

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 2nd December, 2004

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

The Report of the Departmental Committee No."G" on Administration of Justice and Legal Affairs on the appointments of the Director and Assistant Directors of the Kenya Anti-Corruption Commission.

*(By the Chairman, Administration
of Justice and Legal Affairs
Committee (Mr. Muite))*

NOTICE OF MOTION

ADOPTION OF REPORT ON
APPOINTMENT OF KACC DIRECTORS

Mr. Muite: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:- THAT, this House adopts the Report of the Departmental Committee on Administration of Justice and Legal Affairs on the appointment of the Director and Assistant Directors of the Kenya Anti-Corruption Commission, laid on the Table of the House on Thursday, 2nd December, 2004.

ORAL ANSWERS TO QUESTIONS

Question No.555

ALLOCATION OF ALRMP FUNDS
TO MANDERA DISTRICT

Mr. M.A. Haji asked the Minister of State, Office of the President:-

- (a) how much money was allocated to Mandera District from Phase I of the Arid Land Resource Management Programme Fund; and,
- (b) how many projects benefitted from the Fund in Mandera West Constituency.

The Assistant Minister, Office of the President (Dr. Machage): Mr. Deputy Speaker, Sir,

I beg to reply.

(a) Mandera District was allocated Kshs84 million during Phase I of the Arid Land Resource Management Programme of 1996 to 2001.

(b) A total of 29 projects benefitted from those funds.

Mr. M.A. Haji: Mr. Deputy Speaker, Sir, I am not sure what the Assistant Minister means by 29 projects. As I am speaking now, Phase I is over and there is not a single project that can be identified in Mandera West. What does the Assistant Minister mean by the 29 projects?

Dr. Machage: Mr. Deputy Speaker, Sir, I have a list of all the 29 projects. If you allow me, I will read the names. But because of time limitation, I will lay it on the Table.

Mr. Deputy Speaker: Mr. Assistant Minister, Sir, I prefer that you lay the list of the projects on the Table of the House!

(Dr. Machage laid the list on the Table)

Is there another question? Mr. J.M. Mutiso!

Mr. J.M. Mutiso: Mr. Deputy Speaker, Sir, the Arid Land Resource Management Programme is implemented only in certain areas. I would like to ask the Assistant Minister to inform this House the criteria that is used by the Ministry to determine the allocation of those funds in different parts of this country.

Mr. Deputy Speaker: Order, Mr. Assistant Minister! Can that paper be passed on to Mr. M.A. Haji to have a look? Maybe, he can use it to ask a final question.

Proceed, Mr. Assistant Minister!

Dr. Machage: Mr. Deputy Speaker, Sir, the Arid Lands Resource Management Programme is a community-based initiative that enhances food security and reduces livelihood vulnerability in drought-prone and marginalised districts or communities in Kenya, especially in the semi-arid and arid districts.

Mr. Bahari: Mr. Deputy Speaker, Sir, since the list was too long for the Assistant Minister to read, could he tell us, in summary, the cost of the 29 projects in Phase I?

Mr. Deputy Speaker: Order! The list has already been laid on the Table. You can have access to it!

An hon. Member: There is no question!

Ms. Mwau: Mr. Deputy Speaker, Sir, could the Assistant Minister tell us what criteria was used to allocate funds to those areas?

Dr. Machage: Mr. Deputy Speaker, Sir, it is only fair that I answer the question raised by the other hon. Member. The projects that I have talked about also sponsored water tankering to the communities in Mandera West. They also conducted conflict mitigation and training. That gave a cumulative total of Kshs26,683,000.

As regards Ms. Mwau's question; the criteria used to decide which districts should be included in that project are mainly geographical, especially as regards rain distribution. It is, indeed, true that not all areas that have less rain have been included in that project. But we have Phase I, Phase II and Phase III. We will continue to expand the programme to include all the other areas that have been left behind, if funds are available.

Mr. Deputy Speaker: Last question, Mr. M.A. Haji!

Mr. M.A. Haji: Mr. Deputy Speaker, Sir, the list given by the Assistant Minister is too long! It has two types of projects. There are those that are meant to have effect on the people of Mandera West, which faces water scarcity. There are no projects that have been undertaken in terms of alleviating water shortage, water catchment rocks and underground water tanks. They are just

white elephants! They have not been done properly!

Mr. Deputy Speaker: Mr. M.A. Haji, please, sit down. Earlier on, you said that the projects are non-existent. The Assistant Minister laid on the Table a list of 29 projects. So, do you still say that they are non-existent? You seem to say that the projects were white elephants or they were not implemented properly. Could you, please, be specific?

Mr. M.A. Haji: Mr. Deputy Speaker, Sir, on the list there are 29 projects, but the situation on the ground is that those projects that are supposed to have been implemented are non-existent. I wish to seek the Chair's indulgence that this Question be deferred. I want to take the Assistant Minister to Mandera West at my own cost so that he can see the projects and come back to report to this House.

Mr. Deputy Speaker: Mr. Haji, we cannot simply defer the Question until that time you take the Assistant Minister to Mandera West. Do you have any specific project in the list, but it does not exist so that the Assistant Minister can respond?

Mr. M.A. Haji: Mr. Deputy Speaker, Sir, the specific project I have in mind is a rock catchment project in Kiliwehiri that is supposed to have been done at a cost I do not know. The project does not exist today. So, I want to ask the Assistant Minister to tell us what he intends to do about that project since we have phase two of the project going on. In fact, it is being run by the same people who mismanaged the projects. What assurance do I have that when phase two of this project is being implemented, the people of Mandera West are not going to be cheated again?

Dr. Machage: Mr. Deputy Speaker, Sir, may I request my colleague---

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. You heard the hon. Member use the word "cheated". I do not think that is a parliamentary word.

Mr. Sasura: It is the people who were cheated!

Mr. Angwenyi: Mr. Deputy Speaker, Sir, we must at all times uphold the standards of this House.

Dr. Kuti: On a point of information, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Order, Dr. Kuti. We already have an issue at hand. In the context that Mr. Haji asked his Question, the people of Mandera West were told that there was a project going on and yet it was not there. What do you call that? Could you, please, address that issue, Dr. Machage?

Dr. Machage: Mr. Deputy Speaker, Sir, may I allay the anxiety of my colleague over the deceit that he thinks might be there with regard to phase two of the project. I am there in the Ministry and you will not be cheated.

I am ready to visit any of the projects you feel uncomfortable with. The Ministry can afford to do that. So, thank you for your offer.

Mr. Deputy Speaker: Mr. M.A. Haji, I think you can get in touch with the Assistant Minister and see whether you can visit the project.

Dr. Kuti: On a point of information, Mr. Deputy Speaker, Sir. I would like to inform this House that by design, these arid land projects allocated 50 per cent of the money available to training and seminars. We received Kshs15 million this year, and Kshs7 million has been set aside for seminars for women groups and training purposes. The seminars and training programmes have very little impact on the community. Could the Assistant Minister comment on that issue?

Mr. Deputy Speaker: That is not a point of information, but in view of the importance of the matter, I will ask the Assistant Minister to respond.

Dr. Machage: Mr. Deputy Speaker, Sir, the hon. Member's concern with regard to some of the projects in the arid lands development is genuine. It is the sincere wish of the Government that the money is properly allocated so that the communities that are supposed to benefit are given an

upper hand in deciding as to how the money should be used. However, sometimes we are tied with conditions and terms of the donors.

Question No.654

PROTOCOL OFFICER FOR PARLIAMENT

Dr. Manduku asked the Minister for Foreign Affairs:-

(a) whether he is aware that MPs attending parliamentary conferences e.g, Commonwealth Parliamentary Association (CPA), Inter-Parliamentary Union (IPU), and African Parliamentary Union (APU) are not aware of the Government foreign policy; and,

(b) if the answer to (a) above is in the affirmative, whether he could consider attaching a protocol officer to Parliament who would accompany delegations to the above conferences.

The Minister for Foreign Affairs (Mr. Mwakwere): Mr. Deputy Speaker, Sir, I beg to reply.

(a) No, I am not aware.

(b) Since my answer to part (a) is in the negative, the question of attaching a protocol officer to Parliament to accompany Members of Parliament whenever they attend international parliamentary conferences need not arise. Nonetheless, positive consideration will be given to justified specific situations.

Mr. Deputy Speaker, Sir, may I also add here that we have officers in the Clerk's Department who accompany Members of Parliament whenever they attend international conferences overseas and we welcome them to get in touch with the Ministry of Foreign Affairs for any information they require on our foreign policies.

Dr. Manduku: Mr. Deputy Speaker Sir, I am surprised that this Question has been postponed twice and every time it was postponed, I was given a different answer in the positive. The Assistant Minister indicated to me that he was aware of the situation and that he was going to attach a protocol officer to accompany Members of Parliament whenever they go out for international conferences. He even said that if Parliament agrees, he would attach someone here.

Mr. Deputy Speaker: Order, Dr. Manduku! Let me interrupt you before you proceed to ask your question. Last week, when your Question was deferred, it was because the Minister had requested that he would like to answer it personally. He has just done that. Now, was the answer that you are talking about given to you or was it given on the Floor of the House?

Dr. Manduku: Mr. Deputy Speaker, Sir, I am talking about the answer that was given earlier on when this Question was deferred. The answer I have now is a different one. However, that notwithstanding, I would like to ask my question.

Mr. Deputy Speaker: Please, ask a question based on what the Assistant Minister has answered.

Dr. Manduku: Mr. Deputy Speaker, Sir, indeed, the Minister was an Ambassador before he came to this House. It is also true that I was an Assistant Minister for Foreign Affairs before I came to this House. Every time when hon. Members of Parliament or other dignitaries went overseas for conferences, they used to be given a protocol officer from the Ministry to translate the Kenyan Government policies abroad. When did that policy change? We are supposed to be good ambassadors of this country when we go overseas.

Mr. Mwakwere: Mr. Deputy Speaker, Sir, the hon. Member served as an Assistant Minister in the Ministry of Foreign Affairs and he knows very well that what he is saying was done

at a time when there were no officers to do that work in the Kenya National Assembly. Now we have professionals in the Kenya National Assembly's Clerk's Department, who travel with Members of Parliament whenever they attend international conferences. The officers, as I said, are free to get in touch with the Ministry of Foreign Affairs to get any information necessary on Kenya's foreign policy.

Mr. Mwenje: Mr. Deputy Speaker, Sir, when Members of Parliament are travelling overseas to attend conferences, are they supposed to be articulating the Government's policies or the parliamentary committees' policies? I do not know if we really need to know the Government's policies or whether we should only articulate parliamentary committees' policies.

Mr. Deputy Speaker: Mr. Mwenje, the hon. Members of parliamentary committees travel on behalf of the country and, therefore, on behalf of the Government. Really, the parliamentary committees have no policies.

(Several hon. Members stood up in their places)

Order, Members! I do not want to engage in arguments.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, I think this Question was basically meant to inform the Minister that Members of Parliament who attend international conferences overseas are not aware of the Government's foreign policies. Even the way the Question is phrased, it is meant for him to know that the Members of Parliament are not aware of the Government's foreign policies. So, could the Minister ensure that there is a protocol officer attached to Parliament and whose work will be to inform Members of Parliament about the Government's foreign policies?

Mr. Mwakwere: Mr. Deputy Speaker, Sir, the hon. Member understands English very well. But I am wondering whether he has read the Question or whether he is reading it now. The Question is whether I am aware that hon. Members of Parliament attending conferences overseas are not aware of Kenya Government's Foreign Policy, and the answer is that I am not aware that they are not aware.

(Laughter)

Read the Question! If they would like to know more or a summary of Kenya's foreign policy, I am ready to give more information. Otherwise, as the Question stands, I am satisfied with the way I have answered it and I hope that it also satisfies you.

Mr. Deputy Speaker: Last but one question, Mr. Kembi-Gitura, then Dr. Manduku!

Mr. Kembi-Gitura: Thank you very much, Mr. Deputy Speaker, Sir. These "I am not aware" answers that we are getting every other day, are disconcerting. This is because it shows a people who do not want to deal with issues; people who want to sit on the fence.

I have been to these conferences, and if you listen to members from other delegations from other countries like Zimbabwe, they stand and articulate their Government's policies when they are pursued and ridiculed by other Governments like Great Britain, among others. It is important that when we are out there, we are seen not to cower, but to stand to what we think is right, without the fear that we will be contradicting our Government's policy.

So, is it in order for the Minister to stand here and tell us that the Ministry of Foreign Affairs has nothing to do because there are protocol officers in Parliament? Is he taking this particular issue seriously, because it is a very serious issue?

Mr. Mwakwere: I think I was extremely clear. May I repeat what I said. The last part of my

answer was:

"Nonetheless, positive consideration will be given to justify specific situations because Parliament has officers who accompany Members of Parliament to such international conferences".

I am not trying to evade the Question. All I am doing is answering to what appears in there. But I am prepared to give detailed information and guidelines on Kenya's Foreign Policy if that is the Question.

Otherwise, as it stands now, I have answered the Question based on what was asked.

Dr. Manduku: The Kenya Government's Foreign Policy is not the same year in, year out. They continue changing it every other time. For example, yesterday, we had land mines in this country, but now we have signed the treaty on land mines. Kenya also signed the Kyoto Protocol. We do not know some of these protocols, and that is why we are asking the Minister to enable us to understand what Kenya's Foreign Policy is, so that when we go out, we represent this country properly. So, what measures is he really taking so that from time to time, he gets us appraised?

Mr. Mwakwere: I am prepared to address hon. Members in a workshop and give a powerpoint presentation and all details that they would like to have.

(Applause)

Mr. Deputy Speaker: Order!

An hon. Member: Not in a workshop; he should be briefing us on a quarterly basis.

Mr. Deputy Speaker: Next Question, Mr. Leshore!

Question No.948

ALLOCATION OF POVERTY REDUCTION FUNDS
TO SAMBURU DISTRICT

Mr. Leshore: asked the Minister for Planning and National Development:-

(a) how much money has been allocated and disbursed to Samburu District, and especially to Samburu East Constituency, to be used in the fight against poverty; and,

(b) how many individuals, groups or projects have benefitted.

The Assistant Minister for Planning and National Development (Mr. Lesrima): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Currently, there are two main initiatives being undertaken by the Government in Samburu District; the Poverty Eradication Commission and the Community Development Trust Fund (CDTF). Under the Poverty Eradication Commission programme, the district was allocated Kshs1.5 million, out of which two divisions in Samburu East benefitted.

(b) No individual benefitted from the Poverty Eradication Commission allocation, but a total of nine groups received funds, three of which are from Samburu East Constituency.

Under the Community Development Trust Fund, a total of Kshs12,581,714.20 was allocated among 17 projects throughout the district. Two divisions in Samburu East benefitted from a total of Kshs5,644,038.45 and Kshs389,006 respectively, totalling to Kshs6,033,044.45.

Mr. Leshore: You can see that this is a very rare coincidence, because my colleague, the Assistant Minister, comes from Samburu West, and he is also answering the Question. Most of these funds were allocated during the KANU Government's regime. I want him to tell us how much the NARC Government has given to Samburu District to implement this.

(Applause)

Mr. Lesrima: This is a continuous programme. The Community Development Trust Fund was started in 1997/1998, with the support of the European Union funding, and Poverty Eradication Programme was also started in 1999. Therefore, these are continuous programmes and it is really not fair to draw a line between KANU and NARC.

Mr. Owino: The Assistant Minister must be aware that this money which we were given was given to the District Commissioners, who have used half of that money on logistics. The other half was given out as handouts. Could the Assistant Minister think of creating wealth? As an economist, I know that creating wealth is many miles apart from giving handouts.

Mr. Lesrima: I am not aware of any District Commissioner who has utilized this money as handouts. For the Poverty Alleviation funds, there were very clear instructions and circulars on their utilization. The funds were supposed to be disbursed through a financial intermediary within the district, with 10 per cent administrative costs going to the intermediary, and 10 per cent to the Poverty Eradication Committee in the district for monitoring and evaluation. As to the other project, the Community Development Trust Fund, we do not seem to have those problems.

Mr. J.M. Mutiso: The Community Development Trust Fund and the Poverty Eradication Commission have a requirement that all the projects have to be implemented by a lead agency, for example, K-Rep, who, most of the time, take 40 per cent of the money. What measures is the Ministry taking to ensure that at least, most of the monies are spent for the intended projects?

Mr. Lesrima: There are two programmes we are talking about here; we are talking about a Government-funded programme, which was originally under the Office of the President, the Poverty Eradication Programme, which is coming to an end. With regard to the second programme it is the Community Development Trust Fund funded by the EU to the tune of Euros 27.6 million. With regard to the second programme, the Community Development Trust Fund, the monies go directly to the communities. The communities initiate projects under biodiversity programmes like ecotourism, or other programmes like water sanitation health. These programmes are initiated directly by the community and funded directly by the CDTF, which is really detached from the Ministry.

Mr. Leshore: Mr. Deputy Speaker, Sir, could the Assistant Minister tell the House whether his Ministry has a system of funding these projects. I would also like to know how much his Ministry has set aside for the eradication of poverty in this year's Budget.

Mr. Lesrima: Mr. Deputy Speaker, Sir, I said under the Poverty Eradication Commission, the project has come to an end, and we are now negotiating with the African Development Bank to introduce a programme to be called Kenya Social Action Fund as outlined in the Economic Recovery Paper. I am glad to say that the African Development Bank is very positive. They will give us preparation funds early in January, and this programme will benefit communities directly as a replacement of the Poverty Eradication Commission money.

Question No.298

EXPULSION/SUSPENSION OF
STUDENTS FROM PUBLIC UNIVERSITIES

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

(a) whether he could table a list of all students expelled or suspended from the public universities since January, 2003; and,

(b) what the Ministry is doing to have their cases reviewed by the respective university administrations.

The Assistant Minister for Education, Science and Technology (Dr. Mwiria): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Public universities have expelled or discontinued 32 students since last year. They have further suspended 105 students. The breakdown is as follows: University of Nairobi has expelled eight students; Kenyatta University, 13 students; Egerton University, three students; Jomo Kenyatta University of Agriculture and Technology (JKUAT), six students, and Maseno University, two students.

The suspensions are as follows: University of Nairobi, 22; Kenyatta University, 6; Egerton 10; JKUAT, 4; Maseno University, 18; Moi University, 32, and Western University College (WEUCO), 13, making a total of 137 suspensions.

(b) The students' disciplinary matters are the responsibility of the individual university disciplinary committees. Students aggrieved by the disciplinary committee decisions are allowed to appeal against decisions against such decisions to the Senate Disciplinary Committee of the university concerned.

Mr. Munya: Mr. Deputy Speaker, Sir, many of us thought that when the NARC Government took over, fewer students would be expelled from universities because the structures of governance would improve. But if you look at the statistics, the same practice continues. If you look at the list, most of the students who have been suspended or expelled, it is because they participated in illegal meetings. I would like the Assistant Minister to tell this House whether students who are over 18 years old are not governed and do not enjoy the same freedoms and rights as other Kenyans do under the Constitution?

Dr. Mwiria: Mr. Deputy Speaker, Sir, of course, students who are over 18 years have every right to assemble, as long as that assembly is not detrimental to other people's rights. If there are cases where students assemble and damage property, or run to the streets to cause trouble, that is a problem.

Secondly, I would like to correct the impression the hon. Member has created, that most of the students were expelled because of illegal meetings. Actually, many of those who were expelled was because of exam cheating, which is not allowed; those who fail examinations even after doing supplementary exams; theft, those who attempted to rape other students, assault, damage to property, attack on staff members, illegal brewing, some of them were caught with fire-arms, and others were caught fighting. So, there are a variety of reasons, many of which are criminal or academic.

However, we would like universities to be more democratic and for students to be listened to. In any case, if students are not satisfied with decisions of board committees and senate committees, they can always revert to the law. Students, like everybody else, should be subjected to the law of the land.

Mr. Kajwang: Mr. Deputy Speaker, Sir, I have been a victim myself. I was expelled without being heard. A week ago, students from the Faculty of Law at the University of Nairobi, were called after they finished their exams, and somehow, in a "kangaroo court manner", it was decided that some of them had been suspended for three years, two years or one year. What kind of law is this that suspends you after you have completed your studies?

Dr. Mwiria: Mr. Deputy Speaker, Sir, I am sorry that hon. Kajwang was suspended from the university without being heard. However, he is not alone. I was also thrown out of the university as a lecturer without being heard. However, in the case of the law students, I think it is very unfortunate that it took very long for the Senate Disciplinary Committee to meet. That decision has

not been implemented. I called the Vice-Chancellor about it. It is unfortunate it took that long. Any action should be taken immediately because it is not fair to keep the students waiting. But if there is any wrong-doing, again, as a Government, we are interested in seeing that students are not victimised and we will take action against officers that are seen victimising innocent students.

Mr. Munya: Mr. Deputy Speaker, Sir, most of the students suspended or expelled for participating in illegal meetings did so when they were supporting their lecturers who were on strike about their salaries. The Ministry accepted that those were genuine grievances and it increased salaries for lecturers. But they never bothered to also take back those students who were supporting the lecturers in their genuine grievances. Could the Assistant Minister assure this House that he will take it upon himself to ensure that all those students who were suspended for supporting lecturers are taken back to college?

Dr. Mwiria: Mr. Deputy Speaker, Sir, if students were suspended for supporting lecturers, if there was no other crime, that is extremely wrong. I will take it up, and if it is true, they will be taken back. If it is not true, unfortunately, they will have to remain out. But we will certainly look into the matter.

Question No.677

ELECTRICITY SUPPLY TO
LUGARI CONSTITUENCY

Dr. Kibunguchy asked the Minister for Energy:-

- (a) whether he is aware that only 1.2 per cent of the household in Lugari Constituency have access to electricity;
- (b) whether he is further aware that most secondary schools and market centres in Lugari Constituency are not supplied with electricity; and,
- (c) when the Ministry is going to address the dismal supply of electricity to the constituency.

The Assistant Minister for Energy (Mr. Kiunjuri): Mr. Deputy Speaker, Sir, this Question came to the Floor of the House last week and the answer we gave was not satisfactory. We have received another answer, but it is still not satisfactory. Now, we have authorised the Region's Manager to go in person to the constituency and we shall be able to get a good answer by next week.

Mr. Deputy Speaker: So, we defer it to when?

The Assistant Minister for Energy (Mr. Kiunjuri): With the indulgence of the Chair, we defer it to Tuesday, next week.

Mr. Deputy Speaker: I will defer it to Wednesday to give you an extra day.

(Question deferred)

Question No.828

INSTRUCTIONS TO KPLC/NOCK
TO HALT OPERATIONS

Mr. Kajwang asked the Minister for Energy:-

- (a) under what provision of the law the Permanent Secretary in the Ministry of Energy, Mr. Patrick Nyoike, gave instructions to the Managing Directors of Kenya

Power and Lighting Company (KPLC), KenGen, Kenya Pipeline Company and National Oil Corporation of Kenya to halt certain operations until the Minister returned to the country; and,

(b) whether the Minister is aware that such instructions undermine the operations of parastatals and are corrupt and illegal.

The Assistant Minister for Energy (Mr. Kiunjuri): Mr. Deputy Speaker, Sir, what hon. Kajwang is asking us to do is to audit ourselves, which is not in line with transparency. Therefore, I am seeking the indulgence of the House that this Question be referred to the Office of the President.

Mr. Kajwang: Mr. Deputy Speaker, Sir, I do not know about the Ministry auditing itself. I am asking the Minister why he gave certain orders through his Permanent Secretary. That does not amount to auditing; it is a matter of saying "yes he did it and these are my good reasons". So, could the Assistant Minister answer my Question?

Mr. Deputy Speaker: Mr. Kiunjuri, are you saying---

*(Applause as the Minister for Energy
(Mr. Nyachae) approached the Dispatch Box)*

The Minister for Energy (Mr. Nyachae): Mr. Deputy Speaker, Sir, first of all, I must say that there has been some confusion about this Question in the sense that it was sent to the Office of the President. Today, I have seen that it is to be answered by the Minister for Energy, and I beg to reply.

I took over the Ministry of Energy and, within a week, I had to rush overseas for treatment. My absence was to be for four days. I had not been briefed by anybody in the Ministry after taking over, apart from the brief I got from the outgoing Minister himself. Therefore, with so many policies involved, for example, World Bank issues and so on, I advised the Permanent Secretary to inform Chief Executive Officers (CEOs) of the parastatals concerned, that policy issues should be left for the next four days and be discussed so that I am fully briefed. There was no instruction that the CEOs should stop performing their normal operations. In fact, they never stopped. All work went on very well.

Mr. Deputy Speaker, Sir, for the information of the gentleman who asked the Question, I would like him to know that there was no work which was held back. All operations went on very well. However, there is no way I would have accepted policy issues to be carried out before I had been briefed as the Minister in charge. I am answerable to this House on policy matters.

Mr. Kajwang: Mr. Deputy Speaker, Sir, I would like to thank the Minister for that good answer. However, I am hon. Kajwang, I am not a "gentleman"!

(Laughter)

Mr. Deputy Speaker: What are you?

Mr. Kajwang: I am hon. Kajwang!

Mr. Deputy Speaker: You are both hon. Kajwang and a gentleman!

Mr. Kajwang: Mr. Deputy Speaker, Sir, what is of concern here is that parastatals do not make policy issues. Policy issues are made by the Ministry. So, to suggest that the Minister halted operations of these parastatals, so that they do not make decisions on policy issues is to miss the point. They could not have, in their own mandate, made any policy issues. Policy issues are made by the Minister. So, did you halt their operations upon your coming back? Do you not think this is interference with the day-to-day management of our parastatals when hon. Ministers make such

unwarranted directives?

Mr. Nyachae: Mr. Deputy Speaker, Sir, it is up to Mr. Kajwang to know whether he is a gentleman or not. There may be historical issues why he does not want to regard himself as a gentleman!

(Applause)

I would like Mr. Kajwang to know that the man answering his Question understands the operations of Government and creation of policies. Policies do not emanate from the Minister, but from the law. Those which are connected with parastatals come from the boards of those parastatals until the Minister feels they are worth presenting to the centre of Government as policies; for example, the revival of the Sondu Miriu Power Project, which would involve money. I am the one who would take it up with the Minister for Finance and, thereafter, to the Cabinet. There is no way KenGen would go ahead and take decisions on that. Those are the things that need to be understood.

The hon. Member should quote one specific case where operations were held up. There is no point for us to debate on hypothetical basis. However, I know that the CEOs of all the parastatals under the Ministry of Energy carried out their duties in a normal manner and no work was withheld.

Mr. Deputy Speaker: Very well. I will only allow one last question from Mr. Kajwang.

Mr. Kajwang: Mr. Deputy Speaker, Sir, may I refer to Mr. Nyachae as *Mzee* Nyachae? I would like to tell him that any Minister who issues directives to heads of parastatals actually frightens them. In fact, he intimidates and threatens them! This is what we never wanted. That is why we would like the boards of parastatals to be independent, and the managing directors to be appointed by the same boards, so that they are answerable according to the Acts which create them.

Mr. Deputy Speaker: Mr. Kajwang, ask your question!

Mr. Kajwang: Mr. Deputy Speaker, Sir, is the Minister satisfied that this directive was not undermining the operations of these parastatals? Could he give us an undertaking that he will never do anything like this again?

Mr. Nyachae: Mr. Deputy Speaker, Sir, I will not give any undertaking. If the hon. Member could table the letter which was written by the Permanent Secretary, it specifically talks of policy matters. It does not talk about the operations. That is what we requested the CEOs to undertake. This was actually a two-line letter. I would like the hon. Member to know that we do not frighten officers working under us. As Ministers, we have a responsibility to this country and to Parliament to guide all the departments and parastatals under us. You cannot say we should not direct them and at the same time I come here to answer questions to this House about those parastatals! I have to take responsibility!

(Applause)

Mr. Deputy Speaker: Next Question, Mr. Shaaban!

Question No.897

UPGRADING OF DISPENSARIES IN
MANDERA EAST CONSTITUENCY

Mr. Shaaban asked the Minister for Health:-

- (a) what action she is taking to ensure that residents of Hareri and Warangara divisions of Mandera District get access to health facilities;
- (b) if she is aware that there are only two registered nurses serving in Kalaliyo, Lafey, Fino and Libiya dispensaries in Mandera East Constituency; and,
- (c) what steps she is taking to upgrade the above dispensaries to health centres to serve the population in divisional headquarters and their environs.

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

- (a) For a health facility to be put in place the following factors are taken into account:-

[The Assistant Minister for Health]

- (i) The distance from the nearest health facility, the size and the health status of the population.
- (ii) Both the Divisional Development Committee and the District Development Committee must recommend for the facilities to be---

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! The Assistant Minister is answering a very important Question!

Proceed, Mr. Konchella!

The Assistant Minister for Health (Mr. Konchella): Mr. Deputy Speaker, Sir, I was stating the factors taken into consideration while recommending the construction of a health facility.

(i) The Divisional Development Committee must recommend to the DDC for that operation to be taken. In the case of the two divisions which the hon. Member has asked, the nearest health facilities are about 15 kilometres and 20 kilometres apart respectively. They, therefore, deserve to have health facilities although the Divisional Development Committee and the District Development Committees have not made recommendations to our Ministry. The Ministry is currently assessing facilities needed countrywide to determine where they are required. Once this is done, we will be able to raise funds necessary, through this House, to establish such facilities.

(b) From the information available, my Ministry has four nurses who are distributed in the four health facilities namely: Kalaliyo, Lafey, Fino and Libiya. My Ministry will consider deploying additional staff in these facilities at the end of the on-going nurses recruitment exercise.

(c) Regarding the upgrading of the four dispensaries to health centre status, I wish to report that my Ministry will consider the upgrading in the same manner as I stated above.

Mr. Shaaban: Mr. Deputy Speaker, Sir, it is unfortunate that this answer is a big joke. Out of the seven divisions in my constituency, the Assistant Minister says that there are only four staff members. That is a sorry state of affairs as far as health facilities in my constituency are concerned. Having said that, the Assistant Minister says that for there to be health facilities a distance of 15 kilometres to 20 kilometres is required. These divisional headquarters are more than 50 kilometres apart. What is he doing to ensure that health facilities are available to the people of Mandera East Constituency?

Mr. Konchella: Mr. Deputy Speaker, Sir, I have just said that the Ministry is prepared to upgrade the health centres which the hon. Member is concerned about. However, for planning and budgeting purposes, the District Development Committee (DDC) has to recommend that the Ministry starts the upgrading process. As far as part "b" of the Question is concerned, I know that four nurses are not enough to serve a whole division. As soon as we complete the on-going recruitment of nurses, we will consider sending more nurses there.

Capt. Nakitare: Thank you, Mr. Deputy Speaker, Sir. I want to thank the Assistant Minister for the elaborate explanation he has given us. I wonder whether he is aware that the increasing population demands that we have a health centre after every ten kilometres.

Mr. Konchella: Mr. Deputy Speaker, Sir, the decision to set up health centres depends on many factors. One is the catchment area. We certainly do not put up health centres at places where there are no people and regardless of distances. It is the need that determines what health facility is put up in an area.

Mr. Shaaban: Mr. Deputy Speaker, Sir, in my constituency, there is not a single dispensary in any of the three divisions. There are schools, a police station and the other relevant Government departments required in the divisional headquarters. However, there is no dispensary despite the high population of the area. What is the Assistant Minister doing to ensure that there is at least one dispensary to serve the three divisions? The four medical officers sent there are not enough to serve the population of that area. What is he doing about it? People have to travel long distances to seek health care!

Mr. Deputy Speaker: Mr. Shaaban, you have already asked a question! You do not have to go on and on! Mr. Assistant Minister, could you answer?

Mr. Konchella: Mr. Deputy Speaker, Sir, it seems as if the hon. Member is not aware of the situation on the ground. I would like to urge him to work with me, so that we identify the critically affected areas so as to post enough clinical officers. We would also like to know what kind of health personnel to send there. Sometimes, we sent health workers to areas where they stay for only a short period, owing to the hardships that they face.

(Loud consultations)

Mr. Deputy Speaker: Hon. Members, I know that you need to consult! However, for us to run the business of the House smoothly, I request that you consult in low tones.

Question No.608

COMPENSATION OF BUFFALO ATTACK VICTIM

Mr. J.M. Mutiso asked the Minister for Tourism and Wildlife:-

- (a) whether he is aware that Ms. Monicah Mbithe Daudi, a resident of Ngaamba Sub-location, Kilome Division, was attacked by a buffalo at Kiu Ranch in Makueni District in June, 2003 and sustained severe hip injuries;
- (b) whether he could compensate the victim for injuries sustained since she has been partially disabled; and,
- (c) what he will do to relocate the wild animals in the area.

The Assistant Minister for Tourism and Wildlife (Mr. Khaniri): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that a buffalo attacked Ms. Monicah Mbithe Daudi and she sustained severe hip injuries.

(b) The hon. Member should know that the procedure for compensation was not followed in this case. Instead of presenting a medical examination report to Kenya Wildlife Service (KWS), the victim presented the report to her hon. Member of Parliament. This made it difficult for KWS to

take any action. However, the report has now been presented to the KWS and the compensation process has commenced.

(c) It is the mandate of the KWS to protect people and their property from wildlife menace. It is difficult to relocate wild animals from this area to Amboseli and Maasai Mara. The KWS has intensified patrols in areas of high human-wildlife conflict, and is also carrying out education on mitigation measures.

Mr. J.M. Mutiso: Mr. Deputy Speaker, Sir, I thank the Assistant Minister for giving a straightforward answer.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! I regret that I have to remind you that we cannot hear hon. Members asking questions, nor can we hear Ministers who are answering questions. Please, lower your consultation tones!

Mr. J.M. Mutiso: Mr. Deputy Speaker, Sir, I would like to thank the Assistant Minister for that straightforward answer. Now that the medical report has already been presented to the KWS, could he give us the exact time-frame within which Ms. Daudi should expect her compensation?

Mr. Khaniri: Mr. Deputy Speaker, Sir, I cannot give the exact time-frame. Processing compensation claims is a long procedure. What may delay us is a committee in which the hon. Member of Parliament concerned sits. This is the District Wildlife Compensation Committee, which is supposed to approve this claim before my Ministry releases a cheque. I want to assure the hon. Member that I will follow up this matter personally to ensure that the compensation is not delayed.

Question No.630

COMPENSATION OF MR. GAVUNO
BACHO'S FAMILY

Mr. Ngozi, on behalf of **Mr. Rai** asked the Minister for Tourism and Wildlife:-

- (a) whether he is aware that Mr. Gavuno Neko Bacho was killed by a rogue elephant on 22nd July, 2000; and,
- (b) what urgent measures he is taking to ensure that the family of Mr. Bacho is compensated for the loss.

The Assistant Minister for Tourism and Wildlife (Mr. Khaniri): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that Mr. Gavuno Neko Bacho was killed by a rogue elephant on 22nd July, 2000.

(b) Unfortunately, to date, the family has not filled compensation forms for the death. The KWS wardens in Shimba Hills will liaise with the family of the deceased and assist them fill in the forms. The forms will then be forwarded to my Ministry for processing following the laid down procedures.

Mr. Ngozi: Thank you, Mr. Deputy Speaker Sir. First of all, let me say that I have a lot of respect for the Assistant Minister, who has answered this Question.

Mr. Deputy Speaker: Order, Mr. Ngozi! Did I give you an opportunity to ask the Question?

Mr. Ngozi: Mr. Deputy Speaker, Sir, I asked the Question on behalf of hon. Rai.

I have said that I have a lot of respect for the Assistant Minister. However, it is unfortunate

that the compensation forms were completed on 30th July, 2000, and forwarded to the Ministry. Secondly, this incident did not happen in Shimba Hills as the Assistant Minister has said. It took place in Kinango, Macknnon Road Division. Could he tell us when the victim's family will receive this cheque because the forms were completed and forwarded to the Ministry on time?

Mr. Khaniri: Mr. Deputy Speaker, Sir, the cheque cannot be released before the forms are filled. The forms which the hon. Member is talking about were presented to me by the Questioner, hon. Gonzi Rai. These are the same forms reporting the incident and they are not compensation forms. There is a set of compensation forms that the next of kin has to fill for us to process the compensation.

Mr. Sasura: Mr. Deputy Speaker, Sir, the issue of compensation is an issue which we have dealt with in this House for a very long time. The current Wildlife (Conservation and Management) Act does not provide for any compensation. The Kshs30,000 compensation for death is just a sort of a regulation by the Minister as a matter of consolation to the bereaved families. The Ministry and the KWS always hide under the fact that the forms have not been submitted and that the issue of rogue elephants is like that of rabid dogs or hyenas. Could the Assistant Minister ensure that while the process of compensation is going on, these many rogue elephants are gotten rid of so that they do not kill the next person?

Mr. Khaniri: Yes, Mr. Deputy Speaker, Sir. I just want to give that assurance that we will try to manage the situation. We know it is very bad. We have been having a very big shortfall of rangers who assist in carrying out these responsibilities but very soon we will rectify the situation.

Mr. Ngozi: Mr. Deputy Speaker, Sir, if the Assistant Minister says that he does not have the forms, I have a sheet here which is from the Ministry and was filled in by this person and it clearly indicates "Compensation Claim Form" which I am ready to table before the House.

Hon. Members: Table it!

Mr. Khaniri: Mr. Deputy Speaker, Sir, I will be glad to have a look at it and, as I said, as soon as we have the form, I will follow up the matter personally.

(Mr. Ngozi laid the document on the Table)

Mr. Deputy Speaker: Next Question by Mr. Sasura!

Question No.537

OWNERSHIP OF KICC

Mr. Sasura asked the Minister for Information and Communications:-

- (a) who owns Kenyatta International Conference Centre; and,
- (b) how much money in rent has been collected from KICC tenants since April, 2003 and to which account(s) the proceedings were remitted.

The Assistant Minister for Information and Communications (Mr. Were): Mr. Deputy Speaker, Sir, we realised that this Question does not belong to our Ministry and, therefore, it was forwarded to the Ministry of Tourism and Wildlife. So, I do not have an answer.

Mr. Deputy Speaker: Yes, I agree. This Question should go to the Ministry of Tourism and Wildlife.

Mr. Sasura: On a point of order, Mr. Deputy Speaker, Sir. This is the second time this Question is appearing on the Order Paper. You and I know very well that the Minister for Information and Communications is also the Acting Minister for Tourism and Wildlife.

Mr. Deputy Speaker: That may be so but the Question should be addressed to the Minister for Tourism and Wildlife because they are two different Ministries. So, even if he is acting, the matter should be dealt with by the officers in the Ministry of Tourism and Wildlife and not the Ministry of Information and Communications.

Dr. Godana: Mr. Deputy Speaker, Sir, I fully agree with the logic of your reasoning but, in fact, in the interest of us not wasting further time, we should query whether, in fact, the Question does not belong to the Minister for Lands and Housing. The Question is: Which is the authoritative office in this country for determining ownership of property or which keeps records of ownership of property?

Mr. Deputy Speaker: I agree, but the matter of this particular Question is: Should it be answered by the Minister for Information and Communications? I think in order for Mr. Sasura to have his Question answered as quickly as possible, I will request the Clerk to ensure that the Question be directed to the correct Ministry as soon as possible.

Mr. M. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to say that the Minister for Information and Communications cannot answer this Question when it is a matter of public record that when this building was taken over it was, in fact, that Minister for Information and Communications who stormed into the building and took it over?

(Applause)

Mr. Deputy Speaker: That may be so again, but this is a Question directed to a Ministry and not to a person. So, I still think that it should be directed to the Ministry of Tourism and Wildlife and let it come to the House for answering on Wednesday. The Minister should be informed that he is required to answer that Question on Wednesday.

(Question deferred)

QUESTIONS BY PRIVATE NOTICE

DEATH OF JOHN MUIRURI WAITHIRA IN SHAMATA POLICE CELL

Mr. Muchiri: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State, Office of the President, the following Question by Private Notice:-

(a) Is the Minister aware that Mr. John Muiruri Waithira from Warukira area died on 31st October, 2004 in the police cell at Shamata Police Post in Ndaragwa Constituency?

(b) Is he further aware that prior to his death, he was brutally beaten and manhandled by the police?

(c) Could the Minister confirm the result of the post-mortem?

(d) Could the Minister inform the House what action he has taken against the two police officers who perpetrated the heinous act?

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

(a) Yes, I am aware that Mr. John Muiruri Waithira died while at Shamata Police Patrol Base on the night of 26th October, 2004 at around 3.30 a.m. and not on 31st October, 2004 as indicated in the Question.

(b) No, I am not aware that the deceased died as a result of being beaten by police officers.

What happened is that the deceased was involved in a fight on 24th October with one Charles Ndung'u Wahome after the latter person accused the deceased of attempting to defile his three-year-old daughter. The police arrested the now late Muiruri and placed him in the cells from where he died.

(c) Post-mortem was conducted and revealed the cause of death which was due to a head injury caused by a blunt object.

(d) After the death, an Inquiry File No.18 of 2004 was opened to establish the cause of death. The file has been forwarded to the Attorney-General for perusal and direction.

Mr. Muchiri: Mr. Deputy Speaker, Sir, you have heard what the Assistant Minister has said. The late John Muiruri died in a police cell because of being beaten with a blunt object. Could the Assistant Minister reveal who beat the late Muiruri if not the police?

Prof. Kibwana: Mr. Deputy Speaker, Sir, when the wife of Charles Ndung'u Wahome reported to him that the deceased had taken his three-year-old daughter, Teresia Wanjiku, to a bush near the trading centre and had started defiling her, Wahome actually followed the deceased and a fight broke out. The fight attracted members of the public who separated the two and the preliminary information is that, in the course of that fight, the deceased was injured.

Mr. Waithaka: Mr. Deputy Speaker, Sir, if I heard the Assistant Minister well, he said that the deceased died as a result of a fight between him and one Charles Ndung'u Wahome, who is a known person. The fight occurred because the deceased wanted to defile the said Charles Ndung'u Wahome's daughter. What action has been taken against Charles Ndung'u Wahome instead of opening an inquiry file, if the deceased did not die after being beaten by the police?

Prof. Kibwana: Mr. Deputy Speaker, Sir, under normal circumstances, Charles Ndung'u Wahome should be arrested so that he stands trial for this crime.

Mr. Muchiri: Mr. Deputy Speaker, Sir, I think the answer is very unsatisfactory. Mr. Ndung'u has denied that the late Muiruri was defiling the child. That is not true. The story was very well covered by the media. The person by the name of the late Muiruri died in the police cells after having been beaten by the police. So, they are just covering up this matter. If it is Mr. Ndung'u who beat the person, can he therefore be arrested? Secondly, the Office of the President transferred the police officers from Shamata Police Post to another station because they know that they were the culprits in the beating. They are just covering up the whole situation!

Prof. Kibwana: Mr. Deputy Speaker, Sir, it would be wrong for the Office of the President to cover any crime. However, given the information that the hon. Member has provided to me, I will ask the Commissioner of Police to appropriately investigate this matter.

Mr. Deputy Speaker: Very well! Next Question by Mr. Muiruri!

GOVERNMENT POSITION ON
ALTERNATIVE PRESS

Mr. Muiruri: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Information and Communications the following Question by Private Notice.

(a) Is the Minister aware that certain publications, especially, *Confidential*, *Independent*, *Patriot*, *Sun* and *Citizen* are maligning innocent people, breaking families and engaging in money extortion through irresponsible journalism?

(b) What is the Government's position on these publications and what measures has he put in place to regulate their operations?

The Assistant Minister for Information and Communications (Mr. Were): Mr. Deputy Speaker, Sir, this Question has been answered before. However, there was some information that

was requested by one hon. Member regarding publications that had fulfilled the requirement of executing the Kshs1 million bond. This information is with the Attorney-General's office and we are trying to pursue it but we have not been able to do that. I will, therefore, request that this Question be deferred to next week.

Thank you.

Mr. Muiruri: Mr. Deputy Speaker, Sir, this Question was, at first, addressed to the Attorney-General. Later on, it was taken to the Office of the President and again transferred to the Ministry of Information and Communications. This Question has never been answered! How long is it going to remain on the Order Paper? The same gutter press is going round with a lot of malice and extorting money from innocent people. We only have to refer to last week's gutter press which is accusing all hon. Members of having turned---

Mr. Deputy Speaker: Mr. Muiruri, let me now ask the Assistant Minister when he will answer the Question.

The Assistant Minister for Information and Communications (Mr. Were): Mr. Deputy Speaker, Sir, I will request for a week; next week on Thursday.

Mr. Deputy Speaker: Okay. Mr. Were, let that be the last time!

(Question deferred)

Next Question, Mr. ole Ntutu!

REPRIMANDING OF OFFICER FOR
IRREGULAR PREPARATION OF
KEEKOROK LODGE LEASE

Mr. ole Ntutu: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Local Government the following Question by Private Notice.

(a) Is the Minister aware that the officer in the Ministry who approved the request by the Narok County Council to lease Keekorok Lodge to Wilderness Lodges has not been reprimanded as promised by his Permanent Secretary?

(b) What action has the Minister taken to ensure that the officers responsible for the irregular preparation of the lease of Keekorok Lodge are penalised for their mistakes?

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

(a) The Permanent Secretary did not, at any time, promise to reprimand the officer who approved the request by the Narok County Council to lease Keekorok Lodge to Wilderness Lodges. However, the officer was addressed a letter to show cause why disciplinary action should not be taken against her for not making necessary consultations before conveying the approval.

(b) The two officers were subjected to the normal disciplinary process; with one of them being suspended and the other asked to explain the circumstances under which approval was granted. In view of the explanations given by the officers and the fact that there is a pending court case concerning the matter, it would be considered imprudent to penalise them.

Thank you.

Mr. ole Ntutu: Mr. Deputy Speaker, Sir, could the Assistant Minister explain to the House why the former Narok County Council Clerk, Mr. Mulanga, was suspended? Moreover, why was Mr. Ondimo, who is now the current Narok County Council Clerk taken back there four times? What is the Ministry's position on that particular officer? What is the interest of the Ministry in the

officer?

Mr. Tarus: Mr. Deputy Speaker, Sir, the matter was dealt with and concluded. The issue of the clerk who is currently at Narok County Council has no relationship with this other issue.

Mr. Deputy Speaker: Last question, Mr. ole Ntutu!

Mr. ole Ntutu: Mr. Deputy Speaker, Sir, what special skills or ethics does this particular officer, Mr. Ondimo, have to warrant him to go back to Narok County Council for the fourth time? Is it because he is the Permanent Secretary's cousin?

(Applause)

Mr. Tarus: Mr. Deputy Speaker, Sir, I am not aware of the relationship between the officer and any other officer in our Ministry. In any case, that particular officer holds relevant qualifications to serve in that particular council.

Mr. Deputy Speaker: Next Question, Prof. Olweny!

NON-RELEASE OF DEVELOPMENT LOANS
TO SUGAR SACCOS BY KSB

Prof. Olweny: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Agriculture the following Question by Private Notice.

(a) Is the Minister aware that the Kenya Sugar Board (KSB) has refused to release sugar development loans to Kisumu Sugarbelt Co-operative Union and Muhoroni Multipurpose Society?

(b) Could the Minister inform the House the reasons for this refusal?

The Assistant Minister for Agriculture (Mr. Akaranga): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that the KSB has not released development loans to Kisumu Sugarbelt Co-operative Union and Muhoroni Multipurpose Society.

(b) The KSB has not released the loans for the following reasons. The collateral offered by the Kisumu Sugarbelt Co-operative Union title No. Kisumu/Municipality Block7/144 was encumbered by the Commissioner of Income Tax under Section 3(2) of the Income Tax Act to the sum of Kshs200,000. Once the Kenya Revenue Authority (KRA) has issued a clearance certificate to the security, KSB will charge the same and release the loan of Kshs123,132,000 to the Kisumu Sugarbelt Co-operative Union.

Secondly, the KSB has approved a loan of Kshs73,338,594 to the Muhoroni Multipurpose Co-operative Society but the amount has not been released because the society has not met all the conditions set out in the letter of offer.

Thank you.

Prof. Olweny: Mr. Deputy Speaker, Sir, as regards this collateral affair by the Kisumu Sugarbelt Co-operative Union, the loan was for farmers to develop sugar-cane; to help alleviate poverty and create employment. Could the Government, therefore, consider waiving this tax?

Mr. Akaranga: Mr. Deputy Speaker, Sir, that is a completely different Question seeking waiver of tax. The only advice I have for the hon. Member is to let the co-operative union apply for tax waiver through normal channels. If the Commissioner of Income Tax accepts, it will be well and good.

Mr. Deputy Speaker: Last question, Prof. Olweny!

Prof. Olweny: Mr. Deputy Speaker, Sir, as regards Muhoroni Multipurpose Co-operative Society, what are the conditions specified in the letter of offer?

Mr. Akaranga: Mr. Deputy Speaker, Sir, the conditions were laid down in the letter of offer. The title deeds for the parcel offered as collateral are supposed to be forwarded to the KSB. There must be a special resolution pledging the title deed as collateral for security and there must also be evidence of filed returns with the Commissioner of Co-operatives to enable debentures to be registered. There should also be a certificate from the Ministry of Co-operative Development and Marketing, authorising borrowing of the funds.

Mr. Deputy Speaker: Next Question and the last one on the Order Paper. Eng. Muriuki!

FUNDING FOR OL JORO
OROK REHABILITATION CENTRE

Eng. Muriuki: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Gender, Sports, Culture and Social Services the following Question by Private Notice.

(a) Is the Minister aware that Ol'Jororok Rehabilitation Centre for the disabled is about to close due to lack of funding?

(b) How many students is the centre supposed to cater for and how many does it have now?

(c) What is the total allocation for the centre this financial year?

(d) What measures has the Minister taken to save the centre from collapse?

The Assistant Minister for Gender, Sports, Culture and Social Service (Mrs. Chelaite): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that Ol'Jororok Rehabilitation Centre, Nyandarua, is closing due to lack of funds.

(b) The centre is supposed to cater for 50 students but currently it has seven students.

(c) The total allocation for the centre this financial year is Kshs238,758.

(d) The measures taken to save the centre from collapsing are; providing the centre with more instructors who are better trained; increasing the capacity of the officers already in the centre in order to instruct the new students and finally, increasing funding of the centre through extra allocations.

Eng. Muriuki: The Assistant Minister's response to parts (a) and (b) are totally contradictory of each other. Disabled persons have been completely forgotten in this country, both in the Budget and socially. Ol'Jororok Rehabilitation Centre is among the very few institutions which give vocational training to disabled persons in this country. Initially, she said that she was not aware. Subsequently, she said that there are only seven students, instead of 50 students. The fact is that the students go home at the end of the day, because there is neither food nor water at the centre. What explanation can she give for having only seven students at that centre, instead of 50 students if, indeed, there is sufficient funding?

Mrs. Chelaite: Mr. Deputy Speaker, Sir, as I said, we have allocated funds to rehabilitate the centre this year. We have arrangements to recruit more disabled people to join the centre. I want to inform the hon. Member---

(Loud consultations)

Mr. Deputy Speaker: Order! Order, hon. Members! Please, let the Assistant Minister reply!

Mrs. Chelaite: Mr. Deputy Speaker, Sir, I would like to inform the hon. Member that disabled people have not been forgotten in this country. It was only yesterday when we launched the "Persons With Disabilities Council." My Ministry is strategising for rehabilitation of all the

rehabilitation centres in the country.

Ms. Abdalla: Mr. Deputy Speaker, Sir, the Assistant Minister has informed us that she has allocated Kshs238,000 to cater for the 50 students at that centre for the whole year. That means, they have allocated Kshs400 per student for the whole year, which is unrealistic. The First Lady said that this Ministry has a lot of money. What plans does the Assistant Minister have to re-allocate the funds that were meant for killing frogs at Nyayo Stadium to that rehabilitation centre?

Mrs. Chelaite: Mr. Deputy Speaker, Sir, I am happy that all the Budget proposals are approved by this House. The funds that we have in our budget for the centre is the amount I have stated. As I said, we are rehabilitating these centres, and we intend to allocate more funds to them. However, we do not have the power to do that, as Ministry. We had requested more funds, but we did not get what we had asked for. So, we will make do with the resources that we have currently.

Eng. Muriuki: Mr. Deputy Speaker, Sir, if the Assistant Minister is serious, could she tell us when the instructors will be posted to the centre? How much money did the Ministry ask for, which it was not given? When will this money be disbursed to the Ol'Jororok Rehabilitation Centre?

Mrs. Chelaite: Mr. Deputy Speaker, Sir, I said that we launched the council yesterday. We are going to work with the members of the council to see that the money that has been allocated is put into use. Lastly, new instructors will be availed as soon as possible.

Mr. Deputy Speaker: Hon. Members, that brings us to the end of Question Time. I have a few requests from hon. Members who wish to seek Ministerial Statements.

Mr. Ndolo!

POINTS OF ORDER
ESCALATION OF INSECURITY
IN NAIROBI'S EASTLANDS

Mr. Ndolo: On a point of order, Mr. Deputy Speaker, Sir. I rise to seek a Ministerial Statement from the Minister of State, Office of the President, on what is now happening in Nairobi's Eastlands. The security situation in that area is very bad. As I speak, people in Dandora are fighting. I do not even think the Minister is aware of that. The police are doing nothing. The hotlines are not working. The other day, one person came to Parliament Buildings and caused a disturbance. Very soon, we will have more than a million people from Eastlands coming to remove the Minister from this House. Am I not right, Mr. Mwenje?

(Laughter)

Mr. Deputy Speaker, Sir, the security situation in Eastlands is very bad. The people are suffering too much!

Mr. Deputy Speaker: Order! Order, Mr. Ndolo! Stop getting emotional. Ask for your Ministerial Statement. The Minister will take note and come here to respond to your request.

The Assistant Minister, Office of the President (Prof. Kibwana): Mr. Deputy Speaker, Sir, the hon. Member needs to ask a specific question about insecurity. I do not think he has asked for a *bona fide* Ministerial Statement.

Mr. Deputy Speaker: Order! Order, Prof. Kibwana! You cannot say that Mr. Ndolo has not asked for a *bona fide* Ministerial Statement. For your information, before an hon. Member seeks a Ministerial Statement from the Floor of this House, the facts of the matter he wishes to raise are forwarded to the Speaker in his Chamber, who approves them. So, Mr. Ndolo brought his request to me, which I approved. So, it is not proper for you to say that the hon. Member has not asked for

bona fide Ministerial Statement.

Mr. Ndolo, could you repeat your request slowly, and without getting emotional?

Mr. Ndolo: Mr. Deputy Speaker, Sir, I said that, right now, people are fighting in Dandora. The police are not there. The *Mungiki* have taken over estates. Last week, thugs in my area took over an entire estate, and the police did nothing. Yesterday night, thugs moved around an estate, breaking people's houses and taking women outside. In fact, one of the Assistant Ministers in this Government, from Nairobi, goes to my estate every evening. When he leaves, we hear that thugs have invaded that area.

An hon. Member: Who is that?

Mr. Ndolo: An Assistant Minister of this Government!

Mr. Deputy Speaker: Order! Order! Mr. Ndolo, in that regard, you are completely out of order. In your request to me, you did not mention that point. Otherwise, I would not have accepted it. If you have any issue to raise in this House regarding the conduct of an hon. Member, you should bring a substantive Motion. My understanding was that you wanted the Minister of State, Office of the President, to issue a Ministerial Statement on the general insecurity in Eastlands. That is what you told me. Is that not it?

Mr. Ndolo: Yes, it is, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Very well. Mr. Assistant Minister, that is the issue being raised by Mr. Ndolo.

The Assistant Minister, Office of the President (Prof. Kibwana): Mr. Deputy Speaker, Sir, with due respect, I appreciate your assistance to Mr. Ndolo to get focused. However, it is incorrect for an hon. Member to say that people will march to Parliament Buildings and remove the Minister from here, and that whenever an unnamed Assistant Minister visits Eastlands, thugs raid the area. So, I do not think that is a *bona fide* Ministerial Statement.

Mr. Deputy Speaker: Order! Order! Prof. Kibwana, you heard me correct Mr. Ndolo. There is no reason for you to re-visit an issue that the Chair has ruled out of order. So, you will bring to this House a Ministerial Statement on the general insecurity in Eastlands.

Next request, Mr. Mwenje!

OWNERSHIP OF LAND REF:LR.No.11379

Mr. Mwenje: On a point of order, Mr. Deputy Speaker, Sir. The other day, I raised a Question with regard to land, LR.No.11379. I wanted the Ministry of Lands and Housing to tell us the true position on the ground. I am having a lot of problems, because the other day the Assistant Minister said that it belongs to Kiambu/Dandora. I informed him that it belongs to some squatters who had also settled on the land. Now I have received another letter today from the Provincial Commissioner, Nairobi area, which is referring to another letter written by the Commissioner of Lands, a Mrs. Okungu---

Mr. Deputy Speaker: Order, Mr. Mwenje! What specifically do you want a Ministerial Statement on?

Mr. Mwenje: Mr. Deputy Speaker, Sir, I can see Mr. Ojode is here and I would like him to tell us what the true position is. Who really owns this particular land, because now there is total confusion on the ground and people are likely to start killing one another?

Mr. Deputy Speaker: Which land, Mr. Mwenje?

Mr. Mwenje: Mr. Deputy Speaker, Sir, it is LR.No.11379/3. That is the reference number.

Mr. Deputy Speaker: Very well! The Assistant Minister has heard you.

The Assistant Minister for Lands and Housing (Mr. Ojode): Mr. Deputy Speaker, Sir,

indeed, I replied to that Question here, and we still stand by the answer that I brought to the House. I cannot contravene a court ruling, and we will go by that.

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

Mr. Deputy Speaker: Order, Mr. Mwenje! This is a matter that came here in the form of a Question. Now, I am not going to allow supplementary questions on the same, because the Question is not on the Order Paper. You have already asked the Assistant Minister to bring a Ministerial Statement. If he wishes to talk about that particular Question in his Ministerial Statement, that is fine. He may bring a Ministerial Statement and allude to the fact that he had already responded as he has said.

Mr. Mwenje: Mr. Deputy Speaker, Sir, I am only seeking clarification on what he has said here. If the Assistant Minister stands by what he has answered, could he, therefore, withdraw this letter which has been written to me by the Commissioner of Lands, because it is now clear that the land is owned by the---

Mr. Deputy Speaker: Order! I have said that we are not going to start raising further questions on this matter, but there is room for the Assistant Minister to bring a Ministerial Statement and state the facts he is trying to bring up.

COMMUNICATION FROM THE CHAIR

RECOMMITTAL OF THE CONSTITUTION OF KENYA REVIEW (AMENDMENT) BILL

Mr. Deputy Speaker: Hon. Members, before we move to the next Order, I wish to make the following Communication from the Chair.

Hon. Members, you will recall that after the House passed the Constitution of Kenya Review (Amendment) Bill, 2004, on Wednesday, 4th August, 2004, His Excellency the President declined to give his assent to the Bill pursuant to Section 46(4) of the Constitution. You will also recall that His Excellency the President submitted a memorandum to my office which has since been circulated to all hon. Members, indicating the specific provisions of the Bill which require to be reconsidered by the House.

I communicated that to this House and read the full memorandum from His Excellency the President. I have once again availed copies of the memorandum by His Excellency the President to all hon. Members. Section 46(5) provides that the National Assembly shall reconsider a Bill referred to it by the President taking into account the recommendations of the President, and shall either approve the recommendations with or without amendments or refuse to accept the recommendations and, therefore, approve the Bill in its original form by a resolution supported by votes of not less than 65 per cent of all hon. Members of the National Assembly, excluding *ex-officio* Members.

As hon. Members are aware, Standing Order No.111(1) and (2) provides that on re-committal of Bills, the Committee of the Whole House considers only those matters that are specifically referred to it for reconsideration. And the procedure on a Bill re-committed shall be *mutatis mutandis*, that on a Bill on first committal. This means that only amendments to the specific clause being reconsidered shall be undertaken.

The following is the procedure that is to be followed in the re-committal of the Constitution of Kenya Review (Amendment) Bill, 2004. Now, as soon as the Order for the Committee is read, that is Order No.7 on your Order Paper, the House will proceed to the Committee. The Minister in

charge of the Bill will then move the Motion for consideration of the Bill as recommitted. The Committee will then consider the specific recommendations by His Excellency the President as indicated on the Order Paper and approve the same with or without amendments. For the avoidance of doubt, the Clause that His Excellency the President wishes to be deleted reads:-

"THAT, Clause 5 be amended by inserting the following new Sub-section 27(1)(c) to read:-

Every recommendation to the Attorney-General for amendment to the Draft Bill on the contentious issues shall be by consensus or must be supported by the vote of not less than 65 per cent of all the Members of the National Assembly excluding the *ex-officio* Members".

On conclusion of the consideration, the Committee will then report to the House. In the event that the Committee adopts the Bill as recommended by His Excellency the President with or without amendments, then, pursuant to the provisions of Section 46(5)(a) of the Constitution, a simple majority will be adequate to pass the amendment as recommended by His Excellency the President. However, if the Committee rejects the recommendations by the President in total, a majority vote of not less than 65 per cent will be required for the Bill to be assented to.

Now, the essence of Section of 46(5)(b) is that, for the House to reject the recommendations by His Excellency the President, it requires a requisite number of 145 Members. That is 65 per cent of the total Membership of House.

On the reporting procedure after the Committee, the Bill will not be Read a Third Time as this was actually done, and the Bill was passed on 4th August, 2004. It is, therefore, sufficient that as a resolution of the House adopting or rejecting the Report of the Committee of the Whole House in accordance with Standing Order No.113, read together with Standing Order No.109(1) and (2), which states *inter alia* that "the House doth agree with the Committee in the said Report", would satisfy Section 45(5) of the Constitution, and will be in conformity with the rules of procedure on committal of Bills as amplified by Standing Order No.111(1) and (2).

Hon. Members, we will, therefore, proceed to the Committee of the Whole House to reconsider Clause 5, Sub-section 27(1)(c). But allow me to emphasise that the Committee cannot amend any other section that is not subject to the Presidential memorandum. The other clauses are not subject to reconsideration since they had been passed on Wednesday, 4th August, 2004 and the Bill Read a Third Time.

Now, hon. Members you will recall, particularly those who were here during the Eighth Parliament, that we went through this procedure and it is my desire or the desire of the Chair that even before we move to the Committee hon. Members are very clear on the procedures that we are going to follow so that we will have no misunderstanding whatsoever when we go to the Committee. Therefore, I will actually invite hon. Members to seek any clarification before even we move to the Committee Stage.

Thank you.

Mr. Kenyatta: On a point of order, Mr. Deputy Speaker, Sir. I seek clarification on your ruling on the next Order. With all due respect to the powers that are conferred on the President by the Constitution, I think, as a House too, we are bound by both our Standing Orders and the same Constitution, not to entertain anything in this House that may be deemed to be unconstitutional. I seek your ruling because I believe what we are about to entertain is, in fact, unconstitutional.

(Applause)

Mr. Deputy Speaker, Sir, a Select Committee on the Constitutional Review Process was

established by this House. In the last few weeks, we have been grappling very seriously with the fact that, what has commonly been referred to as the "Consensus Bill" that was passed by this House was, in fact, unconstitutional. That fact has been recognised and challenged by people outside this House. That fact has also been recognised by the President himself. We have been grappling with that issue as a Committee because, at the end of the day, what we all desire is not just to shepherd in a new Constitution which will be open to all sorts of legal challenges, but to do it in a manner that is grounded on the very Constitution that we swore to uphold as Members of Parliament.

(Applause)

Mr. Deputy Speaker, Sir, while grappling with this issue---

(Mr. Angwenyi consulted loudly)

Mr. Deputy Speaker: Mr. Angwenyi, could we, please, pay attention to what the hon. Member is saying! Mr. Kenyatta is on a point of order and he has the Floor!

Mr. Kenyatta: Mr. Deputy Speaker, Sir, if I may continue, they will make their comments when you give them the opportunity!

Mr. Deputy Speaker: Order, Mr. Kenyatta! I want you to be clear that we are not in a hurry!

(Loud Consultations)

Order, hon. Members! What I am saying is that I will open this debate to be clear on the procedure. Therefore, whatever it is, I would want it to be clear.

Proceed, Mr. Kenyatta!

Mr. Kenyatta: Thank you very much, Mr. Deputy Speaker, Sir. As I was saying, the Committee has struggled very seriously with this particular issue. It has become very clear to the majority of the Members of that Committee that, the only true way we can shepherd a new Constitution and use a path that is open to the least legal challenges, is only by amending Section 47 of our current Constitution.

Mr. Deputy Speaker, Sir, to show the seriousness that the Committee---

Mr. Deputy Speaker: Mr. Kenyatta, I want you to confine yourself to the issues of procedure on the Memorandum that is before us! I mean the procedure as we go to the Committee Stage.

Mr. Kenyatta: Mr. Deputy Speaker, Sir, as much as we want to confine ourselves to the procedure--- It is true that we want to confine ourselves to the procedure. But, at the same time, this is a constitutional matter! We cannot ignore the constitutionality of the whole process.

Mr. Deputy Speaker, Sir, I put it to you that the Committee even called the Chief Legal Advisor of the Government; that is, the Attorney General, to give us his view on this. Before us, we have--- I wish to table this Report!

(Mr. Kenyatta laid the document on the Table)

(Applause)

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir.

(Dr. Murungaru interjected)

Mr. Deputy Speaker: Actually, I had recognised Dr. Khalwale! But I will give you a chance.

The Minister of State, Office of the President (Dr. Murungaru): On a point of order, Mr. Deputy Speaker, Sir. If you could protect me from some fellows back there!

Mr. Deputy Speaker, Sir, you ruled that the---

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order, all of you! I want, again, to use the words of Mr. Speaker. I want everybody to relax, so that we can have a decent debate on a very important matter. What I asked Mr. Kenyatta to do was to confine himself to the matters of procedure with regard to the business that we are transacting. Mr. Kenyatta, have you finished, so that I can give a chance to somebody else?

Mr. Kenyatta: No, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: But you stood on a point of order! I will give you just a minute!

Mr. Kenyatta: Mr. Deputy Speaker, Sir, let me summarise by saying that, as much as you are asking us to procedurally limit our debate to the very clause that the President has referred back to this House, the question of the unconstitutionality of the entire Bill that, that clause is part of, is relevant. I think the ruling that we desire you to make is a ruling that I believe the Attorney-General, himself, would stand by before this House, if he is an honourable gentleman who can stand by his word, and by his opinion which I have tabled before you, Mr. Deputy Speaker, Sir! I ask that you rule that it is improper for us to discuss in this House a Bill, or sections of a Bill, that have been deemed to be unconstitutional!

(Applause)

Mr. Deputy Speaker: Dr. Murungaru, you were on the Floor! Would you like to say something?

The Minister of State, Office of the President (Dr. Murungaru): Mr. Deputy Speaker, Sir, I wish to seek guidance from the Chair. You had ruled that only points of procedure should be raised at this stage, so that we understand the procedure that we shall go through, as we debate the memorandum from the President. It appears to me as if we have already started debating. If that is the case, could we then expeditiously proceed to the Committee of the Whole House and start debating?

(Applause)

Mr. M. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. I stand to seek your ruling on a matter of extreme and grave concern. Is it in order for this Order to be, in fact, on the Order Paper in this form? Is it also in order for this House to debate a matter that shows very clearly that the President, himself, in writing this memorandum, is violating the Constitution?

(Applause)

Mr. Deputy Speaker, Sir, I seek your ruling on the following point. The only person who has sworn to protect and defend the Constitution of the Republic of Kenya is Honourable Mwai Kibaki, the President of this country. That Constitution has got its procedures for its amendment. The memorandum that has been brought before this House is relating to the Constitution of Kenya Review (Amendment) Bill, which seeks to provide the procedure for amending the Constitution. If you look at the memorandum from His Excellency the President, it is referring to Clause 27, Subclause 1, Subclause (c). That clause was inserted by this House on the following understanding and circumstances:- This is crucial and very important. That clause was part of certain clauses that came at Committee Stage for purposes of amending the original Bill. Those particular amendments were never debated this House. To make matters worse, that particular sub-clause seeks to protect---

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

Mr. M. Kilonzo: Mr. Deputy Speaker, Sir, if you could protect me---

Mr. Deputy Speaker: Order! You must be quick on your point of order.

Mr. M. Kilonzo: I will be very quick, Mr. Deputy Speaker, Sir. As long as Clause 27(1)(c) raises the minimum threshold for interfering with the Bomas draft and the President wants it deleted, he is violating the Constitution of the country because it means the Constitution will be amended on a majority rather than that which is stipulated by Section 47 of the Constitution. Therefore, I seek your ruling.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, with all due respect, I thought you clearly stated that we have not started debate on the clause and that we are trying to seek clarification on the procedure. I do not understand how discussing a report of the Select Committee which has not been laid on the Table in this Parliament is part of the procedure. You either abide by your direction or you change to another direction and we start debating the report right now.

The Assistant Minister for Energy (Mr. Kiunjuri): On a point of order, Mr. Deputy Speaker, Sir. I am on a point of order and clarification from the Chair. Any business becomes the business of this House once the order is read. We have no business before the House because the order has not been read so far. Is it in order for Mr. M. Kilonzo, Nominated Member of Parliament, to deceive the House that the President is acting unconstitutionally while---

(Loud consultations)

You will not win by shouting; you will win by your own votes. You had better keep quiet and listen. Section 46 of our Constitution is very clear, that the President can exercise his power at any given time and that is what he did. You can only challenge that through this House.

Finally, we are debating on the Constitution of Kenya Review (Amendment) Act which was amending a Bill which was before this House. It is an Act of Parliament to amend the Constitution of Kenya Review Act. All those matters can only come in and be debated when the matter is properly before the House. So, I seek your guidance as to what particular time this Bill is properly before the House.

Mr. Deputy Speaker: I will listen to two more then I will give a ruling.

Mr. Muite: I had not finished my point of order!

The Minister for Trade and Industry (Dr. Kituyi): Mr. Deputy Speaker, Sir, the matter before us is of national importance and of very substantial importance to the credibility of the

Government. Opportunities like that of a controversial matter are also a test on the credibility of the Parliament. I want to beseech you to guide us through this critical matter in such a way that our passions do not override our reason. You set out a procedure to follow. I did not want to raise any point of order because I thought you were right in espousing what procedure is to be followed. I did not understand what anxiety made you doubt your own statement of procedure to engage us to debate your ruling.

(Applause)

Obviously, you must be satisfied that you had made a good ruling because nobody has challenged your ruling on procedure. So, I beseech you, as a way of keeping us to remain honourable; can you not steer us away from the preliminary skirmishes, have the business moved, and give us a chance to listen to each other?

Mr. Deputy Speaker: Dr. Kituyi is quite right. I did say that I wanted us to be very sure that we understand the procedure before we go to the Committee Stage. It is a matter of exchanging procedures. I want to plead to hon. Members not to dwell on debate on the matter because you will have opportunity to debate on it.

(Mr. M. Kilonzo stood up in his place)

What is it, Mr. M. Kilonzo? I thought you had finished.

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

Mr. Deputy Speaker: Just a minute, Mr. Muite.

Mr. M. Kilonzo: I had not finished my point of order. As a conclusion of my point of order, I wanted to appeal to the Chair to revise the decision that the Chair made in the Donde Bill. I have not been able to trace any other decision in which the issue of how a presidential memorandum is to be dealt with. It is my considered view, and my request for a ruling on this point, that whenever a President refers a memorandum to the Chamber, it must be reconsidered under Section 46. I have a dictionary definition of the term "reconsideration". Reconsideration requires full debate, where every Member of this Chamber is given an opportunity to comment. Therefore, I am requesting you to make a ruling, revise the Donde Bill ruling, and offer this Chamber the opportunity to use the word "reconsideration".

Finally, I have done research as to whether the word "reconsider" under Section 46 has ever been considered. I request you to make a finding and ruling as to the meaning of "reconsideration" under that particular section.

Mr. Muite: Mr. Deputy Speaker, Sir, when you invited hon. Members to seek clarification, I said that the Chair was so clear on the procedures to be followed that I was unable to think of any clarification to seek. What has happened here shows clearly that it is not clarifications which are being sought. I agree with Mr. M. Kilonzo that hon. Members should be given adequate time to debate. May I beseech and plead with you that you now call on the Clerk to call the Seventh Order so that we can go straight to the debate.

(Mr. Samoei stood up in his place)

Mr. Deputy Speaker: What is it, Mr. Samoei?

Hon. Members: Ahh!

Mr. Deputy Speaker: Mr. Samoei, restrict yourself to the procedure, not the debate.

Mr. Samoei: Thank you, Mr. Deputy Speaker, Sir. I will restrict myself to the procedure.

This House operates on Standing Orders that derive their legitimacy from the Constitution. We will not do anything in this House that contravenes the very Constitution that both establishes this House, and the Standing Orders on which we guide debate in this House. The business of discussing the Consensus Bill that will be brought before this House seeks to provide a way of bringing about a new Constitution outside the very Constitution that establishes both this House and the Standing Orders. Section 40(3)(b) of our Standing Orders says this House shall not discuss anything that is contrary to the Constitution. I want to seek your ruling on the constitutionality of this Bill because it is important to this House and to the Constitution.

Mr. Deputy Speaker, Sir, for your information, the Attorney-General of the Republic of Kenya has said, and I will quote: "There is no way we can review the Constitution without providing for it in the Constitution itself". What we are about to do here has no constitutional basis. I want you to make a ruling on that issue because it is a very important issue.

Mr. Deputy Speaker: Hon. Members, I have listened to your views, but I still want you to know that when we go to the Committee of the whole House, the issues that you are raising can be raised then in form of debate. It is not right for us to debate these issues now. They will be debated in the Committee and, therefore, a decision will be taken then.

Dr. Godana: On a point of order, Mr. Deputy Speaker, Sir. I want to appeal to you and to all the hon. Members, particularly to my friends on the opposite side, that we should try to be as sober as the occasion demands. We are dealing with a grave matter, as hon. Members have said. There is no doubt that the procedures of this House are founded in the Standing Orders and in the Constitution. The constitutional review process has gone on for more than two years. It has had its ups and downs. In the last two months, this House has tried to find a bi-partisan position. We have enacted legislations here, and as part of those compromises, we have even ended up with the Bill, which the President has rejected as unconstitutional and, indeed, it is unconstitutional. Even so, the Parliamentary Select Committee reached a consensus on many contentious issues.

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

Dr. Godana: I am on a point of order and you do not interfere with an hon. Member who is on a point of order! I never interfered with the previous hon. Member who was on a point of order.

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

Mr. Deputy Speaker: Mr. Gachagua, Dr. Godana is on a point of order!

Hon. Members: Throw him out!

Mr. Deputy Speaker: Order, hon. Members! I thought Dr. Godana said that we should be sober on this matter.

Dr. Godana: Mr. Deputy Speaker, Sir, I have not, and I will not debate the merits of the Bill except what concerns---

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

Mr. Deputy Speaker: Dr. Godana is on a point of order. Let him finish!

Dr. Godana: Mr. Deputy Speaker, Sir, I will be very brief. There is only one chief law officer of State in this country, who is also the constitutional legal officer. The Attorney-General is the constitutional office holder and not the Minister for Justice and Constitutional Affairs.

Mr. Deputy Speaker: Order Dr. Godana!

Mr. Gachagua: Mr. Deputy Speaker, Sir, you had made a ruling yourself, but you are allowing your own [Mr. Gachagua] orders to be defiled by hon. Members in the House.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! I will hear the last two people.

The Minister for East African and Regional Co-operation (Mr. Koech): Mr. Deputy Speaker, Sir, it has been put rightly that soberness should prevail. You made a very good introduction. You have clarified the issue by stating how we should proceed with this matter. Some of us did not find any need to challenge your ruling. You made it very clear. However, what is coming up is the discussion of the substantive issue. I think I will be in order to ask you to order the Clerk that we proceed. If the hon. Members have any issues to raise, they will raise them when we will be discussing the Bill. Let me plead with you to make the final ruling, and let us go to the main substance of the debate.

Mr. Kajwang: Mr. Deputy Speaker, Sir, you have given directions on procedure, and the procedure is as set out in the Order Paper. The procedure also includes the legality of the subject matter to be discussed.

(Applause)

If, for any reason, we bring to your attention that a matter which is just about to be discussed is unconstitutional, you are under duty to make a ruling. So, we are asking you a simple question. You should consider the matter which we are raising, that the matter which we are just about to discuss seeks to amend the Constitution unconstitutionally. Consequently, it has no legal or constitutional foundation and should never be debated by this House. That is the matter that we are raising. We are asking the Chair to make a ruling that this House shall not debate an unconstitutional Bill, whether before or after it has been brought back to the House by His Excellency the President. That is a very simple matter on which we need a ruling. If you make a ruling that we go on, whether or not it is unconstitutional, it would be dangerous. If you make a ruling that you are satisfied that it is constitutional and we proceed, then we will proceed. If you make a ruling that it is unconstitutional, then we will proceed accordingly to the next Order, because then we cannot debate it. That is the ruling that we want from you and it is important that it is made before we go to the Order.

Mr. Deputy Speaker: Well, hon. Members, as I said, the Constitution of Kenya Review (Amendment) Bill, was passed. It may have been constitutional or not, but this House passed it on 4th August, 2004. The purpose for today is not to go through the Bill to find out whether it is constitutional or not. The purpose of today is to look at the President's Memorandum. The President's Memorandum is the reason why we are here today, and not to look at the Bill in full. Therefore, I find it very difficult to involve the Chair into the legality of the Bill which the House passed a long time ago. Therefore, those arguments may suffice, but let them be argued in the Committee.

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

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

THE CONSTITUTION OF KENYA
REVIEW (AMENDMENT) BILL

*(Several hon. Members withdrew
from the Chamber)*

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! We are on Order No.7, Committee of the whole House.

Proceed Mr. Minister!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, pursuant to the Memorandum by His Excellency the President, that Clause 5 of the Constitution of Kenya Review (amendment) Bill, 2004, be amended by deleting the proposed Section 27(1)(c).

Mr. Temporary Deputy Chairman, Sir, this proposed Section 27(1)(c) does not appear as such in the original Bill, which we debated in this House. In the original Bill, which has been circulated to Members, the clause appears as Clause 27(2). But after the Bill was passed by the House, a vellum copy was prepared by the Parliamentary Counsel, and this final copy which was taken to the President for assent, and which I would like to table in the House, was revised and re-numbered to incorporate the amendments that the Members introduced on the Floor of the House. So, under the vellum copy which was sent to the President, what is in your Clause 27(2) is now Clause 27(1)(c). That is why the President keeps on referring to Clause 27(1)(c), because this is what was before him. So, there is no mistake at all in referring to Clause 27(1)(c), because, indeed, that is the new re-numbered clause.

Mr. Temporary Deputy Chairman, Sir, the Constitution of Kenya Review Amendment Bill, 2004, is popularly known as the Consensus Bill and was published on 28th June, 2004, after extensive consultations by hon. Members of Parliament. The Bill was considered by this House on Wednesday, 4th August, 2004, and was unanimously passed with amendments by the Committee of the whole House. The proposed Section 27(1)(c) was introduced as a last minute amendment on the Floor of the House and there had been no prior consultation by hon. Members on this amendment.

The proposed Section 27(1)(c) provides that, a recommendation for amendment to the Draft Constitution on contentious issues must be by consensus, or be supported by not less than 65 per cent of Members of Parliament present and voting. The President, in exercise of his powers, under Section 46(3) and (4) of the Constitution, has declined to assent this Bill and referred it back to the House for reconsideration by the House under Section 46(5) of the Constitution. In his Memorandum to the House, the President has explained that the proposed Section 27(1)(c) is inconsistent with Section 54(1) of the Constitution, which makes it mandatory for any question proposed for decision by the National Assembly to be determined by a simple majority, unless, otherwise, decided or determined by the Constitution itself.

The President recommends, in his Memorandum, that the Bill be amended by deleting the proposed Section 27(1)(c) because it is inconsistent with Section 54(1) of the Constitution. Therefore, is there any reason why any Member of this House can disagree or disapprove the Memorandum of the President, as if he can stand up and say that, indeed, Section 27(1)(c) is not

inconsistent with Section 54(1) of the Constitution? There is no other reason on which any Member can refuse to approve this particular amendment.

Mr. Temporary Deputy Chairman, Sir, Kenyans have been waiting for this Constitution for a long time. I beg hon. Members to support the President's recommendation, so that we can unlock the process and move the contents of the new Constitution, which we have now agreed on largely, to the referendum.

Mr. Temporary Deputy Chairman, Sir, with those few remarks, I beg to Move. I would like to invite the Chairman of the Consensus Building Group, Mr. Angwenyi, to second the Motion.

(Applause)

Mr. Angwenyi: Thank you, Mr. Temporary Deputy Chairman, Sir. I stand to second the Motion that we should do as requested by the President and make that Bill, which opens the way forward in our constitutional review, possible as we felt in the Consensus Building Group initially before the Bill was drafted.

Mr. Temporary Deputy Chairman, Sir, I should not say much really. We are all concerned about our Constitution, and we should give our people the Constitution as soon as possible.

With those few remarks, I beg to second the Motion.

(Applause)

(Question proposed)

The Minister for Water and Irrigation (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, I just want to agree with the proposal that the Minister has given and which is the proposal of His Excellency the President. In addition, I want to say very briefly that it is quite clear that this Memorandum is not branding the entire Bill as unconstitutional. If you look at the concluding paragraph of the Presidential Memorandum, it says:

"That built against this background, the proposed Section 27(1)(c) is clearly inconsistent with Section 54(1) of the Constitution, and pursuant to Section 3 thereof, if any other law is inconsistent with the Constitution, the Constitution shall prevail and the other law, to the extent of the inconsistency, be void."

So, what we are really saying is that this clause is the only unconstitutional thing in the Bill. Once we expunge it as per the request of His Excellency the President, the Bill remains constitutional. Even when it is not expunged, by virtue of Section 3 of the Constitution, it is of no effect. But His Excellency the President, in his wisdom, returned this Bill to us to expunge the section, so that there is no debate out there as to the legality of the section; so that we conclude the review without the slightest doubt as to what we are doing.

We are national leaders. We, as hon. Members of this National Assembly, are not only the representatives of our constituents, but we are also the representatives of this nation of Kenya. It is, therefore, our duty to ensure that the Constitution review proceeds without a hitch, and hence, removing this offending section will be satisfying our national duty.

With those few remarks, I beg to support.

Mr. Munya: Thank you, Mr. Temporary Deputy Chairman, Sir. The Memorandum of the President is very specific. It is asking us to deal with a specific clause of a Bill which we have already passed, that contradicts a specific provision of the Constitution. So, contrary to the accusations that are being made and peddled around, what this House is being asked to do is to

uphold the Constitution which we, as Members of this House, swore to uphold. It is important to remember that, that specific provision was introduced on the Floor of this House. It was never part of the Bill that was agreed by consensus by all Members of this House. It was introduced by an individual on the Floor of this House. Therefore, when we are told that we are not agreeing with the consensus, we are being misled. We do not have any choice because it is our responsibility as hon. Members of this House to uphold the Constitution. We can only uphold the Constitution by passing the Memorandum of the President.

With those few remarks, I support.

Mr. Kagwe: On a point of order, Mr. Temporary Deputy Chairman, Sir. In view of the fact that, there seems to be a general agreement in this issue, would I be in order to ask that the question be put?

(Applause)

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Kagwe! In view of the fact that there have been only two contributors, why do you not allow another two more and then reach that conclusion safely?

Dr. Machage!

(Mr. Kimeto stood up in his place)

Order, Mr. Kimeto! Dr. Machage, please, proceed!

The Assistant Minister, Office of the President (Dr. Machage): Mr. Temporary Deputy Chairman, Sir, it is very true that this House, indeed, passed the Bill. There is no doubt about it! It was agreed upon unanimously by both the Opposition and Government sides of the House. It is only that there was a small clause that the President found to be unconstitutional. That is what we should move now.

Mr. Temporary Deputy Chairman, Sir, to show Kenyans how wise we are, we should see what His Excellency the President has already seen, and support him. We have no otherwise but to support him. However, it is evident that some Members of His Excellency's Cabinet, some of whom are here, refused to see what he saw. This House, through me, requests His Excellency the President to study very carefully what has happened in this House today.

With those few remarks, I beg to support.

Mr. Kimeto: Thank you, Mr. Temporary Deputy Chairman, Sir, for giving me this opportunity to air my views. I did not walk out for one reason. Hon. Members would like to amend the section. But according to my little knowledge, we view learned friends as very important. What we want to amend now should have been amended at the Bomas of Kenya, when some hon. Members walked out. I did not walk out today because the people of Sotik Constituency sent me to Parliament, either to defeat or to be defeated by people who are here!

(Applause)

My dear countrymen, according to the knowledge that I got from Bomas of Kenya, to amend any section of the Constitution--

(Mr. Mwenje stood up in his place)

The Temporary Deputy Chairman (Mr. Ethuro): What is it, Mr. Mwenje?

Mr. Mwenje: On a point of order, Mr. Temporary Deputy Chairman, Sir. Even those of us who are on the Opposition side of the House seem to be in agreement. Would I be in order to ask that the Mover to be called upon to reply?

(Applause)

Mr. Kimeto: Mr. Temporary Deputy Chairman, Sir, I hope whatever we will pass today will not hurt our nation of Kenya. I hope we will pass this amendment even for future Presidents!

The Minister of State, Office of Vice-President and Ministry of Home Affairs (Mr. Balala): On a point of order, Mr. Temporary Deputy Chairman, Sir.

Mr. Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Kimeto! Mr. Balala, what is it?

The Minister of State, Office of Vice-President and Ministry of Home Affairs (Mr. Balala): Is it in order for Mr. Kimeto to campaign for the seat of KANU Chairman in this House?

(Laughter)

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! This is the second time an hon. Member has stood up on a point of order to request that the Mover be called upon to reply, because both sides of the House are unanimous on this matter. The Chair has no other obligation but to put the question.

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

The Minister for Energy (Mr. Nyachae): On a point of order, Mr. Temporary Deputy Chairman, Sir. I need clarification from the Chair on the Standing Orders that relate to this particular debate. Does this debate require the Mover to reply?

The Temporary Deputy Chairman (Mr. Ethuro): Thank you, Mr. Nyachae. Hon. Members, I want to draw the attention of hon. Members to Standing Order No.111, Clauses (1) and (2). Subclause (1) reads:-

"When a Bill has been recommitted to a Committee of the whole House, the Committee shall consider only the matters so recommitted and any matter directly consequential thereon."

Subclause (2) reads:-

"Save as is provided by paragraph (1) of this Standing Order, the procedure in Committee on a Bill recommitted shall be *mutatis mutandis* that on a Bill on first committal.

So, we use the normal rules of the Committee Stage. At the Committee Stage, you can read that together with Standing Order No.109. So, I think it is proper for the Mover to reply.

Mr. Minister, please, proceed!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I would like to thank hon. Members on both sides of the House for giving unanimous support to the Memorandum by His Excellency the President.

(Applause)

As you know, there has been debate in this country where hon. Members have been accused of delaying the enactment of the new Constitution.

Mr. Temporary Deputy Chairman, Sir, others have called me a chameleon, but it is quite clear today that those who want a new Constitution, as soon as possible are in this House. Those who want to play political games with the new Constitution have walked out of this House.

The Assistant Minister for Energy (Mr. Kiunjuri): On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the Minister really in order to continue attacking hon. Members from the Opposition side who have already behaved in a cowardly manner?

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Kiunjuri!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, we shall now proceed on expeditiously. We believe that His Excellency the President will now give his assent to this Bill so that we can have a legal framework for moving the process, as quickly as possible, to the referendum.

With those few remarks, I beg to move.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Minister! You could do better than that. What are you moving?

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Memorandum by His Excellency the President on the Constitution of Kenya Review (Amendment) Bill and approved the amendments recommended thereon to delete Section 27(1)(c).

The Minister for Lands and Housing (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Chairman, Sir. I was just wondering whether we have voted on the Memorandum by His Excellency the President?

(Loud consultations)

The Temporary Deputy Speaker (Mr. Ethuro): Order, Members! The House will vote after I put the Question. The Minister has already moved the Motion. Please, do your bit and allow the Chair to do its bit.

(Question put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

REPORT

THE CONSTITUTION OF KENYA REVIEW (AMENDMENT) BILL

Mr. Ethuro: Mr. Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered the Memorandum by His Excellency the President on the Constitution of Kenya Review (Amendment) Bill and approved the same.

Mr. Deputy Speaker: Hon. Members, as I said during the Communication from the Chair, there will be no Third Reading. This is the last Question on this matter.

(Question put and agreed to)

BILL

THE FINANCE BILL

*Second Reading**(The Minister for Finance on 1.12.2004)**(Resumption of Debate interrupted
on 1.12.2004)*

Mr. Deputy Speaker: Hon. Members we are still going on with business of the House. Therefore, those who wish to withdraw from the Chamber should do so quietly.

(Loud consultations)

Order, Members! Now, Capt. Nakitare was on the Floor yesterday.

Capt. Nakitare: Thank you, Mr. Deputy Speaker, Sir, for giving me this chance to contribute on this Wildlife (Conservation and Management) (Amendment) Bill.

Mr. Deputy Speaker, Sir, we all know that this country is a country of plenty. Kenya has a lot of wildlife as well as human beings. We also have trees as part of our natural resources. I would like to dwell on matters concerning wildlife. As an expert in wildlife management, I would like to revisit the contributions made by some hon. Members on this Bill.

Mr. J.M. Mutiso: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to discuss the Wildlife (Conservation and Management) (Amendment) Bill when we are, in fact, supposed to be discussing the Finance Bill?

Capt. Nakitare: Mr. Deputy Speaker, Sir, the last time I was on the Floor I was discussing the Wildlife (Conservation and Management) (Amendment) Bill. I was not discussing the Finance Bill.

Mr. Deputy Speaker: Order, Capt. Nakitare! Sorry for that confusion. I think the Clerk gave me the wrong paper. Capt. Nakitare is right. However, we suspended debate on that Bill. We are now on the Finance Bill. I am sorry, Capt. Nakitare.

Mr. Wanjala: On a point of order, Mr. Deputy Speaker, Sir!

Mr. Deputy Speaker: Order, Mr. Wanjala! Let me, first of all, know who was on the Floor. Mr. Odoyo was on the Floor. Is he present?

Hon. Members: Mr. Odoyo is not present.

Mr. Deputy Speaker: In that case, the Floor is open for anyone who wants to contribute on the Finance Bill. Mr. M. Kariuki!

Mr. Wanjala: On a point of order, Mr. Deputy Speaker Sir. The Finance Bill has been exhaustively debated in this House. Would I be in order to call upon the Mover to reply?

Mr. Deputy Speaker: Order, Mr. Wanjala! You are totally out of order. I have just allowed Mr. M. Kariuki a chance to contribute to this Bill. He has not even uttered a word and there you are trying to stop him.

Proceed, Mr. M. Kariuki!

The Assistant Minister for Foreign Affairs (Mr. M. Kariuki): Mr. Deputy Speaker, Sir, I would like to take this opportunity to give my tribute to the Kenya Revenue Authority (KRA) for doing Kenya proud by overshooting its target during the first quarter of this year. I think we should

consider expanding the statutory mandate of the KRA so that rates and licence fees within the local authorities can be collected by KRA. It has led by example, and given the problems that we have in our local authorities, it is important that we embrace what KRA is doing by expanding its mandate, so that they can have a more efficient revenue collection system at the local authorities level.

Mr. Deputy Speaker, Sir, I am concerned about the collection of taxes in the informal sector. I am aware of the fact that a number of people in the so-called *Jua Kali* industry are making a lot of money which is not being taxed. It is important that we develop a strategy and mechanism for collecting taxes in the informal sector, so that participants there can also add to the national cake.

If you look at our cities, there are very many small traders and hawkers. They pay about Kshs10 every day as licence fee. That totals to about Kshs300 in a month. At the end of the year, the amount totals to Kshs3,600.

Mr. Deputy Speaker, Sir, if you look around our neighbourhood in a country like Uganda, small traders, including hawkers are not required to pay any licence fee. They are actually exempted. Given our strategy for poverty eradication, I would really urge the Minister for Finance to consider this in the next Budget so that this lower bracket of our society trying to survive by doing small businesses can be exempted from licences, which at the end of the day really amount to tax.

I would like to comment briefly on a number of clauses. I support the provisions for goods in transit. We are aware that a lot of petroleum products which are destined for Burundi, Rwanda and even Uganda end up in the local market. Therefore, you will find in some parts of this country that fuel is quite cheap, because it has not been taxed. This is fuel that has been diverted while in transit to the neighbouring countries. I have seen that a number of clauses have been introduced to give a greater latitude to the tax authority to exercise discretion.

Mr. Deputy Speaker, Sir, where discretion is granted to a public officer, it is important to ensure that there is a mechanism of ensuring checks and balances. I appreciate the provision which calls, for example, as regards the auction of goods in the port; that the persons be given two months within which to file a suit in court to challenge the sale or the confiscation of the items at the port. But taking disputes to court will not make matters expeditious.

I would propose that the Minister considers establishing a tribunal to deal with the disputes at the port at that point. That will be more expeditious. But if we are going to use our normal commercial court litigation, it is going to take a long time and the goods will be at the port for a long time, hence attracting a lot of demurrage charges. So, that is an area in which we should consider establishing a tribunal.

Now, coming to Clause 62 on the question of the provision of the cheques, I do not think there was any need for this particular clause to be brought about. The provisions of our Penal Code, particularly the area dealing with obtaining money by false pretences do, in fact, cover the elements about the bad cheques that Clause 62 is trying to take care of. If one was to write a cheque when they did not have an account or when they had closed the account, when they knew too well that there was no money in the account, that amounts to an offence of obtaining money by false pretences. Much as we want to criminalize the issue about cheques in Clause 62 Sub-clause I, the issue of knowledge *mens rea* in criminal law is very important. In this time when we have e-banking, I do not understand why it takes seven days to clear a cheque, because somebody deposits their cheque in the faith and belief that those cheques will be cleared in a day or two. There is this temptation to put another cheque to draw out, and it is going to be held up as "Refer to drawer", and this may amount to the kind of criminal offence that is anticipated by Clause 62.

Secondly, I think this clause should not be within the Finance Bill. If we intend to amend or introduce new provisions in the Penal Code, the appropriate place to put this particular clause was actually in the Penal Code and not in the Finance Bill, because this is a criminal matter, and I think

the proper place for it is within the Penal Code.

Mr. Deputy Speaker, Sir, part of the problem that we have to contend with is that, we are aware that we are coming from a history where the Kenya Revenue Authority (KRA) has had a lot of powers in terms of freezing people's accounts. Now, I see that they are going to get additional powers under Clause 64, where they can levy distress and attach property in recovery of tax. It is important to put safeguards because the people must be given a fair hearing before an adverse step like this is taken against them. I propose that we endorse a clause here where a notice becomes mandatory. We should put a statutory notice that no distress, no attachment and no freezing of accounts will be effected by the KRA until and unless a valid notice of say, 30 days has been issued. Otherwise, Mr. Deputy Speaker, Sir, I beg to second this Finance Bill.

Thank you.

Mr. Sudi: Thank you, Mr. Deputy Speaker, Sir, for allowing me to contribute to the Finance Bill. I wish to congratulate the Minister for Finance, especially the KRA for the collection of taxes which have superseded their targets. This shows that taxes which have been collected in the past were not collected correctly, and I commend the Government for putting checks and balances in the collection of taxes. Soon, we are going to budget for the money collected, and I hope that it is going to be put into proper use, and the people of Kenya will see the benefit of the taxes collected from them.

While commending the KRA for taking over the collection of land rates from the City Council and other county councils, I would like to request you, through the hon. Minister, to intervene because they will collect more rates if the allotted item of the interest which has been levied on the land rates can be waived in the same amnesty the KRA has extended to Kenyan taxpayers until 31st December, 2004. If this is done, I am sure that the councils will collect more revenue, and this will go a long way in elevating and building roads, health centres and improving the health of Kenyans. Soon, we will also have money to budget for the National Social Health Insurance Scheme. As soon as the President orders, this Bill will be included in the Order Paper and we are going to ensure that this money is going to finance this scheme, and it will make the Minister for Finance not to worry about the National Social Health Insurance Bill.

Mr. Deputy Speaker, Sir, I come from an area with no facilities. In my district, that is Marakwet District, there is not even an inch of tarmac going to other towns like Iten or Eldoret. When we reach Iten, the tarmac ends there. But with the collection of taxes like we have seen, we are soon going to realize our dreams; we are going to have a district hospital which we lack and, we are also going to have tarmac roads going to Marakwet. We are also going to have electricity generated in that area. There are so many water falls which could be used to generate electricity, and that is one way of enhancing industrial growth.

The Minister for East African and Regional Co-operation (Mr. J.K. Koech): On a point of order, Mr. Deputy Speaker, Sir. I do not want to interrupt the hon. Member, but I think most of the issues have been raised on this Finance Bill. Would I be in order to ask that the Mover be now called upon to reply?

Mr. Deputy Speaker: Well, I will put the question to the House---

Mr. Sudi: On a point of order, Mr. Deputy Speaker, Sir!

Mr. Deputy Speaker: Order! Mr. Sudi, I am on my feet! You are forgiven for now. It is up to the House to decide. If the House decides otherwise, you can continue, if they decide that the Mover be called upon to reply, the Chair cannot refuse, nor can you.

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

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, I would like to take this opportunity to thank all my colleagues in this House who have contributed to the debate on the Finance Bill.

Many issues have been raised, but one which has received attention from quite a number of Members is the packaging of alcohol in sachets of 200ml or more. After we had banned the packaging of alcohol in small sachets which normally find their way into school bags---

QUORUM

Mr. Sudi: On a point of order, Mr. Deputy Speaker, Sir. I do not think we have quorum in the House.

Mr. Deputy Speaker: You are right, there is no quorum. Ring the Division Bell.

(The Division Bell was rung)

Mr. Deputy Speaker: Order! Hon. Members, we now have quorum. You may proceed, Mr. Mwiraria.

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, I was saying that a few hon. Members spoke about the tax amnesty, requesting me to extend the period which is supposed to end in December. I will give this matter some thought and make a decision on it.

Mr. Deputy Speaker, Sir, regarding the sale of goods from the Export Processing Zones (EPZ), there were some hon. Members who wished that we should increase the percentage paid on goods manufactured in the EPZ to discourage firms from selling them locally. We really do not want to affect adversely the EPZ firms.

On the issue of Liquefied Petroleum Gas (LPG), it is a pity that after I had removed taxes on LPG, the price did not go down as I had hoped. However, I hope that oil companies will heed our call for lower prices, so as to increase utilization of gas.

Mr. Deputy Speaker, Sir, I would like to agree with those hon. Members who talked about investment incentives. Kenya stands to gain from the integration of the East African states. Although we will lose some revenue, I am confident that, in the long run, Kenya will be, by far, the largest beneficiary of the common market.

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

(Question put and agreed to)

*(The Bill was read a Second Time
and committed to a Committee
of the Whole House Tomorrow)*

Second Reading

THE CENTRAL BANK OF KENYA (AMENDMENT) BILL

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, I beg to move that the Central Bank of Kenya (Amendment) Bill be now read a Second Time.

This is a very short Bill which introduces amendments to the Central Bank of Kenya Act in order to do two main things. First, for the Bill to establish a Monetary Policy Advisory Committee

(MPAC). This committee is expected to advise the Central Bank of Kenya (CBK) on monetary policy and to perform other duties of assisting mainly formulation of policies for monetary policy as we may consider necessary. The Bill sets out the membership of the committee. As we can see on Sections (2), 4(D), 2(A), (B), (C) and (D), the membership really comprises the Governor of the CBK as the chairperson, his deputy and the Permanent Secretary to the Treasury, or his representative. It then sets out other members knowledgeable with experience and expertise in matters relating to finance, banking and fiscal and monetary policies to assist in this committee.

Mr. Deputy Speaker, Sir, hon. Members may have noticed that in the amendments of the Banking Act, we are proposing to give the Governor of the CBK independence on many issues. In order to ensure that we do not leave the entire monetary policy in the hands of the Governor alone, we are establishing this high-powered Committee to assist the Governor in the formulation of monetary policies and in guiding monetary policies in the Republic of Kenya.

In addition, this short Bill also seeks to empower the CBK to publish the lowest interest rates it charges on loans to commercial banks which will be known as the CBK rates. These rates are intended to determine the rate at which banks will be lending monies to their customers. As hon. Members are aware, we want the market forces to operate. However, the CBK must give guidance to banks on interest rates which the bank considers reasonable. It is for this reason that we expect the CBK to publish the lowest interest rates it will be charging on loans to banks who will in turn loan that money to other people. This will help banks determine their own rates.

Mr. Deputy Speaker, Sir, finally, Section 39 and 39(A) of the Central Bank of Kenya Act will be deleted. Section 39 in the principal Act which we are trying to amend regulated interest rates for specified banks and financial institutions with respect to both charges on loans and payments on deposits. Clause 39(A) provided for a MPAC, which will now be dealt with in Clause 4(D), which I have referred to.

Mr. Deputy Speaker, Sir, let me take this opportunity to say a few words on banking in general. It goes without saying that a country's economic development depends to a very large extent on viable banking which makes it possible for investors to borrow at affordable rates of interest. In Kenya, our banking interest rates have been so high that the poor people; the small investors, *kiosk* owners and *Jua Kali* artisans have not been able to borrow except from Shylocks. It is for this reason, that we are working hard to establish the Micro-Finance Act, which will regulate micro-finance existence and make it possible for institutions to be available to give affordable credit to the medium and small enterprises in the country.

Mr. Deputy Speaker, Sir, another point I would really want to highlight is the fact that large banks have been pulling out from the rural areas leaving a vacuum. Let me say that we are now considering the possibility of establishing regional banks which will be required to invest about 75 per cent of all their deposits in the regions where they exist in order to make sure that some regions do not become sources of savings to be taken out to invest elsewhere.

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

The Minister for Lands and Housing (Mr. Kimunya): Mr. Deputy Speaker, Sir, I rise to second this Bill that seeks to empower the Central Bank of Kenya (CBK), with more independence and sort out the high interest rates regime, by establishing the confidence of borrowers. It also de-links Treasury Bills rates from the market by creating CBK rates, which we will use while borrowing money in the future.

It is a rather straightforward Bill and I do not need to repeat the points made. I think the important points have already been made.

With those few remarks, I beg to second.

(Question proposed)

Mr. Kipchumba: Mr. Deputy Speaker, Sir, I wish to second this Bill. I would also like to say that what it seeks to do has been done all over the world---

Mr. Deputy Speaker: The Bill has already been seconded. You do not have to do it again.

Mr. Kipchumba: Mr. Deputy Speaker, I wish to support this Bill. I would also like to say that the proposed Monetary Policy Advisory Board is something that has been established all over the world. In fact, many people have always thought that Kenya has such a board. I want to plead with the Minister to look into the membership of the proposed board. I would wish that the chief economists, of not only the CBK, but also of the Treasury be members of the board. We all know the role that economists play in this country. It is, therefore, critical that we make them members of the board. The other remaining members of the proposed board should come from the Kenya Bankers Association, because it plays a critical role. Commercial banks are the main client of the CBK apart from the Government. It would be important for us to revise the proposed membership.

I want to request the Minister to look at the Act that governs the CBK. The Chairman of the board of the CBK is the current CEO. This is unacceptable in the world. We cannot have the chief executive of an institution being the chairman of his board. I thought that this Bill would propose a change in its area. When we want to investigate transparency and accountability issues, we should not be dealing with the same person. We cannot have the same person who runs an institution sitting on a board which is supposed to be investigating him. This is a mockery of structures, which have been established elsewhere and cannot work very well.

This Bill also says that the CBK must specify the interest rates it will charge different banks. I thought that the CBK should publish uniform interest rates for all commercial banks. I do not understand why we should have different interest rates governing different banks. We should have a uniform interest rate to govern borrowing by all banks which are registered in this country. My understanding is that when commercial banks borrow, their borrowing is backed by the necessary securities. Therefore, there should not be any risk involved since banks borrow as long as they are registered.

I want to support what the Minister has said. He has said that we should consider the establishment of regional banks. As it is, many banks which operate, for instance in my home town, Eldoret, transfer all their profits elsewhere. At the end of the day, local people do not benefit from banks which are established in their regions. The Minister should bring an amendment to this Bill to say that local communities in areas where banks have been established should control 75 per cent of the institution's ownership. That would be a welcome move.

With those few remarks, I wish to support.

Mr. Kagwe: Thank you, Mr. Deputy Speaker. I rise to support the Bill. The Departmental Committee on Finance, Planning and Trade has indeed, looked at it and will come up with various amendments at the Committee stage. I would like to support the Minister, particularly on the proposed Monetary Policy Advisory Board. From our visits to various central banks, including the Bank of England, we noticed that the monetary advisory services have become important.

[Mr. Deputy Speaker left the Chair]

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

A monetary advisory board is not simply an advisory body. It is a board with teeth. We must give it teeth, so that its advice is not ignored by the CBK Governor, who can even make his own decisions. It should be a body that will make decisions regarding the interest rates that the CBK will

charge. We should make this very clear. As the Bill reads now, the proposed board will simply be an advisor, whose recommendations can be ignored by the CBK Governor. When you consider that we have barred the Minister from interfering with the Governor of the CBK and brought in a board which will have no teeth, you will see that we are creating an extremely bad situation. This is a situation where an individual will make decisions to hurt an industry.

Today, the banking sector in this country does not have a lot of confidence in the current CBK Governor. That is a fact. Everybody in the sector has lost confidence in him. The bankers have said it, and for the first time since independence, the Government is unable to borrow because of the mismanagement by the current Governor. When we consider such mismanagement, we should not let important decisions be made by an individual. Therefore, we should give the proposed Monetary Advisory Board teeth, if we expect to create stability in the banking sector.

My view is that the board should not only have the Governor and the Deputy Governor from the CBK as its members, but also other employees who deal with analysis at the CBK. The research and analysis staff should give their views at the committee stage. We should not expect the Governor to know everything to do with the Bank. We should also have on the proposed board two other operational level CBK employees.

Mr. Temporary Deputy Speaker, Sir, further, my view is also that when we talk about the six other members, we should allow that one of them may or may not be a citizen of this country. I know that that sparks interest in terms of controversy but when you think about where we are going in future, as far as financial management is concerned, we have to take our place in a global village. We are also talking about moving towards regional integration. There will be a time when we will probably feel that an individual should be able to rotate between the Central Bank's of Uganda, Kenya and Tanzania and such an individual is useful. Indeed, to give an example, the Bank of England has got one American who is on the Monetary Advisory Committee because they acknowledge and assess that what is happening in the United States of America is very important to them as they make their decisions within their own bank. Therefore, I will suggest that in that structure of the Monetary Advisory Committee we should have the possibility of the membership of a non-citizen of this country and then we can be able to take advantage of the global resources that exist as far as management and advice are concerned.

Mr. Temporary Deputy Speaker, Sir, further, I believe that the Monetary Advisory Board should have the authority to interfere with the financial markets, if it deems it necessary to do so because the way our mentors will envisage is a situation where the Treasury will offset the inflation rate that they would like to see in the country. The job of the Central Bank via the Monetary Advisory Committee is to ensure that the objective set by the Treasury is what they achieve and the Board of the Bank will monitor to ensure that the targets set by the Minister are achieved. Now, the only way that we can expect the Monetary Advisory Committee to achieve that is in a situation where we have allowed them to interfere with the market, if necessary, so that they can achieve the objective set for them because by setting interest rates, the main objective is to get stability. So, for them to create an environment where prices are stable and, therefore, predictable and of interest to investors and everybody else, then we have to have a situation where the Monetary Advisory Committee can interfere with the financial markets so that it can be able to set the rates that they want.

Mr. Temporary Deputy Speaker, Sir, further, I agree with the hon. Members that the Governor of the Central Bank should not be the Chairman of the Board. The Board has to ensure and should be mandated to ensure that the members of the Monetary Advisory Committee that we are talking about have got all the necessary resources in order for them to carry out their job. We will expect each member of the Monetary Advisory Board, when they meet once a month and we expect them to meet once a month and not two times a month as proposed by the Bill, to give us a

report of why they suggested whatever they suggested. In other words, there has to be some logic behind the interest rates they are setting. For that reason, it is important and crucial that the Board of the Bank ensures that each of these persons has got the resources necessary to make a viable decision.

Mr. Temporary Deputy Speaker, Sir, when we will have these kind of resources, we will justify why it is necessary that members of the business community need to be eminent. It is not enough that they are chairmen of banking associations. They must, in addition to being members of an association, be eminent individuals and have economics of high standing. That is the class of people we are talking about. For that reason, we have also proposed that it is not enough that these people are proposed by the Minister and the Governor of Central Bank of Kenya (CBK). They must also be vetted by Parliament.

(Applause)

They must be brought here and discussed by the relevant Committee of Parliament. When they have been approved, we will know that any decision that they will take will hold. Further, these people must also report to the Committee of Parliament that should meet quarterly so that we can have discussions. The Finance, Planning and Trade Committee should discuss with them and give reasons that will be supported in the House.

With those many remarks and potentially many amendments, I beg to support.

The Assistant Minister for Finance (Mr. Katuku): Thank you Mr. Temporary Deputy Speaker. I want to support this crucial Bill before us, not only as an hon. Member for Mwala but also as an Assistant Minister for Finance. This is coming at the right time, as my colleagues have said, and it is very important that we let the CBK play its role without any political interference. That is where we are moving towards by ensuring that it is independent and it can perform its function without the interference of the Executive or any other person, including the Minister. That is why we recently had a similar Bill. The Bill we are discussing today is also trying to achieve the CBK's independence, especially, in terms of deciding bank rates. This is, therefore, why we are proposing an advisory committee that can advise and consult widely to help the CBK make right decisions.

We have gone through a very bad experience before where many Kenyans lost a lot of money and property through high interest rates. Some of the reasons were political and we saw banks going under with Kenyans' money. We want the CBK to have the capacity to determine when to intervene on issues of mismanagement of financial institutions and also in terms of interest rates. There was a time that interest rates went up to 70 per cent. A fellow who borrowed money from a bank at an interest rate of, say, 20 per cent had the rates going up to about 40 and even beyond. That was the time many Kenyans lost the properties they had used as collateral. It is, therefore, very important to ensure that we have right people appointed to this Committee so that it can advise accordingly. This is a very important aspect in ensuring economic growth and that we get the right rates.

One thing that the NARC Government has achieved is to ensure that the rates are down. The NARC Government is not competing with Kenyans in borrowing from commercial banks, unlike the previous Government, which borrowed heavily from the money market, thereby causing the interest rates to skyrocket. I would like to assure the House that we, as a government, are trying our best to ensure we borrow minimally---

The Temporary Deputy Speaker (Mr. Ethuro): Order! Order, Mr. Katuku, you said that you would be speaking as the Member for Mwala, but you are now speaking for the Government!

The Assistant Minister for Finance (Mr. Katuku): Mr. Temporary Deputy Speaker, Sir, there is a very thin line between the Member for Mwala and the Assistant Minister for Finance. So, I am speaking as the Member for Mwala and a member of the Government.

I was going to say that the previous Government made us lose a lot of our money due to the way it handled the interest rates. So, the proposed Committee is crucial. If this Bill is passed, the Minister will assist Kenyans by ensuring that we have the right committee in place.

Mr. Temporary Deputy Speaker, Sir, I would also like to comment on the role of the Chairman of the Board of the Central Bank of Kenya (CBK) *vis-a-vis* the role of the bank's Chief Executive. That is a matter which needs to be looked into. I tend to agree with a few of my colleagues who have said that this is an area where there could be conflict. I am sure the Minister will consider this aspect when get to the Committee Stage.

This is a very straightforward Bill. I hope that once we pass it, we will see change in the financial sector. We want this sector properly regulated and administered, because Kenyans need money for development. That is why we are working towards bringing to this House the Micro Finance Bill, so that Kenyans can access money at low interest rates and do business to improve their standard of living. We need to invest more in the private sector, especially in the *Jua Kali* sub-sector, so that people can create jobs for themselves. We can only do that by ensuring that we have cheap money.

That is why we are talking about bringing to Parliament the Micro Finance Bill for debate, and the CBK setting the chargeable interest rates, so that commercial banks do not exploit Kenyans. There was a time when commercial banks made profits of billions of shillings at the end of every year; you wonder what business they were doing when other Kenyans were closing down their businesses. That was because we did not have a system of fixing the chargeable interest rates. That is why we now want the CBK to set interest rates of their own, so that others can follow suit. As the Bill proposes, each commercial bank will be required to publish its interest rates. So, Kenyans will not borrow from banks with high interest rates.

Therefore, the direction we are taking will assist Kenyans by ensuring that they access cheap money, so that they can do business and improve this country's economy. That will further translate into more revenue for the Government, in terms of taxes that will be collected from the businesses that Kenyans will be doing.

With those few remarks, I beg to support.

Mr. J.M. Mutiso: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this important Bill.

At the outset, I would like to say that I was one of the Members of the Departmental Committee on Finance, Planning and Trade, which visited the United Kingdom (UK) with a view to establishing what happens there. The UK financial system - both the monetary and fiscal policies - before 1997 was just akin to what we currently have in Kenya. Historically, issues pertaining to monetary policies are very critical to the growth and development of any economy. It is quite important that decisions pertaining to the monetary policy are informed by expert knowledge. However, due to political interference of certain institutions, you find that we have a problem when it comes to, for instance, inflation targeting, controlling of currency circulation in the market and stability in the entire economy. Therefore, I support the proposed amendment to the Central Bank of Kenya Act, so that we can have in place an independent Monetary Policy Advisory Committee.

Mr. Temporary Deputy Speaker, Sir, it is important that despite the composition of the Committee, there are certain standards which this Committee will have to adopt in order to come up with its targets. Therefore, the composition itself should not be skewed, so that it reflects the Executive image or face. At the moment, we have the Treasury which is headed by the Minister. We have the Central Bank of Kenya still under the control of the Executive. We have also the Treasury

itself which is still under the control of the Executive. You find that when it comes to the formulation of the fiscal policies, sometimes there are certain pressures which are political or otherwise, which necessitate the forces of demand and supply in the economy to be a little bit skewed to certain fundamentals in the economy. Therefore, one of the advantages which is going to be reaped from the establishment of the Monetary Policy Committee will be transparency. The Committee will have to report at least once in a month the decision of the Committee. The mechanics which they used will have to be published, and this report will be subject to public scrutiny. Therefore, this Committee will enhance transparency in setting its rates.

Mr. Temporary Deputy Speaker, Sir, although this is not carried within the current contemplated legislation, it is equally quite important that the Minister should think of also setting up the Treasury as an independent body. The mechanics here operate in such a way that if we have the fiscal policy and we have a macro-economic policy which clearly spell out the monetary policy, fiscal policy and other policies, with a set of rules, there will be co-ordination and harmony in these two important policy frameworks. Therefore, the creation of the Monetary Policy Committee is going to create stability which is needed for higher investment. Time and again, one of the most important aspects for investment in any country is a stable environment as far as the monetary policy is concerned.

Mr. Temporary Deputy Speaker, Sir, I remember in March this year I was in New York and we met with members from Godmand and Search who are one of the leading investment advisory institutions. One aspect which came out clearly was that in the entire world or what we call the global trade, only 2 per cent is traded in the whole of Africa. That means that approximately, out of US\$100 billion, only 2 per cent finds its way as foreign direct investment in the African continent. One of the fundamental questions I asked was why there was less flow of foreign direct investment to developing countries yet they have high potential for growth and investment. One issue which came out clearly was that, unless and until we create a stable environment as far as the monetary policy is concerned, we are likely to get very little investments in our country. Therefore, by passing this Bill, we are going to send the right signal to the investors that we mean business. They will be able to make proper projections of the investment horizon. That is because, if you are not certain of the investment horizon and returns, no investor, however lucrative the investment is, will put his money here! We do not have a stable environment as far as the monetary policy is concerned.

Mr. Temporary Deputy Speaker, Sir, therefore, this is a very important departure from the past, where we had non-defined roles of the Central Bank of Kenya (CBK), the Treasury and also the Minister. This is going to act as a very important pointer to the investors that now, the monetary policy is going to be independently controlled by experts. That will enable the investors to make informed decisions as far as investments are concerned. Indirectly, that means we will get higher growth and employment in this country.

Mr. Temporary Deputy Speaker, Sir, way back, we had a problem as far as the issue of Goldenberg and licensing of financial institutions were concerned. I would like to highlight that as a matter of concern. When banks are licensed in this country, they have to renew their licences every year. That is an archaic and out-dated procedure or bureaucracy that should be dispensed with. The first thing the Monetary Policy Advisory Committee should dispense with is that licensing. Once standards have been set, it is immaterial to call upon the same institutions to renew their licences. Therefore, this amendment is very critical. It is going to free the CBK from bureaucratic controls which impede clear monetary policies in a country and, hence, retards investment and growth. I would like to congratulate the Minister for seeing that lacuna in our monetary system. I know that my colleagues have some points to raise about this Bill.

With those few remarks, I would like to support the amendment.

Capt. Nakitare: Mr. Temporary Deputy Speaker, Sir, I would like to take exceptional notes on this Finance Bill. As you can see, CBK is the basket, safe and stronghold of the country. It is the only institution that should know when money comes in and when it goes out. I do not want to repeat what others have said regarding the amendment on that banking system. They have talked about Section 39(a) of the Banking Act, Section 4(d) and the Monetary Policy Advisory Board. Obviously, you can say that you cannot put all eggs in one basket. As you can see, and with examples from outside the country--- In the international world, if you take an examples of a bank like Morgan Stanley, where I was once a director, the Governor of CBK cannot be the same as a chairman because that becomes a unilateral decision that can easily be manipulated in terms of transfer of powers. None of them has talked about money laundering. I emphasize that because many countries in Africa have suffered! Whenever there was a coup, the first thing that disappeared was the revenue in the central bank. That is putting all your eggs in one basket. If we have a proper advisory committee and a proper monitoring committee then we will not be talked about abusively by other countries. We can then be proud that we have the controls, checks and balances.

Mr. Temporary Deputy Speaker, Sir, the IMF and World Bank have always looked at our banking system as secondary institutions. They would like to put Kenya on a weighing machine, but we have economists and experts in this country. We have people who have worked in monetary institutions for a long time. We have counselling within the Government. I do not see myself separating the Treasury from the Central Bank of Kenya. I would rather suggest that the Treasury is the head of the CBK because it controls all the national finance. The CBK is a giver and a receiver. Since the Treasury is not a banking institution, it has relegated its duties to the CBK. So, the formation of proper machinery of administration in the CBK lies in the hands of the Minister for Finance.

It is not that he will be handpicking people because we have already said that any appointment of the board of directors from the CBK should be vetted by Parliament. This is a healthy practice. It has been done elsewhere. Even in the United States of America, where even judges undergo strenuous screening. Therefore, a Chief Executive Officer of an institution like CBK should not just be handpicked. Such an appointment should be brought to the Floor of the House. Let him be discussed so that at the end of the day, we have checks and balances and the person knows he is accountable to the nation. He is not accountable to his superior, but he is accountable to the nation because he is a custodian of Kenya's revenue.

We do not have bullions of gold that we feel the CBK should have. We have even talked about Treasury Bills. Who controls Treasury Bills? Are they controlled by the Treasury, Finance Minister or the CBK? Obviously, it is the CBK which controls all of this. We are a sovereign country and the choice that we make has to have one language. We should also have a superiority complex and our decisions should be copied by other countries. Kenya has been the pride of Africa for a long time.

When I was working under the East African Community, we had one currency in the East African region. Later on, everything was in shambles and each country went back to having their own currencies. Now, we are unifying the same institution and reviving what was lost. So, the revival of the East African Community depends on our own intellectualism here. It is high time our country spearheaded that and went to the fore front. We also want to have a hand in the African Development Bank. We need to have our people there. We also need to have our people in other higher financial schemes, so that when lobbying to develop Africa is going on, we have our people there.

Mr. Temporary Deputy Speaker, Sir, it beats me to wake up in the morning and find that our money has been devalued. Why is the Kenya Shilling being devalued? Is it because we do not have a strong purchasing power or is it because we are at the mercy of somebody else? We need to have

proper management. We should appoint qualified people to the proper positions. Once somebody has been appointed to a position of a Governor or a chief executive of an organisation, he is answerable to somebody else. We would not like to have proto-graphic systems in our banking institutions. There is a lot of bureaucracy in the banking industry. Maybe this is a way of denying the common man the opportunity to understand how money changes hands. We do not even understand how interest rates are increased by the commercial banks.

We used to have foreign exchange allocation in the Central Bank of Kenya. When I was in the aviation industry, I saw what used to happen then. The Advisory Committee was not there. It was Mr. Githere who was there as a Chief Officer and so, we had a pile of applications for foreign exchange allocations. We had trade and supplies officers who were answerable to the Central Bank. We had the Treasury, which was controlling the system. The Central Bank had little money to share among the traders; the importers of spare parts and other goods from overseas. So, we need to have people with a far reaching vision to help in the implementation of these financial systems. This would help to ease the burden from the Minister for Finance and when he comes here with the Budget, it will have been purified by the Treasury. He should get information from the Central Bank and not from the commercial banks. These are different institutions.

The Central Bank, being our head, if we chop it off, remove the teeth or gouge the eyes, then we will have no sight at all. We should have a man of high integrity at the Central Bank because he is the one who signs all the money deals. It is high time we stopped talking about corruption in this country. You cannot be a thief for ever. Kenya is not corruptible. Corruption is practised in this country by people who want to invest here. Investors who come in through the proper channels do not bribe. Bribing should be dismissed at all costs and people should live like pure Christians and Muslims. When you walk in the streets of New York, people tell you: "Your country is corrupt". This is a big embarrassment.

Today, we had visitors from America. They sat at the Speaker's Gallery and they saw what we did. They were encouraged to see that the Government carried the day. This is a message that is going to go out. We should support our financial institutions. That is why I am against the Central Bank being manipulated and Government money being banked in commercial banks, where it disappears and there is no way of recovering it. **The Temporary Deputy Speaker** (Mr. Ethuro): Order, Capt. Nakitare! Are you implying that we make decisions on the basis of who is in the Gallery?

Capt. Nakitare: Mr. Temporary Deputy Speaker, Sir, that was just an observation. I am sorry. However, I support this Bill and the amendments thereof. As I said, there is no need for Government Departments and corporations to bank public money in private institutions. We should encourage them to bank with the Central Bank of Kenya (CBK), so that we boost our own bullion.

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

The Assistant Minister for Trade and Industry (Mr. Syongo): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me a chance to support this Bill. It is timely in the sense that the days of one-man decisions on issues of monetary policies are long gone. The role of a monetary policy in terms of its impact on the economic performance of any nation is so fundamental. Therefore, it must be vested in a body that is independent of the CBK being the executing institution, but also made up of prominent people who are knowledgeable on matters pertaining to monetary policy. For example, for quite sometime now we have been following a very cautious policy in terms of money supply because we want to keep a single digit of inflation. Yet, presently, the country is experiencing considerable unemployment of all factors of production; that is, labour capital as well as land. A little increase in the supply of money would stimulate investment and growth of this economy, so that more factors would be employed. However, that has not been forthcoming because of a cautious policy which is vested in one person.

Mr. Temporary Deputy Speaker, Sir, I agree with my colleagues that the Governor and Deputy Governor cannot be chair and vice-chair of this advisory body. It does not make sense for the Governor to chair a body that is set up in order to advise him. I, therefore, support very strongly that the chair of this Monetary Policy Advisory Committee (MPAM) must not be an executive member of the CBK.

Thirdly, on the membership, I notice that it has been provided for that the Minister shall appoint other members. I do recommend that it is necessary to include those members that represent the borrower interest groups, for example, the representatives of the Kenya Association of Manufacturers, the Chamber of Commerce, apex bodies of farmers or farmers' organisations as well as SACCOs. The SACCOs do provide and mobilise a considerable amount of money which ends up in banks. I think it is only fair that an advisory body of this nature should include representatives from them.

Mr. Temporary Deputy Speaker, Sir, money that goes through the banks has two very important interest groups. The one that lends money to the banks. In this case, of course, the CBK is also a lender. But there has to be a provision that takes care of the depositors as well as borrowers. So, even as we look at the provision that requires that the bank or the advisory board shall publish the minimum or lowest rate of interest. It is my considered view that we should be courageous enough and provide that they should also publish the maximum rate of interest, so that banks are given a leeway; a margin within which they can now compete with each other. I do not believe that it is fair to leave the maximum rate of interest unspecified. The borrowers should not be left at the mercy of banks. This provision that requires that they will set the minimum rate of interest that provides sufficient safeguards and takes care of the interest for those that deposit the money is not sufficient. I feel that there is need to take care of the interest of those who borrow the money in order to keep our productive sectors working for this nation.

Mr. Temporary Deputy Speaker, Sir, the other issue is the question of frequency of meetings.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Syongo! You will have 25 minutes to continue next time when we have this particular Bill.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, it is now time for the interruption of the business. The House is, therefore, adjourned until Tuesday, 7th December, 2004, at 2.30 p.m.

The House rose at 6.30 p.m.