (c) deleting paragraph 8.

(Question of the amendment proposed)

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

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

(Third Schedule as amended agreed to)

New First Schedule

THAT, the Bill be amended by inserting the following new schedule immediately as the First Schedule—

FIRST SCHEDULE [s. 2]

DELINEATION OF SUGAR CATCHMENT AREAS

SUGAR CATCHMENT AREA

COUNTIES

Rift Region

Kericho, Nandi and Uasin Gishu

Upper Western

Bungoma, and Trans Nzoia

Lower Western Region

Busia, Kakamega, Siaya and Vihiga

Southern Region

Homa Bay, Kisumu, Migori and Narok

Coastal Region

Kwale, Lamu, and Tana River

The Temporary Deputy Chairman (Hon. Patrick Mariru): Chairperson, please move the Second Reading of the new schedule.

Hon. Silas Tiren (Moiben, JP): I beg to move that the new Schedule be read a Second Time. Delineation of sugar catchment areas is being changed into five regions. This is only for administrative purposes. It has nothing to do with clustering farmers into zones.

Thank you.

(Question of the new First Schedule proposed)

(New First Schedule read the First Time)

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

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us start with Hon. Makali Mulu.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman. While I support this new schedule, I am worried that for purposes of posterity, it is not open for those who might join in the future. New sugar growing areas might come up in the future. Once we lock it like this, it means no one else should attempt to grow sugar in this country. I just thought there should be a small window for counties that might join sugar growing.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let me finish with this side before I consider Members on the other side. Hon. Oundo, you cannot speak before Hon. Nyikal, really.

Hon. (Dr.) James Nyikal (Seme, ODM): Hon. Temporary Deputy Chairman, I rise to support this amendment. It is very important because it solves the big problem of zoning that the Chairperson referred to. Actually we need to pass it because in other parts of the Bill, we have made reference to the regions.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Chairman, I support. We need to be very clear with members of the public and sugar-cane farmers that in no way do we have any intention of introducing zoning. Zoning and election of directors to the Board was removed from the Bill purely for administrative purposes.

Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Sankok, you have a minute.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Chairman, for purpose of election, this is okay. However, as the other Member has said, a small opening should be left because Narok, for instance, borders Nakuru. I know places in Nakuru which may soon forget about maize farming and get into sugar-cane farming. I know counties like Meru may have some areas that can support sugar-cane farming. So, let us leave a small opening for such areas.

Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Nkatha.

Hon. (Ms.) Beatrice Nyaga (Tharaka-Nithi CWR, JP): Thank you, Hon. Temporary Deputy Chairman. As I stand to support, I would like the Chairperson of the Committee to confirm if we have sugar-cane farming in Narok. I am not sure about that.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Washiali, I know that you were once a Whip but I will give you a chance. Let us have the current one.

Hon. Emmanuel Wangwe (Navhakolo, JP): Thank you, Hon. Temporary Deputy Chairman. I am a bit cold footed on this issue because farmers tend to suffer when they are not associated with a particular miller in terms of where to take the produce for processing. I want to persuade my colleagues to look at it twice, the reason being whereas we are doing away with zoning, we tend to ask ourselves: “If we produce sugar-cane in Kericho, how will farmers be assigned to the various millers near their catchment zone?” Such farmers would be directly assigned to millers in the neighbourhood. Whereas the majority have it, such are the issues we need to look at carefully before we put them to vote for Members to decide.

Thank you.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Washiali.

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Temporary Deputy Chairman. Once you were a Whip, you are always a Whip. So, when you call out a Whip, you need to qualify it with a name.

The Temporary Deputy Chairman (Hon. Patrick Mariru): I agree with you, Hon. Washiali. It is noted.

Hon. Benjamin Washiali (Mumias East, JP): Hon. Temporary Deputy Chairman, this was an issue that we deliberated under during winnowing. The sponsor of this Bill will go a long way to also support. There are two proposals on the First Schedule. There is one that we proposed and the one that aligned companies with counties. This is because whatever decisions we make here, given that this is a purely agricultural law, must be aligned to the counties so that we do not create problems for the county assemblies as they make decisions that affect sugar-cane production. That is why we need to be very careful on which of these two schedules need to go. I will go with the one we agreed under winnowing.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Let us hear Hon. Mutunga and then we close this matter.

Hon. John Mutunga (Tigania West, JP): Thank you very much, Hon. Temporary Deputy Chairman. Let me remind Members that, at some point, when we were forming the Board, we said there would be five farmers’ representatives. How do we elect them? We have not said whether they will be picked or elected. These clusters or catchments were identified to make that easier for us. Sugar-cane farmers from those counties would form some kind of co-operatives or something that would give them an opportunity to elect their representatives, and they can be rotating over time. That is the essence of having the zoning arrangement. Zoning will also help to assign farmers to sugar-cane processing mills. However, the legislation will not bar anybody from taking their sugar-cane to wherever they want.

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, it is for you to decide on this one. I cannot leave out Hon. Wafula Wamunyinyi, being the sponsor of the Bill.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Hon. Temporary Deputy Chairman, I appreciate that there was a lengthy discussion on this particular clause during winnowing. At the

same time, it is important that it is made clear that the purpose of the catchment areas is not limited to election. It also has to do with matters of administration to ensure that order prevails within the sector. One of the things that has killed the sugar-cane sector is lack of order, control and discipline. How will you ensure that there is order and discipline if you leave the catchment areas open? We do not want zoning but there has to be some level of order to ensure that members of the region are the ones operating there and not the ones from outside. How do we ensure that, that happens?

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Obo Mohamed.

Hon. (Ms.) Ruweida Obo (Lamu CWR, JP): Asante, Naibu Mwenyekiti wa Muda. Ninaunga mkono Lamu, Tana River na Kwale angalau nao wawe na mwakilishi wao. Hayo mengine tunangojea. Mambo ya makao makuu kuwekwa mbali na Lamu, kwetu tunasema ni mbali sana maana usafiri utakuwa mgumu. Tunangojea hiyo ili tubadilishe.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Sasa hiyo ni nini?

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

(The new First Schedule was read a Second Time)

(Question, that the New First Schedule be added to the Bill, put and agreed to)

First, Second and Third Schedules

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by renaming the First, Second and Third Schedules as Second, Third and Fourth Schedules, respectively.

This amendment seeks to ensure that the numbering of the Schedules flows properly because the Bill is being amended by renaming the First, Second and Third Schedules as Second, Third and Fourth Schedule respectively.

Thank you.

(Question of the amendment proposed)

(Question, that the First, Second and Third Schedules be renamed Second, Third and Fourth Schedules put and agreed to)

(First, Second and Third Schedules, as renamed, agreed to)

Clause 2

The Temporary Deputy Chairman (Hon. Patrick Mariru): Departmental Committee Chairperson, you have an amendment to Clause 2.

Hon. Silas Tiren (Moiben, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by deleting clause 2 and substituting therefor the following New Clause—

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Interpretation.

2. In this Act unless the context otherwise requires—

“agreements” means the agreements specifying the standard provisions governing the rights and obligations of growers, millers and out-grower institutions in the sugar industry;

“Board” means the Kenya Sugar Board established under section 3;

“by-product” means any substance, other than sugar, produced incidentally during the process of manufacturing sugar;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to agriculture;

“County Executive Committee Member” means the County Executive Member for the time being responsible for matters relating to agriculture in the respective County;

“farm gate” means prices received by farmers for their sugar-cane at the location of farm;

“Fund” means the Sugar Development Fund established under section 19;

“guidelines” means the guidelines for agreements between parties in the sugar industry set out in the Second Schedule;

“grower” means a person who produces sugar-cane or any crop in Kenya for the manufacture of sugar;

“industry” means the sugar industry in Kenya and includes the growing of sugar-cane and any other sugar producing crop, the manufacturing, refining, warehousing, marketing, transportation of sugar and disposal of sugar and its by-products;

“Institute” means the Kenya Sugar Research Institute established under section 16A;

“licence” means a licence issued by the Board to a miller;

“member” means a member of the Board appointed under section 5;

“mill gate” means a site where sugar-cane varieties are grown under strictly controlled agronomic conditions for eventual establishment of the sugar-cane crop;

“miller” means a person licensed to operate a sugar mill or a jiggery mill in Kenya for the production of sugar including refined sugar and other by-products;

“outgrower” means a person who has a sugar-cane farm in a catchment area and who has in force a cane supply contract in respect of the sugar-cane grown on such farm and registered by the Board;

“refined sugar” means sugar, which complies with the specifications set by the body for the time responsible for setting standards;

“sugar” means crystalline or liquid sucrose in any of its recognized commercial forms, intended for human consumption or other uses and includes raw sugar and industrial sugar;

“sugar-cane” means any plant or part of a plant of the genus *saccharum* or any of its hybrid;

“sugar catchment area” means a specific geographical area where farmers are clustered within a suitable sugar catchment area for purposes of election to the Board under the First Schedule;

“sugar-cane growers’ apex body” means a national sugar-cane farmers and out grower organisation under a cane supply contract and in catchment areas under the Fourth Schedule gazetted as such by the Cabinet Secretary for the time being responsible for agriculture;

“stakeholder” means a person with significant interest in the sugar industry and includes government, millers, growers and out-grower institutions;

“Tribunal” means the Sugar Arbitration Tribunal established under section 24A;

This is in terms of interpretation of the Order Paper. It is self-explanatory. This is just the definition of terms.

(Question of the amendment proposed)

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

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

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Patrick Mariru): Hon. Members, congratulations! We are done with the Bill. Let us have the Mover of the Bill.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you, Hon. Temporary Deputy Chairman. Hon. Temporary Deputy Chairman, I beg to move for recommittal.

The Temporary Deputy Chairman (Hon. Patrick Mariru): The recommittal will come much later, Hon. Mover.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Sorry about that, Hon. Temporary Deputy Chairman.

Hon. Temporary Deputy Chairman, I beg to move that the Committee does report to the House its consideration of the Sugar Bill (National Assembly Bill No.68 of 2019), and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Deputy Speaker (Hon. Patrick Mariru) in the Chair]

REPORT

THE SUGAR BILL

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Members, let us have the Mover. Actually, the Chairperson.

Hon. Emanuel Wangwe (Navakholo, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Sugar Bill (National Assembly Bill No. 68 of 2019) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have the Mover.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Hon. Temporary Deputy Speaker, I beg to move:

THAT, the Motion for Agreement with the Report of the Committee of the whole House be amended by inserting the words “subject to recommittal of Clause 5B, New Clauses 15A, 15D, 16C and Clauses 18 and 26.”

I also request Hon. Tiren to second the Motion.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have Hon. Tiren. All you need to do is to second.

Hon. Silas Tiren (Moiben, JP) I second.

The Temporary Deputy Speaker (Hon. Patrick Mariru): What is out of order, Hon. Kilonzo? It is okay. I can tell what you want to say. I will give you a chance. We will prosecute the recommittal by Wafula Wamunyinyi to the end. A number of you also have recommitments.

(Question of the amendment proposed)

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

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Members, there are quite a number of Members with recommitments. That one was by Hon. Wafula Wamunyinyi. There is one by Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Speaker, I beg to move:

THAT, the Motion for Agreement with the Report of the Committee of the whole House be amended by inserting the words “subject to recommittal of Clause 9A.”

This is because the issue of the sugar...

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Member. We are not prosecuting it. You end at that. You will have an opportunity to explain that when it is brought back.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. We cannot have headquarters in Kisumu.

Hon. Temporary Deputy Speaker, I beg to move:

THAT, the Motion for Agreement with the Report of the Committee of the whole House be amended by inserting the words “subject to recommittal of Clause 9A.”

I also request Hon. Benjamin Washiali, the former Minority Whip, to second the Motion.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have Hon. Washiali. Give him the microphone.

Hon. Benjamin Washiali (Mumias East, JP): Thank you. Before I second, I just wanted to correct my brother. I was the former Majority Whip. I rise to second.

For your information, my constituency has the biggest factory in the Republic. We should be asking ourselves how it collapsed. We used to have our annual general meetings in Kisumu.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Washiali, this is just a recommittal. When the issue comes back, you will get an opportunity to speak to it. This is just a recommittal.

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to second.

(Question of the amendment proposed)

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

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have the one by Hon. Kilonzo.

Hon. Charles Kilonzo (Yatta, Independent): Thank you, Hon. Temporary Deputy Speaker.

(Loud consultations)

There are too many consultations. I can barely hear myself.

The Temporary Deputy Speaker (Hon. Patrick Mairu): Order, Hon. Kilonzo. There is a point of order by Hon. Sankok. What is out of order?

QUORUM

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. We do not have enough quorum in the House.

(Loud consultations)

The Temporary Deputy Speaker (Hon. Patrick Mairu): Order, Members. Hon. Sankok, when you raise the issue of quorum, you cannot leave the House. Hon. Members, Hon. Sankok has raised the issue of quorum. We cannot ignore what the Member has raised. I order that the Bell be rung for 10 minutes. Hon. Sankok, you cannot leave the House when you have raised the issue of quorum.

(The Quorum Bell was rung)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Members! Order! What is that consultation by Hon. Obo Mohamed that is an agitated conversation and consultation?

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Members! We do not have the numbers. Order, Hon. Members! We have not been able to raise the numbers now and in the circumstances, the time being 12.31 p.m., this House stands adjourned until today, Wednesday, 13th October, at 2.30 p.m.

The House rose at 12.31 p.m.