

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 5th October, 2006

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### PAPERS LAID

The following Papers were laid on the Table:-

The Annual Report and Accounts of Kenyatta University for the year ended 30th June, 2005, and the certificate thereon by the Controller and Auditor-General.

The Annual Report and Accounts of University of Nairobi for the year ended 30th June, 2005, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Agriculture  
(Mr. Kembi-Gitura) on behalf of the  
Minister for Education)*

The Annual Report and Accounts of Sisal Board of Kenya for the year ended 30th June, 2002, and the certificate thereon by the Controller and Auditor-General.

The Annual Report and Accounts of Sisal Board of Kenya for the year ended 30th June, 2003, and the certificate thereon by the Controller and Auditor-General.

The Annual Report and Accounts of Sugar Development Fund for the year ended 30th June, 2005, and the certificate thereon by the Controller and Auditor-General.

The Annual Report and Accounts of Pest Control Products Board for the year ended 30th June, 2005, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for  
Agriculture (Mr. Kembi-Gitura) on  
behalf of the Minister for Agriculture)*

The Annual Report and Accounts of Communications Commission of Kenya for the year ended 30th June, 2005, and the certificate thereon by the Controller and Auditor-General.

The Annual Report and Accounts of Kenya Post Office Savings Bank for the year ended 30th June, 2004, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for  
Agriculture (Mr. Kembi-Gitura)  
on behalf of the Minister for  
Information and Communications)*

The Annual Report and Accounts of Ewaso Nyiro South Development Authority for the year ended 30th June, 2004, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for  
Agriculture (Mr. Kembi-Gitura)  
on behalf of the Minister for  
Regional Development Authorities)*

The Annual Report and Accounts of State Corporations Appeal Tribunal for the year ended 30th June, 2005, and the

certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for  
Agriculture (Mr. Kembi-Gitura)  
on behalf of the Minister of  
State for Public Service)*

The Annual Report and Accounts of Kwale County Council for the year ended 30th June, 2004, and the certificate thereon by the Controller and Auditor-General.

The Annual Report and Accounts of Taveta County Council for the year ended 30th June, 2004, and the certificate thereon by the Controller and Auditor-General.

The Annual Report and Accounts of Nyambene County Council for the year ended 30th June, 2004, and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for  
Agriculture (Mr. Kembi-Gitura)  
on behalf of the Minister for  
Local Government)*

## COMMUNICATIONS FROM THE CHAIR

### NOMINATION OF EAST AFRICAN LEGISLATIVE ASSEMBLY MEMBERS

**Mr. Speaker:** Hon. Members, before we move on to the next Order, there are two things I want to bring to the attention of the House. The first one is in relation to the nomination of Members to the East African Legislative Assembly by political parties. The Clerk of the National Assembly has advertised this in the newspapers. He has also written to the various political parties asking them to make their nominations but we have not had any response to date. You will recognise that this Parliament is the electing authority. I, therefore, wish to inform political parties that the deadline for presentation of qualified nominees to the Clerk of the National Assembly will be before 15th of this month. So, please, take note.

### PRESENTATION OF BILLS FOR DEBATE

The Second issue is in relation to the Order Paper. Hon. Members will realise that the only

business listed on the Order Paper is the Motion by the Chairman of the PIC. I know that there are many Bills that this House will be called upon to deliberate on. We have made enquiries to various Ministers whether they are ready to move those Bills. We all know that this House has taken flak for not passing Bills. We cannot pass Bills that have not been presented to the National Assembly. I, therefore, urge the Ministers to present the Bills to the House. The Clerk should list them so that if the Business of the House is completed, for example, today, the House can debate the Bills that should be debated in this House.

We have one Bill on the Order Paper. However, we want to have as many as possible so that this House can transact its business.

### POINT OF ORDER

#### MEMBER IMPROPERLY DRESSED

**Dr. Ali:** On a point of order, Mr. Speaker, Sir. There is an Assistant Minister who is dressed like a ranger. I think he is not supposed to be in this House. That is Mr. Ndile. He is dressed like a ranger. He should get out of the House and dress properly.

**Mr. Speaker:** Mr. Ndile, why are you in fatigues?

**The Assistant Minister for Tourism and Wildlife (Mr. Ndile):** Bw. Spika, Dkt. Ali anataka kuharibu wakati wa Bunge. Mavazi yangu ni mazuri kwa sababu yana *necktie*. Labda hajui nguo ya kisasa. Ukilinganisha mavazi yangu na yake, mavazi yangu ni mazuri.

**Mr. Speaker:** Order, hon. Members! Let us not take the time of this House all the time talking about hon. Members not being properly dressed. I am sure there are occasions for each attire. Hon. Members must fit in the occasion. Respect the House when you come here! Dress like footballers when you go to a soccer match; dress in fatigues when you go to warfare! In the

**[Mr. Speaker]**

meantime, could we proceed? I think the Assistant Minister has heard that. That is enough. I am sure the Assistant Minister will take appropriate action.

**Mr. Ndile:** Bw. Spika, nimesikia.

### QUESTION BY PRIVATE NOTICE

#### ILLEGAL SUB-DIVISION OF NAMANGA HOLDING GROUNDS

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

(a) Is the Minister aware that Olkejuado County Council is in the process of sub-dividing the Namanga Holding Grounds into individual parcels?

(b) What immediate steps is he taking to protect this public land from being seized by individual developers?

**Mr. Speaker:** Is anyone here from the Ministry of Local Government? Mr. ole Metito, there is none. Could I defer the Question?

**Mr. ole Metito:** Mr. Speaker, Sir, could we kindly wait and see whether the Minister will come because there is another Question on the Order Paper for that Ministry?

**Mr. Speaker:** I will call out the Questions as we wait for the Minister for Local Government to come. It is not your fault.

Next Question by Mr. Opore!

*(Question deferred)*

## ORAL ANSWERS TO QUESTIONS

*Question No.519*NON-PAYMENT OF DUES TO  
MR. ABEL NYAMWEYA

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

(a) whether he is aware that Mr. Abel Nyamweya, a former guard/watchman with Dynasty Security Services Limited of Nairobi has not been paid his dues since his services were terminated in 2005; and,

(b) what arrangements the Ministry is making to have Mr. Nyamweya paid all his outstanding dues, in order to enable him meet his family obligations.

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

(a) I am aware that Mr. Abel Nyamweya, a former guard/watchman with Dynasty Security Services Ltd., Nairobi has not been paid his dues since he left employment on 1st August, 2005.

(b) Mr. Nyamweya reported his complaint to the District Labour Officer in Migori on 8th August, 2005, who initiated action towards settlement of his case. Mr. Nyamweya, however, ceased following up the matter in January, 2006. His co-operation with the District Labour Officer, Migori, is important in ensuring settlement of his final dues.

I, therefore, call upon Mr. Nyamweya to report to the Migori District Labour Officer to assist in the finalisation of the complaint.

**Mr. Opore:** Mr. Speaker, Sir, on 31st October, 2005, Mr. Nyamweya was sent to Nairobi by the District Labour Officer, Migori. When he reported here, he was told that they had written several times to the employer and he had not responded. It was not clear as to whether Mr. Nyamweya was to visit the employer and get an answer. Could the Assistant Minister tell us what else Mr. Nyamweya was expected to do since he had done all that was required by the Ministry?

**Ms. Mwau:** Mr. Speaker, Sir, with me I have a number of correspondences between Mr. Nyamweya and Dynasty Security Services Limited. The Labour Officer in Migori has actually done all that he could. Mr. Nyamweya should, therefore, report to Migori District Labour Office so that he can be assisted. He actually ceased to communicate with the Ministry for Labour and Human Resource Development office in Migori. I have documentation here to show that, that office has been trying its best to settle this matter. So, it is up to Mr. Nyamweya to call on the Labour Office in Migori so that his case is settled.

**Mr. Angwenyi:** Mr. Speaker, Sir, why is the Assistant Minister trying to prolong the misery of Mr. Nyamweya? Why can she not collect the cheque, bring it here and hand it over to hon. Opore to deliver it to Mr. Nyamweya? It is so easy! Could she, please, bring the cheque here and give it to hon. Opore who will in turn hand it over to Mr. Nyamweya?

**Ms. Mwau:** Mr. Speaker, Sir, that is not the work of an Assistant Minister. I believe that my work, in this case, is not collecting cheques, rather it is to ensure that Mr. Nyamweya gets his dues. However, there is much more to this case than we know. He has actually not been able---

**Mr. Manoti:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead this House that it is not the work of the Assistant Minister to collect cheques while we know that our people in the field collude with employers in propagating corruption?

**Mr. Speaker:** Order, Mr. Manoti! That is not a point of order. In fact, she is perfectly in order; it is not the business of Ministers to be couriers.

**Ms. Mwau:** Mr. Speaker, Sir, before I was interrupted, I was saying that it is up to Mr. Nyamweya to go the Labour Office in Migori so that his case can be settled. It is a straightforward

case. If the Labour Office in Migori does not act on his case, the Ministry is ready to take up the case.

**Mr. Opore:** Mr. Speaker, Sir, I have no problem telling Mr. Nyamweya to do exactly that. However, how could Mr. Nyamweya have known that he is required to report to the Labour Office in Migori if there was no correspondence from the Ministry to Mr. Nyamweya?

**Ms. Mwau:** Mr. Speaker, Sir, I did not hear his question.

**Mr. Opore:** Mr. Speaker, Sir, I have no problem telling Mr. Nyamweya to do exactly that. However, I would have expected the Ministry to have written to Mr. Nyamweya that he is required to report to the Labour Office in Migori for further action to be taken on his case.

**Ms. Mwau:** Mr. Speaker, Sir, I said before that I have a number of correspondences that the Migori Labour Office has been engaging in with Dynasty Security Services Limited and Mr. Nyamweya. I am, therefore, asking the hon. Member to contact Mr. Nyamweya and ask him to report to the Labour Office in Migori. If that is not done, let the hon. Member come to our Ministry and the case will be dealt with.

*Question No.349*

CONSTRUCTION OF OFFICE BLOCKS IN  
NAIROBI RESIDENTIAL AREAS

**Mr. C. Kilonzo** asked the Minister for Local Government:-

- (a) why the Nairobi City Council has allowed the construction of office blocks in residential areas in Lavington, Riverside and Kileleshwa; and,
- (b) what action the Minister is taking to ensure that town planning and zoning is adhered to by the City Council.

**Mr. Speaker:** Is the Minister present? Again, he is not there!

**Mr. C. Kilonzo:** On a point of order, Mr. Speaker, Sir. I seek the Chair's guidance on this matter. The Minister and Assistant Ministers for this particular Ministry did not show up yesterday in the House to answer any of the Questions concerning them which were appearing on the Order Paper. Today, there are two Questions concerning them on the Order Paper and yet there is none of them here to answer those Questions. We are all aware that, that Ministry has a Minister and two Assistant Ministers. Are these people taking the business of this House seriously?

**The Minister for Planning and National Development** (Mr. Obwocha): Mr. Speaker, Sir, I just wanted to inform the House that we have been having a Cabinet meeting and the Ministers are on their way here.

*(Loud consultations)*

**Mr. Speaker:** Order, Members! Can I hear him first?

**The Minister for Planning and National Development** (Mr. Obwocha): Mr. Speaker, Sir, I am just giving information and I do not think that I have done anything wrong. Whether hon. Members like it or not, I am just giving information that many of the Cabinet Ministers are on their way here. For those of us who are here, it is because we managed to dodge the heavy traffic.

**Mr. Speaker:** Mr. Obwocha, were you in the Cabinet meeting with the Assistant Ministers?

**The Minister for Planning and National Development** (Mr. Obwocha): No, Mr. Speaker, Sir.

**Mr. Speaker:** Are they not Ministers according to the Standing Order? Mrs. Tett, are you ready to answer this Question?

*(Loud consultations)*

Who is the Assistant Minister for Local Government?

**Mr. Angwenyi:** On a point of order, Mr. Speaker, Sir. Could we be told if nowadays Assistant Ministers attend Cabinet meetings?

**Mr. Speaker:** Mr. Angwenyi, I have just asked that question.

**Mr. Angwenyi:** What is the answer?

*(Laughter)*

**Mr. Speaker:** The answer is no. So, what do we do with this Question?

**Mr. Sungu:** On a point of order, Mr. Speaker, Sir. It appears clearly that this Government does not take Parliament seriously. They cannot ignore Parliament simply because they are having a good lunch at State House. I wish that you take action against this particular Minister who has become notorious.

**The Minister for Justice and Constitutional Affairs (Ms. Karua):** Mr. Speaker, Sir, I undertake to have the Question answered if you could, kindly, defer it so that I find out what is happening. We apologise to hon. Members, but I also want to remind them that many of them ask Questions, but they do not come here. So, I would wish that they tackle this matter with the same vigour.

**Mr. Speaker:** Order, Members! I think I will settle this because two wrongs do not make a right. We will defer this Question and ask the Deputy Leader of Government Business, hon. Karua to ensure that these two Questions are responded to on Wednesday, next week.

*(Question deferred)*

*Question No.497*

RESETTLEMENT OF MOLO TRIBAL  
CLASHES VICTIMS

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

- (a) if he is aware that tribal clashes victims in Molo live under deplorable conditions in Kasarani area of Elburgon Division; and,
- (b) how the Government intends to resettle these victims in Molo.

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

- (a) Yes, I am aware that the victims live in poor conditions.

(b) The Report of the Task Force on Displaced Persons in Rift Valley Province and Other Areas has now been handed over to the Government and a team will soon be established to analyze the Report with a view to settling the identified genuine victims, according to the recommendations therein.

**Mr. Mukiri:** Mr. Speaker, Sir, ever since I was elected to this Parliament, I have asked this Question every year, but no specific reply has ever been given to me.

The Assistant Minister, as you have heard, has not answered my Question which is very specific. I am just asking when the Government will resettle these people. The Government set aside about Kshs400 million in the current Budget to resettle people who have problems with land. Could the Assistant Minister tell this House what he is doing to resettle these people now that there is money allocated for that? He need not talk about that Report, something they have been doing for the last three years.

**Mr. Kingi:** Mr. Speaker, Sir, I am supposed to deal with the issue of the clash victims. I had pointed out earlier that a team had been assigned the duty of identifying the victims to find out

exactly what caused their displacement and propose the way forward. That report is ready.

**Mr. Gitau:** Mr. Speaker, Sir, yesterday this House was treated to some story about a farm that was bought for Kshs169 million. We

were told that it was bought to resettle squatters. Did they buy the farm before they knew who they wanted to settle there? He is misleading this House. Why can the Assistant Minister not say when they will resettle those people?

**Mr. Kingi:** Mr. Speaker, Sir, I think we need to differentiate between the programme of settling squatters and the one of settling clash victims. According to the report, some of those people have their land but they fear going back to that land because of insecurity. Now that we have identified them, we will set up a mechanism of settling them. We have been informed that some of the people who were displaced have cases pending in court. We need to solve those problems. Some of the people who presented themselves do not even have documents to show any proof of ownership. The report has several categories of people who presented themselves. We have to classify these people and hand them over to the relevant Ministries. For example, if they are squatters, we will hand them to the Ministry of Lands so that they can be included in the squatter settlement programme.

**Mr. Rotino:** Mr. Speaker, Sir, we want the Assistant Minister to take this issue very seriously because he is just dilly dallying. Could the Assistant Minister give us a list of the people who were settled on the farm that was bought from Mr. Karume by the Government? The money that was used to buy the farm was part of the money that the Government had set aside to buy land to settle those people. Could he give us a list of those names if he is serious about settling them?

**Mr. Kingi:** Mr. Speaker, Sir, I think it is not the responsibility of the Ministry of Administration and National Security to settle squatters. That is the responsibility for the Ministry of Lands. Our responsibility is to identify out of these people how many of them are the real squatters, so that we can hand them over to the Ministry of Lands which has that responsibility of settling squatters. My responsibility is not to settle squatters.

**Mr. Muiruri:** Mr. Speaker, Sir, this is a very serious matter. We are talking about people who were displaced during the tribal clashes. I have raised this matter before in this House. I have about 4,000 people who live in the forest of Kieni in my constituency. I have been urging the Government to resettle them but they always say that they are doing something about it. I have seen Mrs. Njenga who is the Director of Settlement and we have even gone there as the Committee of Agriculture, Lands and Natural Resources. The Minister and the Provincial Commissioner have also been there but nothing has happened. We are talking about people who live in the forest with animals. They even make love in the bush because they have no place to go. When will the Government settle those people?

**Mr. Speaker:** Order! Are you sure that is not obscene language?

**Mr. Kingi:** Mr. Speaker, Sir, I have already accepted that those people are living in deplorable conditions. However, we had to identify the genuine victims. Now that we have been able to do that, the next stage is settling them. Those that need to be assisted to get back to their land---

**Capt. Nakitare:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead this House by saying that the Government is trying to identify clash victims, when most of them live on the road reserves? What is the problem?

**Mr. Speaker:** That is a question!

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

Hon. Members, I appreciate the gravity of this issue but we must make progress.

**Mr. Mwanicha:** On a point of order, Mr. Speaker, Sir. This is an issue that affects most

Members in this House. Unfortunately, Kisiis are the major victims in Molo. Would I be in order to ask your guidance that we defer this Question so that the Assistant Minister can come up with an answer addressing the seriousness of this matter?

**Mr. Kingi:** Mr. Speaker, Sir, we have a report that shows who those people are and where they were displaced from. We are now in the stage of trying to resettle them. We will hand over the squatters to the Ministry of Lands so that they can be settled together with the other squatters in this country.

**Mr. Mukiri:** Mr. Speaker, Sir, this report that the Assistant Minister is talking about was finalised in 2004. It is only now that I have asked this Question that the Assistant Minister says they have processed the list. The Government has set aside money for this exercise in the Budget and gone ahead to purchase land from Mr. Karume's farm in Molo. Why can the Assistant Minister not just state that those people who are known can start resettling on that farm as they look for some other land? Why does the Government have to keep on postponing the process under the pretext of handing over reports? The Government is just buying time. They are not serious.

**Mr. Kingi:** Mr. Speaker, Sir, I want to correct the impression being created by the hon. Member that this report was finalised in 2004. This report was finalised in July this year. That report contains names of people who are genuine squatters. We will hand their names to the Ministry of Lands which has the responsibility of settling squatters. We will set up a mechanism to return those other people who were displaced from their areas to their land because their land is available. Those that have court cases must be handled by the relevant Ministry so that their cases can be finalised to enable them to settle back on their land.

*Question No.426*

NON-PAYMENT OF MR. AHMED'S  
FIXED DEPOSIT ON MATURITY

**Mr. Rai** asked the Minister for Finance:-

(a) whether he is aware that a fixed deposit No.33/302 for 12 months dated 28.11.85 of Mwamwenda Kiluku Ahmed with the Bank of India has not been paid despite maturity; and,

(b) when the deposit together with interest to date will be paid.

**The Minister for Finance** (Mr. Kimunya): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that a fixed deposit No.33/302 dated 28th November, 1985 for 12 months with the Bank of India in favour of Mwamwenda Kiluku Ahmed has not been paid.

(b) In view of the response to part "a" above, part "b" does not arise.

**Mr. Rai:** Mr. Speaker, Sir, I am disturbed by the answer given by the Minister because he says that he is not aware and yet I made him aware through this Question that Mr. Mwamwenda opened a fixed deposit account of Kshs80,000 in 1985. He has not been paid his dues for 21 years. I made the Minister aware but he is now telling me that he is not aware. What do I do?

**Mr. Kimunya:** Mr. Speaker, Sir, we have no information in terms of a certificate of deposit to substantiate the existence of such deposit so that we can follow it up.

**Mr. Rai:** Mr. Speaker, Sir, if you could just give me time up to Tuesday, I could table the deposit receipt so that the Minister can take up the matter from there.

**Mr. Speaker:** I think what the Minister is saying is logical. He cannot go to a bank and say that he wants to see a certain account or ask what happened to it if he does not have any certificate. In order to expedite the assistance of Mr. Mwamwenda, you should forward the certificate to the Minister. I will defer the Question to Thursday next week to give the Minister time to look into that issue and assist your constituent.

**Mr. Rai:** Much obliged, Mr. Speaker, Sir.



*(Question deferred)*

*Question No.400*

TRANSFER OF KANGUNDO KPLC  
SERVICES TO MT. KENYA REGION

**Mr. M. Maitha** asked the Minister for Energy:-

(a) whether he is aware that Kenya Power and Lighting Company Limited services for Kangundo were transferred from Nairobi to Mt. Kenya region whose headquarters is in Nyeri Town;

(b) whether he is also aware that this change is occasioning unnecessary extra costs to KPLC customers from Kangundo; and,

(c) when these services will be transferred back to Nairobi to effectively serve Kangundo power consumers.

**The Minister for Planning and National Development** (Mr. Obwocha): Mr. Speaker, Sir, I beg to reply on behalf of the Ministry of Energy.

(a) I am aware that the Kenya Power and Lighting Company Limited services for Kangundo were transferred from Nairobi to Mt. Kenya South sub-region whose headquarters is not in Nyeri Town, but Thika Town. This is for operational convenience as power supply to Kangundo and Tala would be better served from Thika rather than Nairobi.

(b) Recently, the Kenya Power and Lighting Company opened an office in Tala to serve customers there and the same is set to expand to cover a wider range of services.

(c) The KPLC services for Kangundo will not be transferred back to Nairobi. However, the present Kangundo/Tala office will soon be expanded this financial year so that most complaints are resolved in Kangundo.

**Mr. M. Maitha:** Mr. Speaker, Sir, it takes about one-and-a-quarter hours to travel to Thika, whereas it takes 30 minutes to travel from Kangundo to Nairobi. What operational convenience is there if you take longer to travel to Thika than to Nairobi?

**Mr. Obwocha:** Mr. Speaker, Sir, the hon. Member will appreciate that the KPLC has various regions. Kangundo and Tala lie in the Mt. Kenya South sub-region. Nairobi as a region is separate. We will do everything in our powers to make sure those services are localised in Kangundo.

**Mr. Wambora:** Mr. Speaker, Sir, I do not know whether the Minister is aware that the office location of the KPLC is very inconvenient and that the company is not able to cope with the volume of work. Could he consider opening the Mt. Kenya South office in Embu because the office in Nyeri is not able to cope with the amount of work? They were allocated money in the last financial year but they have not implemented any project to date.

**Mr. Obwocha:** Mr. Speaker, Sir, as you will appreciate, there is also a sub-region office in Embu. So, the question of transferring the main office from Nyeri does not arise. I can assure this House that we are now moving to a second stage in terms of billing because that is where the problem lies. One will buy a small card and use it until the amount of money indicated on that card is used up. When that money is used up one can buy another card. That is where we are moving to so that we can sort out this problem of bills.

**Mr. Mbai:** Mr. Speaker, Sir, the office they are talking of in Tala has only one person. There are no vehicles and blackouts occur in Tala and Kangundo towns every day. When will the office in Tala become fully operational?

**Mr. Obwocha:** Mr. Speaker, Sir, issues of power blackouts are now rare in the country because we have addressed them. Yesterday, while Moving the Vote for the Ministry of Energy, I said that for this particular region, we have a contractor who will be upgrading work at Kiambere and

Meru Stations. So, the issue of power blackouts will soon be a thing of the past. I assure the hon. Member that the office in Tala will soon be opened.

*Question No.504*

MISAPPROPRIATION OF FUNDS RAISED FOR  
PURCHASE OF SCHOOL BUS

**Mr. Sambu** asked the Minister for Education:-

(a) whether he is aware that Mr. Maritim, the then Headmaster of Moi Sirgoi High School in Mosop, and the then school Board of Governors (BOG) collected funds from parents and students in 1998 as the contributions for the purchase of a school bus;

(b) whether he is further aware that to date the school has no bus and the money collected for its purchase is missing;

(c) how much money was collected for this project; and,

(d) in the absence of the promised bus and the money intended for its purchase also missing, what action has been or will be taken against those who obtained the funds by false pretences.

**The Assistant Minister for Education** (Dr. Mwiria): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that funds for the purchase of a school bus were collected by the former headmaster and the BOG of Moi Sirgoi Secondary School.

(b) As far as my Ministry is concerned, the secondary school has not purchased the school bus to date and we do not know how the money was spent.

(c) According to the audited accounts for the year 1998/1999, the school collected a total of Kshs990,380 as follows: 1998, Kshs693,380 and in 1999, Kshs297,000. This totals to Kshs990,380.

(d) Investigations and an audit exercise carried out by the Ministry has revealed that there was misappropriation of funds and abuse of office by the headmaster and the BOG members and disciplinary action has been taken. As a matter of fact, the former headmaster has been interdicted. Consequently, the BOG and the headmaster will soon be summoned by the relevant authorities for the hearing and determination of the case.

**Mr. Sambu:** Mr. Speaker, Sir, as you have heard, this issue went on from 19998 up to 2000. The Assistant Minister says that the action taken against the headmaster was interdiction. When this issue was brought to the District Education Board meeting, we said that the headmaster should be reported to the police. This issue was actually reported to the police but no action was taken. Are head teachers above the law?

Could the former headmaster be prosecuted under the Penal Code for misappropriation of school funds or for obtaining money by false pretences?

**Dr. Mwiria:** He is not above the law

*[Mr. Speaker left the Chair]*

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

**Mr. Sirma:** Mr. Temporary Deputy Speaker, Sir, why did this issue take so long, until the hon. Member brought a Question to this House for the Ministry to take action?

**Dr. Mwiria:** Mr. Temporary Deputy Speaker, I appreciate that hon. Sambu brought this matter to our attention. But sometimes we are aware of every thing that is taking place until an hon. Member, like Mr. Sambu, feels concerned and gives us information. We would like other hon.

Members to follow the good example of Mr. Sambu, so that we act on malpractices more quickly. When we were told there was a problem at that school we investigated. We hope that this situation will not be repeated in other schools.

**Mr. Boit:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The Assistant Minister is misleading us because all Government Ministries have auditing facilities. Is he in order to mislead us that they acted after they were reminded by hon. Sambu?

**Dr. Mwiria:** Mr. Temporary Deputy Speaker, Sir, I am saying that there was an oversight. There is nothing wrong with the hon. Member reminding us that we had not acted as we should have.

To respond to the previous question, the former Headmaster is not above the law. This is only the beginning of our action. After listening to the BOG and the former principal, you can be sure that, if we get evidence, the matter will be reported to the police and the man will be jailed if found guilty.

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

*[Mr. Speaker resumed the Chair]*

**Mr. Speaker:** Last question, Mr. Sambu.

**Mr. Sambu:** Mr. Speaker, Sir, you have heard the Assistant Minister say that they took action when I brought the matter to their attention. There are school inspectors and auditors in the Ministry. There are also District Education Office auditors and inspectors who are doing practically nothing. They just go round schools, collecting bribes. Could the Assistant Minister prosecute these people under the Penal Code and not under the TSC Act, which provides for just interdiction? He should make sure that they are charged under the relevant section of the Penal Code in a court of law,

**Dr. Mwiria:** Mr. Speaker, Sir, it is unfortunate that this matter is being dealt with so many years after it took place. I know that hon. Sambu has been a member of Parliament for more than three times. I am surprised that he brought up this issue only recently.

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir. I have brought this Question before this House more than three times. It is only that the Ministry of Education has been deferring it.

**Dr. Mwiria:** Mr. Speaker, Sir, I remember that this Question was brought to this House a few months ago. But I am talking about the fact that he did not raise this issue in the Parliament before this one. Nevertheless, I think two wrongs do not make a right. We are sorry about the delay and we will act more speedily next time. We will take the necessary action against the former Headmaster.

**Mr. Sambu:** On a point of order, Mr. Speaker, Sir. I wish to remind the Assistant Minister and his Ministry---

**Mr. Speaker:** Order, Mr. Sambu! We operate under specific rules. Make up your mind before you stand up. If you want to stand up on a point of order do so. If you want to ask a supplementary question, we have already passed that stage. So, is it a point of order really?

**Mr. Sambu:** Mr. Speaker, Sir, is the Assistant Minister in order to mislead the House that everything is in order in the school when at the moment its students are on a strike because of misappropriation of funds?

**Dr. Mwiria:** Mr. Speaker, Sir, I do not remember ever saying that things in the school are okay. The Question has nothing to do with whether things are okay in the school. The hon. Member's Question is whether we are taking action against the former headmaster, which we have taken. So, is he in order to raise that kind of point of order?

*Question No.464*

ISSUANCE OF TITLE DEEDS

## TO SIGOR RESIDENTS

**Mr. Rotino** asked the Minister for Lands:-

(a) whether he is aware that the residents of Tangasia, Sondag, Kokwotendwo and Muino have not been issued with title deeds; and,

(b) what plans he has to ensure that land adjudication is undertaken and title deeds issued in the aforementioned areas.

**The Assistant Minister for Lands (Mr. Kamama):** Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the residents of Tangasia, Sondag, Kokwotendwo and Muino have not been issued with land title deeds.

(b) Due to inadequate resources, my Ministry has adopted a result oriented strategy of finalising the on-going adjudication programmes in the district before the declaration of new ones.

**Mr. Rotino:** Mr. Speaker, Sir, I want to thank the Assistant Minister for that inadequate answer. He has said that his Ministry does not have enough money. How much money has the Government earmarked for land adjudication in this area, this financial year?

**Mr. Kamama:** Mr. Speaker, Sir, my Ministry is doing a lot in Sigor Constituency. For instance, Tangasia is part of Sebon Adjudication Section and, adjudication and registration of land are about to be completed in that area. In Sondag, we are currently demarcating and surveying land, and we are using money to do that. Kokwotendo has been proposed for adjudication by the District Development Committee (DDC), but has not been declared an adjudication area. Muino area is yet to be proposed for adjudication by the DDC. So, we are doing a lot. I am not able to state the exact amount being used for survey work. But we are doing a lot by way of land registration and adjudication in Sigor constituency.

**Mr. Speaker:** Mr. ole Metito! Oh, sorry, sorry, it is Mr. Gitau!

**Mr. Gitau:** Mr. Speaker, Sir, Mr. ole Metito and I do not look alike. Nevertheless, the Minister has just said that they are surveying---

**Mr. Speaker:** Order! Maybe, I can correct you, Mr. Gitau. Others look at you. You do not know how you look.

**Mr. Gitau:** Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Okay!

**Mr. Gitau:** Mr. Speaker, Sir, the Minister has just said that they are surveying the land, and that they are in the process of preparing title deeds. Could he confirm to this House what sort of title deeds they will be issuing? Will they issue mere pieces of papers, as we were told last year or they will be genuine title deeds which will be honoured with sanctity?

**Mr. Kamama:** Mr. Speaker, Sir, my Ministry cannot issue paper title deeds. We issue authentic title deeds.

**Mr. Raila:** Mr. Speaker, Sir, land surveying and issuance of title deeds should not be politicised because it is the right of the people of Kenya to receive title deeds. The Ministry is in the habit of politicising the issuance of title deeds and land matters generally. The other time, the people of Kajiado District were promised some land in Amboseli National Park but they have not been given that land to date. Last month, the Ministry politicised issuance of title deeds to some residents of the Coast Province. We saw the Minister calling out names and His Excellency the President handing over title deeds to people. That is the work of a clerical officer. It is not the work of a Head of State.

**The Minister for Finance (Mr. Kimunya):** On a point of order, Mr. Speaker, Sir. Is the hon. Member in order to reduce the stature of the Head of State of this country to that of a clerical officer?

**Mr. Speaker:** Mr. Kimunya, I think what Mr. Raila said is that the actual delivery of title deeds should be by clerical officers. What did you say, Mr. Raila?

**Mr. Raila:** Mr. Speaker, Sir, the Government has land officers all over the country. We are saying that issuance of title deeds is not the responsibility of the Head of State. It is the responsibility

of Government land officers, who are all over the country. That is a matter of common sense. So, could the Ministry stop politicising the issuance of title deeds and issue the document to Kenyans who deserve it, like those in the Coast Province, whom they cheated?

**The Minister for Finance** (Mr. Kimunya): On a point of order, Mr. Speaker, Sir. You clearly heard Mr. Raila reduce the stature of the Head of State to that of a clerical officer. This is a repetition of what has been said at several funeral gatherings out there. Talking of the principle of clerical staff and officers, when Mr. Raila was a Minister, he kept moving round the country under the guise of inspecting roads, which should have been the work of public works officers. Does this House not have a responsibility to respect the Head of State and give him the respect he deserves when serving the people who elected him by giving them the land title deeds that they have been denied for 40 years?

**Mr. Speaker:** Order! Order! Hon. Members, the Chair does, in fact, have the responsibility not only to protect the integrity of His Excellency the President but of all other hon. Members of this House. Can we now move out of that issue? By the way, what law stops the President from issuing title deeds to citizens? What is wrong with it if he is happy to see his people happy?

*(Applause)*

You can now respond, Assistant Minister!

**The Minister of State for National Heritage** (Mr. Shakombo): On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Bw. Waziri, tafadhali, tumemaliza swala hilo. What is it?

**The Minister of State for National Heritage** (Mr. Shakombo): On a point of order Mr. Speaker, Sir. Is Mr. Raila in order to imply that the coastal people have not reached the level of being respected by His Excellency the President to the extent of personally issuing them with title deeds?

**Mr. Speaker:** Mr. Shakombo, I thought I had already dealt with that issue!

Proceed, Mr. Kamama?

**Mr. Kamama:** Mr. Speaker, Sir, we should not cheapen this issue. Let us not take this matter lightly. The issue of title deeds in this country is close to the hearts of many Kenyans. I want to remind my friend Mr. Raila, that he served in former President Moi's Cabinet and they did not deliver title deeds to people. The current President is very sensitive---

**Mr. Speaker:** Order! Order, Mr. Kamama! I have already conclusively dealt with that issue. Is there any further answer you want to give?

**Mr. Kamama:** Mr. Speaker, Sir, I just want to confirm to the House that we will continue issuing title deeds. If His Excellency the President wants to join us, he is at liberty to do so.

**Mr. Speaker:** Very well!

**Mr. Rotino:** Mr. Speaker, Sir, I want the Government to realise that it is the right of Kenyans to be issued with title deeds, just like it is the right of every Kenyan to be issued with a national identity card. The Government does not have to wait for us to bring Questions to this House for them to issue our people with title deeds. I appreciate what the Ministry is doing in Sigor Constituency but I want the Minister to confirm to me when they are going to finish surveying Tangasia and Sondany areas, so that the residents there can have their title deeds. Could he specify the exact date and time?

**Mr. Kamama:** Mr. Speaker, Sir, since the hon. Member is a friend of mine, I want to promise him that we will fast-track the issuance of title deeds in that constituency.

**Mr. Speaker:** Very well!

Next Question, Mr. Korir!

*Question No.292*

DESTRUCTION OF CROPS BY BABOONS

## IN KOIBATEK DISTRICT

**Mr. Korir** asked the Minister for Tourism and Wildlife:-

- (a) whether he is aware that baboons are wrecking havoc on residents of Kisanana Location in Koibatek District through destruction of crops and killing of goats; and,  
(b) what he is doing to alleviate the problem.

**The Assistant Minister for Tourism and Wildlife** (Mr. Ndile): Bw. Spika, ninaomba kujibu.

(a) Nina habari kwamba nyani wanawasumbua wakazi wa Kata ya Kisanana. Hili ni tatizo la muda, ambapo nyani huhama sehemu za Solai Wilayani Nakuru msimu wa kiangazi. Lakini stesheni yetu ya Shirika la Huduma kwa Wanyama pori la Kenya (KWS) huko Kabarnet haijapokea ripoti yoyote kuhusu nyani mwaka huu. Katika miaka ya 1997-99 shirika la KWS lilifanya msako mkubwa na kuweza kuwanasa nyani wengi katika sehemu za Solai na Kisanana. Mnamo tarehe 2.4.2003, KWS iliwahamisha nyani wengine baada ya wananchi kulalamika.

(b) Hivi majuzi, Wizara ilidumisha idadi ya askari. Pia, fedha zimetolewa za kukabiliana na matatizo yanayosababishwa na wanyama pori. Shirika la KWS limewahusisha viongozi kutoka maeneo yaliyoathiriwa katika kutatua shida hizo.

**Mr. Korir:** Bw. Spika, Waziri Msaidizi amekiri kwamba nyani hawa wanawasumbua watu wa Kisanana. Nyani hawa, wameshindwa kupanga uzazi na wameleta hasara nyingi kwa watu wetu. Nyani hawa wanavamia ghala zetu, mbuzi wetu na hata watoto wetu wako hatarini. Mji wa Kabarnet Town ambao ni makao makuu ya Wilaya uko kilomita 200 kutota Kisanana. Tuko na matatizo chungu nzima.

Je, ni hatua gani Waziri Msaidizi atachukua kuhakikisha kwamba amefungua kituo cha KWS huko Kisanana ili askari wa KWS waweze kushughulikia wanyama hao?

**Mr. Ndile:** Bw. Spika, wakati wa kiangazi, wanyama wote hupata shida sana ya malisho. Nimekubali kuwa wakati mwingine, wanyama wa pori hutoka porini ili kutafuta malisho. Hatutaki mwananchi yeyote aathiriwa na wanyama wa pori na tutaliangalia jambo hili.

**Mr. Sirma:** Mr. Speaker, Sir, the Assistant Minister has said that the residents of Koibatek District will have to rely on another district for help. We have KWS offices in Eldama Ravine, which are supposed to serve the residents of Koibatek District. Could the Assistant Minister equip that office and post staff there? There are other wild animals apart from the baboons, which destroy our crops and eat our animals, for example, elephants and leopards.

**Mr. Ndile:** Bw. Spika, Wabunge wanafaa kufahamu kwamba nyani wana akili. Ingefaa Wabunge watusaidie kujaribu kuwafukuza nyani wanapovamia mashamba. Sisi kwetu tunawafukuza nyani wanapovamia mashamba yetu. Huu si wajibu wa Wizara peke yake. Ni wajibu wa kila mtu. Hawa ni wanyama wetu na wanatuletea pesa za kigeni.

**Mr. Gitau:** Jambo la nidhamu, Bw. Spika. Waziri Msaidizi hachukui kazi ya Bunge kama kazi muhimu. Kila siku, nyani wanaharibu mali ya wananchi wa Kenya na kuhatarisha maisha yao. Ukiwaua nyani, utachukuliwa hatua na Wizara. Waziri Msaidizi anafaa kufanya kazi yake!

**Mr. Sirma:** On a point of order, Mr. Speaker, Sir. The Assistant Minister has not answered my question about the district headquarters. We actually got Independence when we were in Kabarnet---

**Mr. Speaker:** Order, Mr. Sirma! We will do orderly business! Mr. Ndile, would you like to respond?

**Mr. Ndile:** Bw. Spika, mhe. Sirma anaweza kuja katika ofisi yangu tujadiliane ili anielezee vile anavyotaka tufanye. Ofisi yangu iko wazi.

**Mr. Korir:** Bw. Spika, ningetaka kumwambia Waziri Msaidizi afanye hima kuhakikisha kwamba wanyama hawa wamezuiliwa kuingia kwenye mashamba yetu. Kama si hivyo, inafaa aanze kuandaa mazishi ya nyani hao. Je, kuna mpango wowote wa kuwatuma askari wa KWS huko Kisanana ili waweze kuwashughulikia hawa wanyama?

**Mr. Ndile:** Bw. Spika, nitahakikisha kwamba maofisa wangu watalishughulikia hilo swala. Ningetaka kuwaomba wananchi wasiwaue wanyama wa pori. Ukiwaua wanyama wa pori, utapambana na mhe. Ndile!

*Question No.376*

POSTING OF MEDICAL PERSONNEL  
TO BURETI HEALTH FACILITIES

**Mr. Speaker:** At hon. Sang's request, his Question is deferred to next Wednesday, 11th October, 2006.

*(Question deferred)*

That is the end of Question Time!

Hon. Members, there are three hon. Members who have consulted me about their intentions to either make a Ministerial Statement or seek one. Hon. Munyes wants to make a Ministerial Statement while hon. Boit and hon. Raila wish to seek Ministerial Statements. At least, those are the requests that I have received.

**MINISTERIAL STATEMENT**

FINANCING OF ARID LANDS PROGRAMME II

**The Minister of State for Special Programmes (Mr. Munyes):** Mr. Speaker, Sir, I would like to make a Ministerial Statement on the Arid Lands Resource Management Programme that has received additional financing credit from the World Bank for the Arid Lands Programme II.

The total amount of the credit finance is US\$60 million. The Fund is to be spent as follows:- US\$25 million will be used for preparedness activities for the Arid Lands Programme II; US\$15 million will be used for up-scaling the Arid Land Drought Contingency Fund and US\$20 million will be used to reimburse Government eligible and audited non-food expenditure associated with the severe drought of 2005/2006 Financial Year.

I want to talk about the criteria used and the additional districts to be covered. A total of 39 districts fall under the Arid and Semi-Arid Lands (ASALs) which are categorised into A, B and C by the extent of aridity as shown below:-

In Category A, there is Turkana, Moyale, Marsabit, Isiolo, Wajir, Mandera, Garissa, Ijara, Samburu, Tana River and East Baringo. These are 11 districts. In Category B, there are 19 districts. These are Kitui, Makueni, Kajiado, Mwingi, Mbeere, Tharaka, Baringo, Laikipia, West Pokot, Narok, Trans Mara, Taita-Taveta, Kwale, Kilifi, Lamu, Malindi, Meru North, Machakos, Keiyo and Marakwet. In Category C, there is Nyeri, Rachuonyo, Suba, Kuria, Thika, Koibatek, Migori, Bondo and Nakuru.

Mr. Speaker, Sir, we have decided to include six districts in Category A from Category B. These districts will be covered under the Fund. We will include Taita-Taveta, Kwale, Lamu, Malindi and Kilifi in the Coast Province. In Eastern Province, we will include Meru North District. The above six districts were selected based on the fact that they are in Category B and they have 30 to 84 per cent aridity and have a high number of persons on famine relief. The US\$25 million is meant for:-

(a) Scaling-up both, geographically and sustantively, the successful drought management and long-term livelihood activities in 28 districts.

(b) Strengthening the implementation of the natural resources management activities.

(c) The establishment of six additional districts.

(d) We will employ in those DMOs data analysts and support staff. We will purchase vehicles and other equipment.

(e) We will spend some funds on Recurrent Expenditure to run those offices.

(f) Finally, we will establish drought early warning systems and community capacity building in those areas.

Thank you.

**Mr. Munya:** Mr. Speaker, Sir, I would like to take this opportunity to thank the Minister for the effort he has made to put Meru North District in Category B. This is something that we have been trying to do since this country became Independent and it has not been possible. However, I would like to know how long it will take the Ministry to put the necessary infrastructure on the ground, so that the new six districts can start benefiting from those programmes under the ASAL projects.

**Mr. Sungu:** Mr. Speaker, Sir, I would like to thank the Minister for bringing this important information to the Floor of the House. We would also like to appeal to the Minister to consider parts of Kisumu District, particularly in areas called Kolwa and parts of Nyando, which fall in the rain shadow and which are actually as dry as the North Eastern Province. When it floods, it floods absolutely. When it is dry, the cracks on the soil are so wide that you can bury a child in them. Could you, please, also consider these areas?

**The Minister of State for Special Programmes (Mr. Munyes):** Thank you, Mr. Speaker, Sir. As for hon. Munya's issue, I think the funds are readily available and we will start immediately. As for Kisumu, we will look into that issue. We will send our officers to investigate and give us the right information.

**Mr. Speaker:** Very well! What is it, Mr. Boit?

## POINTS OF ORDER

### RE-INTRODUCTION OF THE USE OF DDT

**Mr. Boit:** Thank you, Mr. Speaker, Sir. I stand to seek a Ministerial Statement from the Ministry of Health concerning the re-introduction of the insecticide called Dichloro-Diphenyl-Trichloroethane (DDT).

Mr. Speaker, Sir, I believe this insecticide was banned in this country over 30 years ago. I understand that this insecticide is manufactured in the USA and is being distributed to developing countries, Kenya included. Is it safe for Kenyans to use this insecticide? We want the Minister to issue a Ministerial Statement on this issue urgently.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Mr. Assistant Minister, are you ready for it or do you want more time?

**The Assistant Minister for Health (Dr. Machage):** Mr. Speaker, Sir, I promise to give that Ministerial Statement on Thursday next week.

### INSECURITY IN NAIROBI

**Mr. Raila:** Mr. Speaker, Sir, I stand to seek a Ministerial Statement from the Minister of State for Administration and National Security. Last night, between 8.00 p.m. and 11.00 p.m., armed gangs descended on the residents of Kibera and unleashed mayhem on them. The gang moved from one section of the village to the other shooting indiscriminately. By the time they were through, three people were dead and seven others were seriously wounded, some of them critically. Four of them are right now admitted at the Kenyatta National Hospital.

Mr. Speaker, Sir, one of the places where the shooting took place is not very far away from



the General Service Unit (GSU) camp in Kibera. In fact, it is about 100 metres away. The gunshots could be heard as far away as Woodley Estate, yet the police did nothing about it. I do not want to speculate, but the issue of insecurity in the City of Nairobi is of serious concern for some of us, hon. Members, who represent Nairobi. We would like the Government to come and give a Ministerial Statement to clarify what exactly happened and what action they are going to take to ensure that the culprits are apprehended and brought to book. Wanton killings are something that this country does not deserve, coming so soon after there have been some statements of threats issued.

The situation in the village is very tense and people are very apprehensive that more bloodshed might befall the village. I would, therefore, like the Government to come up and issue the Ministerial Statement.

**Mr. Speaker:** Will you respond to that request, hon. Karua?

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Speaker, Sir, hon. Kingi is here.

**Mr. Speaker:** Proceed, Mr. Kingi!

**The Assistant Minister, Office of the President** (Mr. Kingi): Thank you, Mr. Speaker, Sir. We undertake to issue a Ministerial Statement on Wednesday next week. But in the meantime, we will take all the necessary steps to ensure that, that act [**The Assistant Minister, Office of the President**]

does not happen again and that the people live safely.

**Mr. Speaker:** Very well! Next Order!

## BILLS

### *First Readings*

THE MICROFINANCE BILL  
THE SUPPLIES PRACTITIONERS  
MANAGEMENT BILL

*(Orders for First Readings read - Read the  
First Time - Ordered to be referred to the  
relevant Departmental Committees)*

### *Second Reading*

THE KENYA INSTITUTE FOR PUBLIC POLICY  
RESEARCH AND ANALYSIS BILL

**The Minister for Planning and National Development** (Mr. Obwocha): Thank you, Mr. Speaker, Sir.

I beg to move that the Kenya Institute for Public Policy Research and Analysis Bill be read for the Second Time.

Mr. Speaker, Sir, the purpose of this Bill is to provide for a legal framework for the Kenya Institute for Public Policy Research and Analysis (KIPPRA). This is a body that has existed and, as a Ministry, we feel that it is time for Parliament to give it a legal framework. Therefore, I expect that hon. Members can take time to go through it. I also hope that the debate will be focused. This is a very small Bill and the contents do not involve a lot of legal technicalities.

Mr. Speaker, Sir, as I have said earlier, this Bill seeks to set an Act of Parliament to establish

the KIPPRA and to provide for its incorporation, powers and functions and for connected purposes. As you may recall, the KIPPRA was established as a public institute under the provisions of the State Corporations Act through Legal Notice No.56 of the Kenya Gazette, dated 9th May, 1987. The institute formally commenced its operations in June, 1999, and was established with the mandate of contributing to the public policy formulation and implementation process by conducting high quality and objective policy research and analysis, and through capacity building.

Mr. Speaker, Sir, KIPPRA's mandate is well captured in the issued vision and mission. Its vision is to be the leading public policy research institute in Africa and an international centre of excellence. Its mission is to provide quality public policy advice to the Government of Kenya by conducting objective research and analysis and through capacity building in order to contribute to the achievement of national development goals.

*[Mr. Speaker left the Chair]*

*[The Temporary Deputy Speaker  
(Mr. M'Mukindia) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, KIPPRA has come a long way in the relatively short time it has been operating. It now has one of the highest concentrations of highly-trained economists. The institute has about 30 economists, and about one-third of them are PhD holders. The rest have masters degrees. So, this is a concentration of very highly qualified Kenyans. These researchers work on different programmes, including micro-economic analysis, focusing on the competitiveness of the productive sectors, social sector issues such as poverty, education, health, labour markets and social institutions; infrastructure and economic services problems and the legal and the greater environment for private sector business in the country.

Through this capacity and the additional capacity provided by its rich and wide network of research associates, the Kenya Institute for Public Policy Research and Analysis (KIPPRA) has produced more than 100 publications in the short period it has been in operation. It continues to produce about 20 new papers every year to inform various public policy documents. The KIPPRA has been working with relevant Government Ministries and stakeholders in the development of a number of key policy documents, such as the Economic Recovery Strategy for Wealth and Employment Creation 2003-2007, the Sessional Paper on Micro and Small Enterprises, the Information and Communication Technology Policy, the Draft on Fisheries Policy, the Draft Sessional Paper on Integrated National Transport Policy, the Draft Seed Policy, the Draft Livestock Policy, the Draft on Kenya National External Aid Policy and the Draft Private Sector Development Strategy. Those are some of the key policy documents they have come up with.

Mr. Temporary Deputy Speaker, Sir, besides these documents, the KIPPRA is currently involved in various policy or technical working groups and task forces. With respect to capacity building, the institute trains about ten to 12 young professionals every year, most of them from the public sector, institutions like the Kenya Revenue Authority, the Kenya Anti-Corruption Commission and the Central Bank of Kenya, among many others. They have hired policy analysts from KIPPRA which is testament to the quality of the institute of researchers. In addition to the young professionals programmes, the institute trains a number of other public sector officials through secondment, and holds many training courses and workshops.

One of the regular training courses is on the micro-economic modelling and focusing which attracts trainees from several countries in our African continent. It is clear, therefore, that the KIPPRA is achieving its mandate with considerable success. The demand for evidence-based public policy advice from the Government has grown considerably and continues to grow further. More and

more Ministries and other public agencies are approaching the KIPPRA for policy research and analysis. One may ask why this is necessary if the institute is already doing very well. The reason is that the KIPPRA now faces considerable challenges.

I would like to bring to the attention of the House some of these challenges. First, it faces inadequate public funding and funding of more programmes from the development partners. This affects the implementation of the institute's work plan because it is forced to accept more projects funded outside the work plan. Currently, we have the Africa Capacity Building Foundation (ACBF) which is based in Harare, Zimbabwe. But if this Bill is passed by this House, then the scope will be wider and we will get more money for research.

Another major challenge which is also related to the first one is staff retention. Over the last two or so years, the institute has lost staff to institutes within and outside the country owing to less competitive terms and conditions of service. There are also staff members who are always left somehow insecure in their jobs owing to lack of the enabling legislation of the institute. Some of the potential supporters and donors have also been uncomfortable with this situation where we do not have a legal framework.

An Act of Parliament is critical, therefore, for the long-term sustainability and ability to confront these challenges. It will secure independence and attract requisite funding, both from the Government and development partners. The Act will always allay fears among development partners, thereby unlocking funding potential that exists among them. Both of this will ensure that the KIPPRA continues to carry out objective public policy research and analysis to meet the growing demand for evidence-based public policy advice to the Government, private sector and the civil society.

The Act will also allay fears among members of staff regarding the future of the [institute. This will not only help to retain highly qualified staff in the institute, but will also attract other equally or even more qualified Kenyans from the diaspora. The importance of this cannot be overemphasized considering the tapping of the technical and investment potential of the Kenyans in the diaspora, which is increasingly being viewed as a key element of the country's long-term development strategy.

Mr. Temporary Deputy Speaker, Sir, allow me to highlight some of the provisions in the Kenya Institute for Public Policy Research and Analysis Bill 2006. First and foremost, the Bill fully transfers all the rights, obligations, assets and liabilities of the existing KIPPRA to the succeeding KIPPRA, if we do pass the Bill. Secondly, the Bill clearly establishes the objects and functions of the institute. In summary, the objects and purpose for which the institute is established is to develop human and institutional capacities required to undertake economic focusing policy analysis and research, thereby contributing to the formulation of medium and long-term strategic perspectives for the economic and social development of the country.

Thirdly, the Bill vests the management of the institute in a 15-member board, including the Executive Director. Five of these are Permanent Secretaries in the key Ministries. Two are representatives of special interest groups and seven are representatives of the business sector and the research community. Such a balanced structure of the board is critical for the success of a think-tank such as KIPPRA. Part four of the Bill has financial provisions for the institute, including the procedure and timetable for preparing annual estimates and accounts. It also specifies how the board may invest the surplus funds.

Fifth, the Bill requires the KIPPRA, in consultation with other relevant institutions, such as the Ministry of Planning and National Development, the Ministry of Finance and the Central Bank of Kenya, to prepare an annual report on the performance of the Kenyan economy during the preceding year and its prospects for the coming three years. The report shall be submitted to the Minister for Planning and National Development, who shall then lay it together with the annual report on the

operations of the institute, before the National Assembly. This will ensure that the institute is fully accountable to the public.

Finally, the Bill empowers the Executive Director to request information required in the performance of the KIPPRA functions in writing. This is important to ensure that the institute has the data it requires for performing its functions.

I would like to conclude by saying that the APRM report which was produced by the country was analyzed by institutes like the KIPPRA. The KIPPRA was one of the key institutes that analyzed the data that brought up that report, coupled with other institutes like the Institute of Economic Affairs and the Institute of Development Studies. They did analyze the issues of political, economic, corporate and social governance to come up with that report. So, its role cannot be over-emphasized.

Therefore, this Bill has only four parts; the establishment of the institute, the administrative structure of the institute, its financial obligations and miscellaneous provisions. I believe that this is a good institute that will help us. However, we need a legal framework for it to succeed and properly function.

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

**The Minister for Justice and Constitutional Affairs** (Ms. Karua): Mr. Temporary Deputy Speaker, Sir, I beg to second.

*(Question proposed)*

**Mr. Kipchumba:** Mr. Temporary Deputy Speaker, Sir, I have read the Bill and what I fail to understand is what the Minister said. He said he wants to give it a legal status. If you read through the Memorandum of Objects and Reasons, it states very clearly:-

"The institute has been operating as a State Corporation under the State Corporations Act, Cap.446."

There are provisions for the establishment of a State Corporation. The fact that there is a provision for the establishment of the same does not make it illegal. It means that it is provided for in law. Therefore, it is wrong to come and tell us: "We are establishing this!" That is because Kenya Institute for Public Policy Research and Analysis (KIPPRA) has been a parastatal since 1997. We are not establishing a new body. That is what the Minister is not telling us. That is not a completely new body. KIPRA exists. I was looking at the reasons why the Minister wants to establish that institute under an Act of Parliament. I listened to the Minister very clearly. One of the reasons is to attract public funding from development partners and donors. That is being candid. Probably, that is the reason why they want to establish it. They also want remuneration of the staff to be enhanced. Probably, that is a reason.

That is going to be a public research body. Therefore, we cannot be told that, that institution will only serve the Government. When you establish an institution that is going to do research using public funds, then it must make all the information and data available for consumption by the public. We cannot accept otherwise. The Government can use the data for its own policy issues. Members of the public must be able to access that information for their own use. Therefore, as much as we all know the definition of the Government, I would like it to be clearly defined under this Act. Once we establish that body, we shall be told tomorrow that, that information will only be available to the Executive. Therefore, the Board, in its own wisdom, will tell you that you will not get the information because it is only meant for the Government. We, therefore, want that definition to be made very clear so that, Members of Parliament, including all the Committees of this House, could access that information for their own consumption. We cannot be duplicating roles. We are all aware that there is a private sector policy research institute. Probably the one we are establishing will kill it.

The definition of Minister is given as: "The Minister responsible for Economic Planning and

National Development." Who would tell us in perpetuity that, that Ministry will be called the Ministry of Economic Planning and National Planning? We must bear in mind that Ministries, and especially that Ministry, has, over time, evolved into different names. At times, it is called the Ministry of Planning alone. At times, they add "National Development." Therefore, it is important that, in its definition, we take that into account.

Mr. Temporary Deputy Speaker, Sir, it further says that the headquarters of that institute shall be in Nairobi. Those are the issues that we discuss everyday. Why would we want to put the headquarters of an institute in Nairobi? Who says that, in future, this country cannot move its headquarters to Athi River, Kitengela, Naivasha, Machakos or even Eldoret? There is no point of placing all those details on a paper.

There is another issue that I would like the Minister to re-look at. That research institute will be allowed to borrow money. A research institute should not be allowed to borrow money. How will they repay the money? We all know that research institutes do research on a long term basis. Therefore, to tell us today that you are going to allow that institution to borrow money that it cannot pay is unacceptable! That institution must use the funds available for research. If they run out of funds, the research can wait. Alternatively, any institution that requires data from that institution can raise funds.

That institution must be able to raise funds. I have looked at what the Minister has said at the last page. It is expected that, that institution will generate funds in the course of performing its functions. If you read through the financial provisions, it does not clearly provide how that institute will raise funds. I expected the Minister to tell us what that institute will do to raise funds. For example, it can be allowed to sell research materials and information to raise funds. But to tell us it will gradually raise its own funds--- If we are establishing an institute that will be used for public research, it must, at all times, be funded through the Exchequer. There cannot be any other way. If you are going to rely on the goodwill of outsiders, then that institute will be crippled even before it starts. Therefore, in as much as I would want it to raise its own funds, I want it to be able to sell some of the materials.

Mr. Temporary Deputy Speaker, Sir, the establishment of the Board is, indeed, not proper. You are going to have five Permanent Secretaries sitting on that Board. Is that institution going to make the policy itself, or is it going to conduct research? We must distinguish between an institution that is going to undertake research and an institution that is going to make policy. It is already established. There is no justification to have five Permanent Secretaries sitting on that Board.

Then, it goes on to say that the Board will determine its own remuneration and allowances. Since when did a Board determine its own allowances? We must have a mechanism of doing that. If you look at No.11, it says:-

"Members of the Board shall be paid such remuneration, fees, allowance and disbursements as may be approved on the recommendation of the Board."

Why would the Board recommend its own allowances? Therefore, we must be very clear as to who determines their allowances. It can be done by the Minister. But the Board should not be allowed to recommend its remuneration. Why not just say that the Minister will determine their allowances as per the prevailing circumstances in the country?

The Bill says that the Executive Director will be appointed for five years. That is not good. We must reduce that period to three years. Most of the institutions we have in this country have a lease period of only five years. There is also a provision of reappointment only once. The institution's directors should not operate like they are Members of Parliament. I recommend that the Minister puts a clause indicating that the director must leave after serving for three years, so that the conditions are not equivalent to ours. There is a provision for the appointment of a Chairman which also reads; "the Chairman of the Board shall in consultation---" The issue of consultation has not been proven to

work anywhere. The Minister may tell us that he consulted on an issue. However, where are the mechanisms to ensure that the consultation is done? Who will prove to us that, indeed, some consultation was done? We do not want a situation where the Minister will make his own decisions and tell us that he consulted the board, yet there are no mechanisms to ensure that that has been done. I would want to say that the Board should elect a chairman among its members and then be approved by the Minister. However, we should not be told that there will be some consultation.

As I have said before, this body is already in existence. We may not be aware of the functions that it performs since it has been a very silent body. Probably, it has been given very little funding but once it is established, we should see it giving services to Kenyans. Therefore, I want us to agree that this is an important institution since it can provide research information that can be used. The Minister has told us that the Board will be composed of many PhD and masters holders. What is all that for? If you want to conduct research, you will, clearly, be told that you do not require to have very many learned people around to provide you with meaningful findings. You need to use other meaningful institutions. In fact, I would have preferred if this body was given more duties. For a whole year, what will be the role of the institution? What will it be doing from January to December?

When we talk about research, I believe that once you complete working on a paper concerning a particular issue, there is nothing else to do until the next financial year. Therefore, we must define, clearly, the functions that the institute will be carrying out. However, let it not employ very many PhD holders. We should have probably three of them in various fields. The rest of the departments should be run by consultants who can be hired on short-term basis which will be cheaper. Retaining 30 PhD holders by the Government, probably doing nothing, is a waste of money.

You will be amazed to learn that there is another research institution at the University of Nairobi, IDS, which already exists. I heard the Minister say that there will be seven Board members, some of whom will come from the universities. The Minister should, clearly, define where the Board members will come from. He should tell us which business sector some of them will be picked from. We have different business sectors like the Kenya Association of Manufacturers. If that is the kind of body he is talking about, let it nominate its own members. However, the Minister should not be ambiguous by telling us that members will be elected from the business community and that others will come from the universities.

The Bill says that seven members will represent the university, business communities and the research institutes in Kenya. What research institutes are we talking about? We must not be ambiguous in matters that concern law. We must, clearly, define who is supposed to be included in the Board. The Minister is a human being and, tomorrow, he may nominate people and we end up with many controversies.

In conclusion, I want the Minister to reduce the number of Board members. We waste a lot of money on many people sitting in a boardroom discussing research findings on policies, yet they cannot come up with policies. The Minister should tell us whether this body will be charged with the responsibility of conducting research work only or if it will be given other responsibilities. We do not have good research bodies in this country. If we say that we want to develop this body so that it can be giving us good research information, so be it. However, we must be very clear on what we are doing so that we do not lock up five Permanent Secretaries every morning, doing nothing but discussing issues that they cannot implement. A policy cannot be made by such a body. It must be made collectively by the Government, from various Ministries. After all, the Ministry of Planning and National Development has the responsibility of reporting to all the other Ministries. Therefore, the body we are discussing should first report its issues to the Ministry so that the Minister can be able to disseminate information. We cannot have a body that is independent.

We cannot have the Permanent Secretary for Agriculture, the Permanent Secretary for Trade

and that of Finance locked up in one room, and even the Permanent Secretary to the Cabinet and Head of Public Service. All the information should be going to the Minister for Planning and National Development so that he can disseminate it to all consuming Ministries. I hope this is not one of the bodies that donors are dictating to us to establish. If donors want to give us money, let them give it to us but with no conditions. They should not tell us to establish a corporation because after all, we are trying to reduce the number of parastatals in this country. We cannot be creating more when the policy all over the world is to reduce parastatals so that the Government can carry out other important business.

With those few remarks, I want to support but ask the Minister to make the necessary amendments.

**The Assistant Minister for Planning and National Development (Mr. Ethuro):** Thank you, Mr. Temporary Deputy Speaker, Sir. I stand here to support this Bill. The need to set up an independent legal framework, devoid from a comprehensive--- The Kenya Institute for Public Policy Research is legal in the sense that it was established under a gazette notice. What this Bill attempts to do is to get an Act of Parliament so that it can stand on its own and legalise its operations. That is the difference. It is legal now, but we do not want to continue as having it established through a gazette notice, but through an Act of Parliament. Hon. Members should appreciate that I speak as a researcher, because I had an opportunity to work with KIPPRA when I was a young researcher working with the Kenya Agricultural Research Institute.

The turnover of agricultural scientists and any other scientists of good standing is very high in this country. They are in high demand and we use a lot of public money to train them, but we cannot retain them because we cannot afford to pay them.

The most critical thing we want to achieve is the capacity to retain our research scientists after spending a fortune on their training. This can only come about if we have an elaborate framework in which we can recruit, remunerate them and create an enabling environment for them to produce the information that is required. We want to make a distinction between researchers in the universities and those that have specific mandate, in terms of attainment of the national development goals. This is a specific mandate that a body like the one we are establishing should deal with while the university bodies are at liberty to experiment, depending on their own capacity. However, the one we are discussing will be restricted so that researchers will use specific scientific knowledge to achieve desirable outcome as defined by the Government and this House.

Mr. Temporary Deputy Speaker, Sir, research is not something you will do in a day. It is an engagement on a long-term basis. You need a bit of time in order to see the fruits of your work. So, the tenure of the Executive Director cannot be limited to three years. The five years, in my view, is the minimum you can actually achieve, just to make sure that he is in charge. But the research itself is usually a long-term investment. If you are going to have another high turn-over of Executive Directors, you cannot track down the amount of work that has been done and you cannot realise the objectives that you set to achieve.

Mr. Temporary Deputy Speaker, Sir, if there is an omission in this particular Bill, it is what is called institutional learning. In most of our public institutions, including line Ministries, they basically operate like computers on "Random Access Memory". There is no institutional learning that, over time, officers can change. The reason we create institutions is so that there is a depository of knowledge and information that, over time, anybody can come; hon. Kipchumba could be the Chairman of the board today and after a while, hon. Ethuro will come, and there will be a systematic storage of that information that could be used. This is particularly important to research because you need to make references. You need to draw from your past work. You need to draw conclusions based on that, and you need to make suggestions on recommendations for public policy. Therefore, the tenure of the Executive Director should be extended beyond five years.

Mr. Temporary Deputy Speaker, Sir, I do not think this House should spend a lot of time on this Bill. This is an institution that has existed before and we just wanted to formalise it so that it can operate on its own because it has the capacity.

With those remarks, I wish to end my contribution and encourage all hon. Members to contribute very briefly so that we can dispose of it.

**Mr. Muturi:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to say one or two things about this Bill. From the outset, I want to correct the Minister by telling him that he cannot say that he is trying to create a legal framework. There are three methods in this country of setting up parastatals or State corporations. One, is through an Act of Parliament, like he is saying we are doing now. The other one is through a Legal Notice issued under the provisions of the State Corporations Act, Cap.446, Laws of Kenya. The third way is by forming a public company under the Companies Act, Cap.486, Laws of Kenya.

Fortunately, under the docket of the hon. Minister for Planning and National Development, there is a company called Kenya Pipeline Company. It is formed under the provisions of the Companies Act, yet it is a parastatal. It has legal status; it has legal capacity. It has capacity to sue and to be sued. It has capacity to invest and, indeed, even to divest. So, I just want the Minister to get this right. This is not creating a legal framework.

Mr. Temporary Deputy Speaker, Sir, I see some ingenuity in Government; in bringing this Bill. As we know, the Government is hard-pressed. The Minister talked about donors and, indeed, therein lies the reasoning behind the bringing up of this law. The donors have put pressure. We also appreciate that donors are increasingly channelling their funds into this country through NGOs and other civil society organisations. You can see that, notwithstanding the fact that KIPPRA has existed since 9th May, 1997 as the Minister told us, it is now being transformed through an Act of Parliament. But we cannot quarrel with that. There is no harm in Government taking Parliament in circles because they are used to doing it. But why not just say what you want is to comply with some conditionality by some donor; the World Bank, in particular? It is also the habit of this Government to freeze the civil society. They want everybody who is out there to get into Government, and that is why they are providing that they want a centralised body. In the Memorandum of Objects and Reasons, it says:-

"The principal object of this Bill is to provide for the establishment of the Kenya Institute for Public Policy Research and Analysis, whose primary purpose will be to carry out objective analysis into public policy issues in Kenya and to serve as a centralised source from which the Government, agencies of Government and the private sector may obtain information and advice on public policy issues."

Therefore, what the Government is doing is to try to look for a way of making sure nobody gets issues on public policy research from elsewhere other than from this centralised Government agency. That is why I said the Government is becoming ingenious in this, and I want to congratulate the Minister. This is thinking beyond--- Let me not say that.

Mr. Temporary Deputy Speaker, Sir, there is no harm in having independent research groups. Indeed, I hope the creation of KIPPRA under this Act will not necessarily mean a drain on institutions such as the Institute of Development Studies (IDS) at the University of Nairobi, or indeed, the Institute of Policy Analysis and Research (IPAR), or even civil society organisations like the IEA which, I believe, play very complementary roles alongside KIPPRA. Indeed, as far as research is concerned, all those bodies have actually complemented and/or supplemented the work that KIPPRA has done over the last few years it has been in existence.

Therefore, I suspect that maybe some other underlying reason could be salary for the staff, and the Minister mentioned it. There is no harm in the Minister being candid as he has been, that maybe when KIPPRA is established under this Act of Parliament and the donors are now able to



channel the funds which they were channelling through the other civil society organisations, they will be able to attract and retain quality personnel with PhDs, Masters and the rest. Indeed, that is good for the country. For that reason, I actually wholeheartedly support.

Mr. Temporary Deputy Speaker, Sir, I now want to go to the provisions of the Act where I would want to propose that the Minister re-looks at it critically. When you look at Part 4 on Functions of the Institute, some of them are very well put. But I am just wondering whether some of these functions should be put in an Act of Parliament. For example, on page 870, function (j) reads: "The institute will organise symposia, conferences, workshops and other meetings." Surely, do we need to provide in an Act of Parliament that it will hold symposia? The Ministry does so without any express provisions of the law. This seminar mania has got into this Government so much that we must now put it in law that when you see the institute holding a symposium, it is provided for in the law! Who is going to challenge you even if you call the entire Parliament or the entire Ministries of Government to a workshop? I would want to propose to my good friend, the Minister, to re-look at some of these things. We do not want to be laughed at by other people out there that, "must you provide for organisations of conferences and seminars in your laws?"

Mr. Temporary Deputy Speaker, Sir, another area that Mr. Kipchumba mentioned is the appointment of the seven members. It says that the seven shall represent the business sector, the universities and research institutes in Kenya; and they shall be appointed by the Minister by virtue of their integrity, knowledge and experience in matters relating to public policy. They shall be people who have a basic understanding of the management of public finances, personnel management and social science research procedures. I have no quarrel with those requirements. However, given the era that we are in and since we have already set in motion some of these processes, should the Minister also not seek to have some input from the relevant committee(s) of this House in making this decision? Maybe the Minister could consider a place for Parliament. Even in this House, we have already set up the Fiscal Analysis Committee. I think it is only fair that the Minister also consults with some of these bodies. Indeed, it makes a lot of sense since there is so much representation by the technocrats; all these Permanent Secretaries, there may be need to get some input from Parliament. I am sure the Minister has a team that can put that in motion.

On sub-section II of the same Section 7, I would also agree that there may be need, once the board has been put in place, that it be allowed to elect its chairman and then the Minister appoints members. I think it makes a lot of sense that such a board is the one that will have elected its own chairman but the Minister would do the final appointment.

Mr. Temporary Deputy Speaker, Sir, I do not want to go to areas that Mr. Kipchumba visited. However, I pick quarrel with Section 11 which provides as follows:-

"The members of the board shall be paid such remuneration, fees, allowances and disbursements for expenses as may be approved by the Minister on the recommendations of the board."

This flies in the face of Section 10, I believe, of the State Corporations Act because it does not matter whether, indeed, in the report which I am just about to begin moving in the next few minutes; that is the legal opinion that we have received from the Principal Legal Adviser of the Government that unless you make provision specifically ousting the jurisdiction of the State Corporations Act, Cap.446, you may not go outside the provisions of that Act in deciding fees, allowances or other forms of remuneration that may be paid to board members, directors and staff. At this early stage, I would like to propose to the Minister that he looks at that just to harmonise so that the Bill does not have any cobwebs like we have seen with other Statutes that have been enacted after 1986 when the State Corporations Act came into being.

Mr. Temporary Deputy Speaker, Sir, in Section 12(2), it says that the Executive Director shall hold office for a period of not more than five years on such terms and conditions of employment

as the board may determine and shall be eligible for re-appointment. I just wonder why this Government never came up with something that we think is, in some areas, paying dividends; performance contract. Why do they not want to have an inbuilt of that in the terms and conditions of appointment of the Executive Director? We have no quarrel with the ability to be re-appointed. However, let it be based on performance. I think it is happening right now. Even some of the parastatals under the Minister have done so. I am just making this contribution just in case it may make sense and see whether it can be included. We are into that era and we want to see whether that can be considered.

What I have said about Section 11 would apply to Section 14 which has a typographical mistake which purports to have a sub-section 1 without there being any other sub-section. It says that:-

"The board may appoint such officers, agents and other staff of the institute as are necessary for the proper and efficient discharge of the functions of the institute under this Act upon such terms and conditions of service as the board may determine."

I want to suggest to the Minister - again, that is why I am saying "just like I said" - that since under Section 26 of the State Corporations Act, indeed, by this Government and I have already commended them for doing so because it is the law, he appointed the State Corporations Advisory Committee - he should let that body to be charged with the responsibility of setting these terms. Therefore, unless you specifically, like I had said earlier, oust the jurisdiction of that Act, then you may find it difficult to make these appointments in the manner that is proposed here without again it being said to be contradicting the other Act. The Controller and Auditor-General will always catch you and tell you that you have violated the other Act. Therefore, it is a matter that needs to be re-looked.

Mr. Temporary Deputy Speaker, Sir, Section 22(2) states that:-

"The board may place on deposit with such bank(s) as it may determine any monies not immediately required for the purposes of the institute."

I do not know who did this for the Minister. The Minister himself was an hon. Member of the Public Investments Committee (PIC). He knows how much funds have been sunk by parastatal heads in bodies like Daima Bank, Pioneer Building Society and Euro Bank. He is telling them that they can do that?

**An hon. Member:** No way!

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, they will kill the institute because they will always be attracted by some funny interest which will be formulated. If you put your deposits in a bank and the day you expect to go and get your money back plus the interest, you are [told: "Roll it over!"], you will not like it. In the Report that I am about to begin tabling, there is a lot of evidence about that. So, I think again, to comply with successful Treasury circulars on application of funds not immediately needed by any parastatal - they are very many - it is important that such funds be placed in such bank(s) as the Treasury will approve from time, just like you have made provisions for the placement of the others in consultation with the Minister but with the approval of the Treasury. It is the Treasury that should tell you that this bank is facing problems. It is the Treasury that should tell you: "Place these funds in Charter House Bank", if it is healthy. Therefore, it is important that there is involvement of the Treasury in where such funds may be placed.

Mr. Temporary Deputy Speaker, Sir, I said that I support this Bill and I continue to do so. I do so, because the Minister has told us the truth behind it. He said that when this institute exists in the manner that it does, the donors do not think that it has sufficient legal capacity. I blame the Government for not being forthright with the donors. The Government should tell donors this institute can borrow, be lent money and even receive donations. This institute has that capacity. They have just taken the Government in circles and come to take our precious time to do things that actually already exist. The powers that the Government is seeking to give to this body are already

there.

Mr. Temporary Deputy Speaker, Sir, of course, there will be the question of categorization. I believe if the Minister hopes to attract the kind of personnel and researchers as he has stated, obviously, like we know, in all parastatals in this country, there will be need, from the outset, to state what category of parastatal this one will be.

Mr. Temporary Deputy Speaker, Sir, on a technical issue, I note that at the tail-end where the Minister's name appears, it says:-

"The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for in the Estimates. However, it is expected that the Institute will gradually fund its operations through funds it will generate in the course of the exercise of its powers or the performance of its functions under the proposed Act."

We are always told that when you say that public funds will be incurred, you state that the President has also signalled his consent to such expenditure. I can see Mr. Wetangula is getting excited because he was my classmate. That is the only reason that he gets excited when he sees me on Floor!

Mr. Temporary Deputy Speaker, Sir, I want to appreciate the work that the KIPPRA has done. Indeed, a lot of us may not have actually been able to digest what came up through the APRM mechanism. I want to commend the people who have been running that institute because those of us who care to read the reports they produce know that they have really done this country proud. Perhaps, part of the reason why we acceded to being examined is because our own researchers in KIPPRA had done such a commendable job. I, therefore, would have no hesitation in supporting some of the ideas the Minister has, for example, paying better salaries. I obviously support that the staff of KIPPRA need to be paid better than what they are earning currently. I suppose if they exist only as a small compartment in the Ministry, they will not serve this country in the manner that we expect.

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

**Mr. Sungu:** Mr. Temporary Deputy Speaker, Sir, I also stand to support this Bill. This is a Bill in the right direction because we have many subsidiary legislations in the name of Legal Notices signed by technocrats, civil servants and sometimes derived through roadside decisions. We want to state here, as the Ninth Parliament, that we want to make laws for this country. It is right and proper that KIPPRA works under a proper legal framework.

Mr. Temporary Deputy Speaker, Sir, their mission statement says:-

"To bring together public research bodies, to involve in public policy formulation and to have objective research and analysis."

That mission statement is noble. I would like to start my contribution by saying that research in this country has been grounded. Research is very important if any country is to develop. We only need to look yonder to the United States and other developed countries such as the Tiger nations who have given research priority. They know what is good for their country and vice versa. The tendency in this country is to rely on foreign formulated or donor-driven policies rather than home grown advice from research institutions in this country. This is what this Bill tends to address.

We have numerous research papers in this country. We have results of numerous workshops. These have never been implemented and nobody in Government in a decision making position has ever had the chance to look at these papers and make a decision derived from proper research. Therefore, there has been no institutional memory when it comes to papers or research. There is no single body which has been able to look at all the research that is going on in this country, and to tell us which direction we should take scientifically, socially and so on. Therefore, this is a must for Kenya. It is a must that we legalise KIPPRA so that we are in the right direction and so that when we make decisions, we do so, in the right way.

Mr. Temporary Deputy Speaker, Sir, recently some hon. Members of Parliament attended a Parliamentary network on the World Bank. We had the occasion to interact with hon. Members of Parliament from other countries such as America, Europe, Asia and even from Africa. It turns out that there are many research institutions that are funded by the World Bank. It is important that Parliament is able to integrate these research institutions. We can only do this if there is a legal framework.

Mr. Temporary Deputy Speaker, Sir, there are over 10,000 PhD holders in Kenya. In Nairobi, there are over 5,000 PhD holders. I beg to disagree with any hon. Member who says that we need to hire these people. Why do we have to take these people to school, through college and university level? When will we, as a country, ever use the knowledge that they get? We have been encouraging brain-drain by not employing our people in the right way, so that they can help this country. I am sure most of the researchers at KIPPRA are Kenyans, who have the Kenyan experience. If it is a village in, for example, Nyeri, Kisumu or the Eastern slopes, there will be people with that experience. There is no scientific or social knowledge that can be applied if we do not have the background of the people. Therefore, the tendency to import these researchers will work against us.

Mr. Temporary Deputy Speaker, Sir, this country has numerous research institutions. We have the Kenya Agricultural Research Institute (KARI), the International Centre for Research and Agro-forestry (ICRAF), the International Livestock Research Institute (ILRI), the Kenya Medical Research Institute (KEMRI), not to mention universities with thoroughly qualified people. South Africa is taking the better part of our doctors. We are also losing our professionals to other countries in Southern Africa and even elsewhere in Europe and Australia. What a better way to use them if there is research for the benefit of this country.

Mr. Temporary Deputy Speaker, Sir, one of the things that has been said that KIPPRA has developed is the Economic Strategy for Wealth and Employment creation. This, in fact, was an item to address the Millennium Development Goals (MDGs). I want to appeal to this Government, and I hope the Minister is listening, if we want to have proper research carried by professionals in this country, then we should be able to implement their findings to the letter. When implementing their findings we should not be influenced by our political inclination. Research work should be carried out throughout the country. It should not only be concentrated to certain areas where the politically-correct people are. We should not ignore my beloved Kisumu. When policy is developed, it is for this country. This Government, and any government for that matter, must ensure that it is applied equitably. These policies can never work if we ignore certain sections of the committees. They are the so-called economic linkages. If you established a factory in Thika, for example, and the raw materials are coming from Migori District, that does not make economic sense to anybody. That is why we want research and analysis to be objective, so that when the researchers say something, we follow it as politicians to the letter. When we implement, we help the rest of Kenya.

Mr. Temporary Deputy Speaker, Sir, this Bill is coming in the right mode and at the right time. It has been said that one cannot stop an idea whose time has come. This is the right to do things. However, with respect to the management board, I want us to move, and this is the tendency in Kenya, from a situation where appointments to boards are vetted and approved by Parliament.

Mr. Temporary Deputy Speaker, Sir, we are the representatives of the people of this country. My honourable friend, the Minister for Planning and National Development, Mr. Obwocha, is a very fair man but tomorrow it could be me or hon. Ndile. Now, what is there to prevent me from appointing only people from my own place if there are no parliamentary checks and balances on it? So, it is important that as we look at this thing at the Committee Stage, parliamentary approval be sought for this.

Mr. Temporary Deputy Speaker, Sir, this is a very important institution and I want us to move away from appointing people by positions. We should appoint people by name. The Minister

for Finance and the Attorney-General sit in numerous parastatal boards. What time do they have? They always send one officer today, another tomorrow and another one the following day. That means there is no institutional memory. That also means that they cannot give you the service and thus the advice and support that these ministries need will never be proper. So, I want to suggest that we appoint people by name because we know that there are many qualified Kenyans even in those ten Ministries and even if they were transferred they can continue to be members of those boards and report to that Ministry accordingly until such a time when they can be replaced.

Mr. Temporary Deputy Speaker, Sir, I said my contribution will be a short one and I want to leave it at that because I notice that some other hon. Member was protesting. I want to say that I support this Bill wholeheartedly. We will look at it at the Committee Stage and we will co-operate with the Minister to ensure that we pass this important Bill.

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

**The Assistant Minister for Foreign Affairs** (Mr. Wetangula): Thank you very much, Mr. Temporary Deputy Speaker, Sir. The Kenya Institute for Public Policy Research and Analysis has been functioning very well and it is good that we are giving it legal cover.

Mr. Temporary Deputy Speaker, Sir, I want to start from where hon. Muturi left that if the hon. Minister wants this new legal outfit to function and function properly, he has to expressly oust the provisions of Cap.446 applying to this outfit. I say so because Cap.446 is an old and archaic law that stifles rather than encourage growth of any institution in this country. It has been used variously for good and bad causes and if you want this institute to function properly and grow, then keep away Cap.446 from its provisions because it will just "choke" and make it moribund before it even takes off.

Mr. Temporary Deputy Speaker, Sir, research is very critical for any country, developing or developed. Indeed, any country that does not invest and believe in research is doomed to go nowhere. If you will recall, in the early 1960s, if you bought a Japanese car you were laughed at and considered to be unfortunate but today everybody wants to buy a Japanese car. Why? Because of continuing and continuous research in improving their products. If you have had the opportunity to go to Cuba, you will see how a poor country can do so much with so little by investing in research. You will be impressed how their research institutions have kept that country running with the blockade that they have had for now close to 50 years. Research has always improved the living standards of people and economies of countries and it is important that as a growing and developing country, we put a lot of time, emphasis, energy and money in research.

Mr. Temporary Deputy Speaker, Sir, I would also wish to see that as we emphasise research and research-oriented activities for the growth of our country, we also have to take into account the ethics of research. I have seen no provision here that deals with research ethics so that when you get people who channel out fraudulent research results like we have gone down the road with Kemron, Pearl Omega and all sorts of things that smack of fraud, then the ethics of research must be built in the law to deal with those who falsify research.

If you recall the recent ignominious fall of the embryo research, professor from South Korea has for the last 15 to 20 years cheated the whole world that he is a genius in embryo research only to turn around and find that the man has been falsifying every step of the research he has been channelling out and in the process, he had received billions of shillings from both the United States and America and other supporters of his research activities.

So, we need something like an international organisation called Bi-Ethics so that we can protect society because when you channel out fraudulent result of research, by the time we discover and catch up with you, you will have hurt millions of people, caused losses and done all sorts of things. So, it is important that the ethical aspect of research should be built in the law so that when such things occur we know how to deal with them. I am sure the hon. "Son of Paulina" knows how to

factor that into this Bill

**Mr. Muturi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. With all due respect, is it in order for the hon. Member to talk about the "Son of Paulina" here? I do not think we have any hon. Member that is known by this name. Who is that?

**The Assistant Minister for Foreign Affairs** (Mr. Wetangula): Mr. Temporary Deputy Speaker, Sir, this young man is fond of raising frivolous points of order whenever I am on my feet.

Mr. Temporary Deputy Speaker, as I was saying, I am sure we know where to place that clause and when it comes to the Committee Stage, whether it is me contributing or somebody else, the Minister should look at the ethics of research.

Mr. Temporary Deputy Speaker, Sir, on Clause 6(1)(B) of the Bill, I just want to encourage the Minister to also include research in micro-economic issues because he has talked of macro but the growth of our economy is really micro. We are dealing with poverty reduction and elimination and all these things come through micro. I know we have macro at the national level but we have micro at the lower level that we should address and I hope that the Minister will deal with that. Mr.

Temporary Deputy Speaker, Sir, on the composition of the board, you know when we are dealing with research, I would want to load this board with university dons, people who are committed to research on a day-to-day basis. We should not load the board with Permanent Secretaries who will eventually start sending Deputy Secretaries (DSs) and then eventually send Under Secretaries and sometimes send nobody and then the board starts suffering. I want to encourage the Minister that we want to see a lot of our luminaries in academia like professors who can sit, research and read. As somebody said yesterday, a botanist's office is in the garden. Those are the kind of people we want to see here. We do not want to get to a situation where a Permanent Secretary is torn between following his Minister or going to attend a board meeting of a critical research organ like this. I hope the Minister can see that all we need is the linkage of the line Ministry and, perhaps, the Ministry of Finance. That is because the institute has something to do with funding. For the rest, we can have people appointed from universities and other research institutions to represent critical areas of research. Sometimes, we appoint Permanent Secretaries whose capacities are very limited. We load them on research organisations and find that their production is very limited and totally unhelpful.

Mr. Temporary Deputy Speaker, Sir, I understand the Minister said that he is responding to donors in bringing this Bill. If he said that, then it is most unfortunate! That is because this Bill---

**An hon. Member:** He did not say that!

**The Assistant Minister for Foreign Affairs** (Mr. Wetangula): Then Mr. Muturi was misreading what he said!

Mr. Temporary Deputy Speaker, Sir, this Bill should never have anything to do with donors. This is something that is home-grown. Research must be our own. If any donor brings in any money, well and good! But whether we get donor money or not, we must continue researching to develop ourselves. We must continue researching to improve our capacity to grow.

Mr. Temporary Deputy Speaker, Sir, I, sometimes, feel very concerned when we do something and leave fluid clauses like: "The institute will operate on gifts and foreign grants". Sometimes, they come in and over-run our independence. They then start imposing unpalatable issues on us.

Mr. Temporary Deputy Speaker, Sir, I agree with Mr. Muturi that the Executive Director should have a renewable five-year term. It should be based on performance. If he or she performs well, he or she should have another term. If he or she does not, he or she should exit. We should not have a research institute with a director who becomes a permanent fixture like the one we have at KEMRI. As long as I have known KEMRI, it has had only one Director, and yet you hardly see what it does! I think we need to give room to new talent, so that we can develop our research institutes.

Mr. Temporary Deputy Speaker, Sir, Clause 12(5) reads:-

"A person shall not be appointed an executive director of the institute unless the person has experience in quantitative economic analysis and public policy research, policy formulation and procedures of Government, proven leadership ability in policy oriented research and analysis, management experience in the areas of both personnel and budget control!"

There is no mention of academic qualifications of such a person!

Mr. Temporary Deputy Speaker, Sir, that is very dangerous! You can have a person masquerading as "having experience in quantitative economic analysis and public policy research". We need to see the qualification of the person who has that experience. That should be put in the Act as well. It should show whether you are looking for an engineer, an economist, a lawyer or whatever! But let us have some basic academic qualifications before we look at the experience. That way, we will not get a quack masquerading as an experienced person. I hope the Minister can do that. In fact, I would not want us to have anybody with less than a Doctorate of Philosophy degree or several of them, being the director of that institute.

Mr. Temporary Deputy Speaker, Sir, equally, I have some concerns on Clause 13(2)(a). If the Executive Director of that institute is going to be a person we will rely on to guide the institute to growth and give us results that we desire, it may not be desirable to have the same person as the secretary to the Board. That is because you will bog him down with petty administrative work, writing minutes and so on, when you can employ somebody else to do that. You should allow the board to have a secretary with given qualifications. We know who secretaries to such boards are. That way, we will leave the Director to deal with more serious issues than being a secretary to the Board. I hope that finds favour with the Minister who moved the Bill.

Mr. Temporary Deputy Speaker, Sir, as we go on recreating that institute, I want it to be given a free hand to determine the remuneration of the personnel they want to have, so that they can attract the best brains that they can have both internally and externally. I met a man called Prof. Calistus Juma. When you talk to him, you will see that, that is the kind of professor that you need to come and head an institute like that. We have many more Kenyans who can do that. That is just an example.

Mr. Temporary Deputy Speaker, Sir, I do not know whether Clause 24 is in consonance with other provisions of the law, including Intellectual Properties Act. You cannot give the Executive Director or anybody from that institute authority to seek information. There are other research organisations that research and protect their findings. Those findings can only be given out through some arrangement. They can refuse to give them out! When you say: "The Executive Director may, in writing, request any person to furnish the institute with such information or produce documents---" It is as if it is a policeman summoning a witness. We cannot do that! If KARI is doing its research, KIPPRA cannot just wake up and say: "Give us information on what you are doing! If you do not, you will end up in jail or being fined!" That is not consistent with intellectual development of any nature. I hope the Minister will delete that clause or amend it in such a way that research institute can share information and work together with other research institutes both internally and externally. We should not give them authority that is akin to police behaviour. They will not be able to exercise that because, if you refuse to give them your information, what can they do? Even if you go to court and you are fined, you can still say: "I am not giving you the information!" Mr. Minister, I hope you can see that. I believe it will help the institute do a much better job.

Mr. Temporary Deputy Speaker, Sir, all in all, this Bill was long overdue. I want to plead again with the Minister: "For heaven's sake, do not allow this institute to go and fall under the clutches of the State Corporations Act. It will never grow. It will be stifled for ever. Give them authority to operate independently and work with other research institutes. Let Kenyans benefit from their work."

With those few remarks, I beg to support.

**Mr. Syongo:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to make a few remarks on this Bill.

Mr. Temporary Deputy Speaker, Sir, I want to acknowledge the fact that, the previous contributors have made excellent contributions which, I believe, the Minister will take into account and restructure this Bill before the Committee Stage.

Mr. Temporary Deputy Speaker, Sir, when the Minister was moving this Bill, he indicated that, so far, the Institute has produced 100 research publications, at a rate of nearly 20 publications per annum. I think that is an excellent indicator of performance. But what I would have wanted the Minister to indicate is an assessment of the impact of those research papers on actual Government policy, and whether they have been truly tested for efficacy. It is one thing to produce a research paper, and a different one to gauge whether it is practically useful, so that they can justify their use of public funds. I like the idea of performance contracts for the directors. But I think the quality of research findings and papers should pass the test of practical application and efficacy.

Mr. Temporary Deputy Speaker, Sir, the previous speaker said that currently KIPPRA has 30 officers, one-third of which have doctorate degrees. That is very commendable. However, the same scenario exists in our universities. In fact, they have more personnel with doctorate degrees. KARI alone has over 300 officers with PhDs. The point that hon. Kipchumba was trying to raise is: What happens to these PhD holders when there is no research work going on? This is something that the Minister should take into account. I believe that this country needs a think tank such as this one. It is a must that we have a think tank for our country. However, such an institute can be set up within the overall framework of existing universities.

Syracuse University has the Maxwell School which specialises in public affairs while the Harvard University has the J.F. Kennedy Institute. The Minister should think a little more and consider the possibility of KIPPRA being part and parcel of the larger academic framework, so that even when there is no research, the learned personnel can actually be passing on their knowledge to others through teaching.

Mr. Temporary Deputy Speaker, Sir, if you travel around in this region, you will see that there is not a single country within the East, Central and Southern Africa which does not appreciate the value of the Kenya Institute of Administration (KIA). This is because it has produced many public administrators. It is one institution that should ideally be upgraded. I visualise a framework which will ensure that the KIA is developed and upgraded as a centre of excellence. Why would an institute such as the one that we have in mind be given consideration to be domiciled at the KIA? We need not only do research, but also teach practitioners. That is those who are going to apply the policies. KIA, I feel, is being misused because it is at the present times used to teach undergraduates. I think it has resources and a good name and can provide an institute such as KIPPRA with the necessary framework, structural as well as institutional, to carry out its work.

Thirdly, the hon. Minister talked about the necessity to guarantee research institutes some funding, and that therefore, the legislative framework will guarantee KIPPRA public funding. I fully agree that we need to do so. However, the real assurance of sustainability in modern days is the ability of every institution, such as the proposed one, to produce quality services that are marketable.

*(Dr. Rutto consulted loudly  
with hon. ole Ntimama)*

**The Temporary Deputy Speaker** (Mr. M'Mukindia): Order, Dr. Rutto! You are totally out of order. You are disrupting the business of the House. You are not listening to what hon. Syongo is saying, and I think that is not right. If you wish to consult with your colleague, hon. Ntimama, please



go out quietly and do so. Disrupting the business of this House is totally out of order.

**Mr. Syongo:** Mr. Temporary Deputy Speaker, Sir, I was talking about sustainability of an institution such as the proposed one. Public funding should only be seen as part of it. Ultimately, this institute must produce marketable products. It must produce results, that is research services that will be in demand not only by the Ministries, but also by external entities. I would, therefore, like the Minister to ask himself how KIPPRA, once established through a statutory arrangement such as we are considering, will, in fact, produce quality products that will ensure its sustainability. Public funding cannot be the only source of funding.

I want to bring to the attention of the Minister the fact that there is need for him to consider all existing similar establishments in Ministries and the entire public sector. For example, in the Directorate of Personnel Management (DPM) there is an extremely good division called the Management Consultancy Services Division (MCSA). It specialises on policies regarding human resource management. That is a department whose capacity and institutional memory should ideally be of benefit to KIPPRA especially in areas of human resource management. I know that, that division has not only been used by parastatals in this country, but also by other countries.

*(Hon. ole Ntimama stood up in his place)*

**The Temporary Deputy Speaker** (Mr. M'Mukindia): Order, Mr. ole Ntimama! No two hon. Members shall stand and start talking. Hon. ole Ntimama, you are very much aware of our Standing Orders. In fact, I have just brought this to the attention of Dr. Rutto, who was talking to you. One minute later, you are repeating the same thing. I am very surprised at you!

**Mr. ole Ntimama:** Mr. Temporary Deputy Speaker, Sir, I do apologise.

**Mr. Syongo:** Mr. Temporary Deputy Speaker, Sir, I think I have made that point clear and the Minister has taken note of it. Now, these are not issues only within the DPM. In fact, KIPPRA can be given the assignment to do a complete inventory of all research institutions that are responsible for policy formulation, be it in departments of Government or Ministries. I think they will be able to find and identify such institutions so that we do not have a proliferation of institutions which basically do one and the same thing. That, in fact, would be a waste of public resources. If we pool together all the resources available within all these institutions and put them in one centre, we shall have a much stronger institution. I believe that will be something good to consider doing.

Mr. Temporary Deputy Speaker, Sir, even as we contemplate setting up KIPPRA through this statutory arrangement, we should be reminded of the fact that we should not create a monopoly. We should not create an institution which will claim monopoly over research projects in the public sector. As a nation and an economy, we have agreed that we must have a competitive environment, and that policy should be seen to be practised everywhere. There are several other private and public institutions such as the Institute of Policy Analysis and Research, which was mentioned by one of my colleagues. We should not stifle competition; instead, we should ensure that KIPPRA competes with other research institutions. We should also ensure that the demand for research and policy analysis in the public sector is accessible by private research institutions, universities and so on. If we do not do so, we shall establish a hegemony, and at the end of the day we will see decadence and obviously sloth in terms of capacity and efficiency.

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

**Mr. Angwenyi:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the chance to contribute to this very important Motion.

This Bill demonstrates that if you put people in positions that they understand, they will definitely do what the country needs. The hon. Obwocha has done very well to bring this Bill before us. For a long time, researchers in this country, especially in the area of economics, have not had a

proper house from which they could carry out their research. Hon. Obwocha is now providing a place that can create knowledge and solve economic problems for this country and its neighbours.

Mr. Temporary Deputy Speaker, Sir, research is the foundation of knowledge. Just imagine this! If there was no research, we would not have discovered Penicillin, let alone Cafenol. Research is what gives us solutions to problems affecting humanity. These days, the biggest problem facing our people is poverty. In fact, poverty is related to economic performance.

Mr. Temporary Deputy Speaker, Sir, creating an institution such as the one which the Minister wants to create will assist this country to move forward. I want to give a success story of an institution which has performed very well but Kenyans do not know how it was started. I am referring to KEMRI. KEMRI was started by three lecturers of the University of Nairobi. They were Dr. Koech and Dr. Mugambi. They wanted to establish a research unit at the University of Nairobi. But they were not given facilities. They were given a room without any budget for it. They were eventually given Kshs7,500 to set up a research institute to do research in medicine. As you realise, Kshs7,500 a year cannot do much. It cannot even buy matches for lighting fire in a house.

Mr. Temporary Deputy Speaker, Sir, so, those dedicated Kenyans urged the Government to form a proper research institute. They were able to influence an amendment to the Research Technology Act in this country. When the late President Kenyatta passed away there was some commotion in the country. The former Attorney-General, Mr. Charles Njonjo, was not in charge of laws being enacted at the time in this country. So they were able to sneak through this House an amendment to that Act, which established the first institute in this country, KEMRI. Those people offered for two years to work for free to establish that research institution.

Today, that institute gets over Kshs1 billion grants from well wishers all over the world. It trains about 150 postgraduate students in medicine related research. It has created employment for 2,741 people. This is the kind of commitment, I hope we will get quality research from the institute we are going to establish through this Bill. Why was KEMRI able to achieve all that? This was because they were given a free hand to run that institute. They were given a free hand to recruit researchers who are qualified and experienced. The founder member of KEMRI, Dr. Davy Koech, has remained there without being disturbed. He has committed his life to that research institute. If you visited that institute, you would see what it has achieved since 1979 when it was started.

What I am saying is that the Minister should give the proposed institute a free hand to recruit qualified people. They should be given adequate financial and physical resources, so that they carry out research work. They should also be given a free hand to conduct any research it deems necessary to solve our economic problems. We have had people appointed to positions they were not qualified for. They were appointed to them simply because they knew the appointors. Such people are not secure in their jobs and work under fear of being sacked. So, we should emulate the example of KEMRI and replicate it to the research institute we are setting up.

My friend, hon. Wetangula, knows that there is no academic qualification set for the director and other people to be recruited into this institute. We must insist that the minimum qualification for the director should be a doctorate degree in the relevant field. We have got such people in this country. Mr. Minister, if you do not have one, I know a Dr. Bosire who is qualified in economics but has had no job for the last three years. We have got such people, who are idle and are wasting their brains. They can be found from any corner of this country. Ministers, these days, appoint their brothers to positions; if you do not have a brother go to the Turkana or Elmolo and pick somebody. If you come to me, I will give you, Dr. Bosire. We must insist on academic qualifications first before going for experience.

Mr. Temporary Deputy Speaker, Sir, I have noticed that the board will be composed of Permanent Secretaries. We should insist that the board should consist of the academia. We have got six public universities and about ten private universities in this country. These universities are staffed

by Kenyans. What I am saying is that we should insist that this board will have people from the academia. The Board members will then create think tanks to deal with issues like micro-economics, public finance and welfare economics. They will provide research information to Kenyans, especially to parliamentarians, so that when we discuss issues in this House, we discuss them from point of information and not from ignorance, as we do sometimes.

Mr. Temporary Deputy Speaker, Sir, PSs have no time. Most of PSs do not have academic qualifications befitting this kind of institution. We must also look into laws that may affect the operation and functions of this institute. I, therefore, suggest that where laws conflict with this Act will prevail. Hon. Wetangula said that this institute should be funded wholly by the Government. I have just given an example of KEMRI. Ninety per cent of KEMRI's budget is grants because it has performed well. It has established itself as a renowned institution. So, philanthropists are and willing to support. When the institute is operational, we should give it a free hand to look for resources from well wishers, as long as it does not enslave itself.

However, We should give the Minister powers to reject conditions, if we are given, in the manner the World Bank has been doing to us. Yesterday, we were talking of expatriates in the Kenya Power and Lighting Company (KPLC). We do not have expatriates in the Office of the President which consumes Kshs40 billion. We should not allow that kind of infiltration. We should not be forced to take people who are rejects elsewhere. If we allow this proposed institution to work to the best of its ability and commitment, we will have done a good job.

With those few remarks, I beg to support.

**Mr. Odoyo:** Mr. Temporary Deputy Speaker, Sir, I wish to add my voice to all the good points raised by the hon. Members who have spoken before me. Specifically, I wish to thank the Minister for recognising the fact that research is not only important in the scientific and agricultural sectors but also in policy and economics. This particular institute will bridge a very important gap among the research fraternity in this country.

The Minister has said that the enactment of this Bill into law will bring change, and that this institute will succeed the existing research body. The question is: Will this institute succeed the existing body in terms of attitude, approach and style?

**Archbishop Ondiek:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Mr. Odoyo to speak from the Front Bench?

**The Temporary Deputy Speaker** (Mr. M'Mukindia): I will let him continue for the purpose of saving time.

Proceed, Mr. Odoyo! You are quite in order.

**Mr. Odoyo:** Thank you, Mr. Temporary Deputy Speaker, Sir, for protecting me against Archbishop Ondiek, who keeps on fighting Lucifer everyday.

**Mr. Mbau:** On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a very straightforward Bill. These are the kind of Bills that we should be dispensing with as **[Mr. Mbau]** quickly as possible, so that we can transact more business. Would I be in order to call upon the Mover to reply?

**The Temporary Deputy Speaker** (Mr. M'Mukindia): It is okay, but I will allow Mr. Odoyo to finish contributing to the Motion first.

**Mr. Odoyo:** Thank you, Mr. Temporary Deputy Speaker, Sir. The Minister should ensure that the institute will be proactive. For instance, there are issues coming to play at the regional and global levels. These are areas in which the institute should be proactive. The institute should not wait to be requested to carry out studies. It should be proactive, so that we can assist--

**QUORUM**

**Prof. Olweny:** On a point of order, Mr. Temporary Deputy Speaker, Sir. We do not have a quorum.

**The Temporary Deputy Speaker** (Mr. M'Mukindia): Indeed, we do not have a quorum. So, could the Quorum Bell be rang?

*(The Quorum Bell was rung)*

Order! Order! We now have a quorum. Proceed, Mr. Odoyo!

**Mr. Odoyo:** Mr. Temporary Deputy Speaker, Sir, this particular institute should be linked up with the Council of Economic Advisors, members to which are appointed by the Minister in charge of economic planning. The council does not have a research arm. I believe that this institute can assist this council, which advises the President on economic issues. It is assumed that members to this council provide their own opinion, but on what basis? I believe that this institute can assist that particular council.

Mr. Temporary Deputy Speaker, Sir, another area of necessary linkage, which I wish to point out, is that of regional activity. We are moving more and more towards the East African Community, the World Trade Organisation (WTO) and the global agenda. Today, we are affected by diseases that are global, be they Sars, Ebola or HIV/AIDS. More and more, the global perspective is affecting us. Therefore, I wish to appeal to the Minister that the research---

**The Assistant Minister for Water and Irrigation** (Mr. Wanjala): On a point of order, Mr. Temporary Deputy Speaker, Sir. I have been looking at Mr. Ndile. Is he properly dressed to be in this House?

**The Temporary Deputy Speaker** (Mr. M'Mukindia): Mr. Wanjala, that issue was resolved before you came to this House.

Proceed, Mr. Odoyo!

**Mr. Odoyo:** Mr. Temporary Deputy Speaker, Sir, many of the institutes that are world renown focus on a few lines. If this institute will focus on policy, it must start from day one with the intention of being a global leader in this area. Even if it starts as a regional or continental leader, it must be the best in this region in matters of policy analysis. For that reason, it should have the capacity to generate income from regional consultancy services.

Mr. Temporary Deputy Speaker, Sir, if the institute becomes a world class centre, people will come to request its services and they will be prepared to pay for those services. For that reason, the Minister must ensure that the institute will have its own proper buildings that will be purposely designed for research. The institute should be located in an area that will encourage and have the good minds of clever people prosper.

Mr. Temporary Deputy Speaker, Sir, whereas other hon. Members have pointed out that it is---

**The Assistant Minister for East African Community** (Dr. Khalwale): On a point of order, Mr. Temporary Deputy Speaker, Sir. The speech of the hon. Member on the Floor generally reflects the mood that has been in the House on this Motion that hon. Members are in agreement. Could the **[The Assistant Minister for East African Community]** Mover be now called upon to respond?

**The Temporary Deputy Speaker** (Mr. M'Mukindia): Mr. Odoyo, as you know, the issue of calling upon the Mover to reply has been raised several times this afternoon. I think you have had enough time to speak on this debate. Therefore, I will put the question.

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

**The Minister for Planning and National Development** (Mr. Obwocha): Mr. Temporary Deputy Speaker, Sir, I want to thank hon. Members sincerely. As I said, basically, we are formalising the status in which KIPPRA has been operating, so that we have an Act of Parliament. Therefore, to some extent, there was not much to deal with. However, I would like to respond to a few of the issues raised by the hon. Members who have contributed to this debate.

Mr. Temporary Deputy Speaker, Sir, we will bring an amendment to the clause that is dealing with the Minister for Finance and the Minister for Planning and National Development to simply the Minister in charge of planning affairs at that time.

On the composition of the Board, which many hon. Members have mentioned, there is a feeling of the House that there are too many Permanent Secretaries. However, I want to assure the hon. Members that we will bring an amendment to delete Clause 7(1)(a), which includes the Permanent Secretary, Secretary to the Cabinet and Head of the Public Service. This is the man who is in charge of policy. Therefore, anything that is discussed there will finally end up on his desk. So, it would be wise, as indicated by some hon. Members, that there is no justification in including him. However, I would hasten to add that many of the Permanent Secretaries who are there are for the purposes of public policy generally, so that when they are being dealt with, they are abreast with what is happening and can contribute effectively.

Mr. Temporary Deputy Speaker, Sir, the issue of the Chief Executive Officer's term being five years is reasonable. In a research institution, the period cannot be any shorter. The results sometimes take a long time and what they do needs to be analysed. So, a period of three years appears to be too short. Therefore, a period of five years appears to be fairly reasonable. However, I am free and ready to take any suggestions or amendments that the hon. Members will bring.

There is also the issue of where the Kenya Institute for Public Policy Research and Analysis should report to. Parastatals report to their parent Ministries. If it is the feeling of the hon. Members that KIPPRA should report to the Ministry of Planning and National Development, I have no quarrel with that, because that is the parent Ministry.

**Mr. Kajwang:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I would not have wished to interfere with the Minister's contribution. However, I had mentioned to him quietly that there is a description of the Board. This is in Clause 7(1)(a), which suggests that there is an office in the Republic of Kenya called "Permanent Secretary, Secretary to the Cabinet and Head of Public Service". I am not aware that there is any such office in any Act of Parliament. We may have been referring to it administratively, because there is no Head of Public Service other than the Public Service Commission. Is it in order to---

**The Temporary Deputy Speaker** (Mr. M'Mukindia): Order, Mr. Kajwang! You should bring an amendment at the appropriate time. That is not a point of order.

**The Minister for Planning and National Development** (Mr. Obwocha): Mr. Temporary Deputy Speaker, Sir, I really agree with hon. Kajwang that we have proposed to delete Clause 7(1)(a). So, whether it is described properly or not, it will be deleted.

I want to agree with the sentiments of hon. Muturi. He has said that we have included functions like seminars. We will have a look at that. I think he is being more specific. There is nothing wrong by saying that the institute will be in charge of seminars and other events. However, we have taken the sentiments seriously.

It has been stated that Clause 11, which deals with salaries and allowances conflicts with the provisions of the State Corporations Act, Cap.446. We will look at that to see whether the provisions are really in conflict with Clause 10 as mentioned by hon. Muturi.

Mr. Temporary Deputy Speaker, Sir, the performance contract is a new phenomenon in the Kenyan management and it is working. Therefore, I do not think that we should tie it to the law.

However, if the hon. Members feel strongly that we should, we, as a Ministry, will look at it. On Clause 14, there is a typographical error because we have indicated 14(1) when there is no 14(2). So, we will also delete 14(1).

**Prof. Olweny:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I want to draw the attention of the Minister to the fact that under Clause 7(1)(b), there is also a Permanent Secretary to the Treasury. I thought we only had a Permanent Secretary in the Ministry of Finance.

**The Temporary Deputy Speaker** (Mr. M'Mukindia): Order, Prof. Olweny! We will not entertain those exchanges. You still have a chance to bring in amendments during the Committee Stage.

Continue, Minister!

**The Minister for Planning and National Development** (Mr. Obwocha): Mr. Temporary Deputy Speaker, Sir, I do not know whether the Professor read bio-chemistry--- I do not know what he read, but we are dealing with financial matters, which we are experts on. But if Prof. Olweny has any suggestion, we are open to them. This is an open Parliament and we are open to suggestions which are reasonable.

Mr. Temporary Deputy Speaker, Sir, I think I have commented about salaries and allowances. We appreciate the comments of hon. Sungu. I would like to clarify one other issue which was raised by two or three other hon. Members, about local funding and donor funding. I never talked about donor funding. I said that African countries, just like we have created the African Peer Review Mechanism (APRM), have created a body for capacity building in this continent. It is called the African Capacity Building Foundation (ACBF), and most hon. Members do not have access to it. This year, I attended a meeting of the ACBF in Paris. This is a contribution made by all African countries at a rate of a minimum of US\$250,000. The headquarters of the ACBF is based in Harare, Zimbabwe. Its objective is to build the capacity of our research institutions. Africans felt that we should have this body. If other people put their own money there, it is their own *shauri*, but it is an African concept. It has nothing to do with donor funding. So, I hope that my brother, hon. Muturi, understands this.

Mr. Temporary Deputy Speaker, Sir, I appreciated the comments made by hon. Wetangula a lot, about the composition of the Board. I want to confirm that we will include the academic qualifications of the executive director. Regarding the issue of donor funds, which he also covered, I have explained about the ACBF.

As to Section 13(ii)a, maybe, that is an issue we will consider if we can have a different secretary to the Board, other than the managing director. But the advantages of having the managing director as the secretary are quite immense, because he is able to combine his knowledge about what is happening and how to get those minutes sorted out. But we will look at it because it was a suggestion made by hon. Wetangula.

Regarding Clause 24, I will get to my officers and we will also look at it in order to amend the research institute sharing information, because I think it is important. I also want to thank hon. Syongo for his contribution. But more importantly, we should not create a monopoly of KIPPPRA. I am sure that there are many research institutes in the country and they play different roles. So, I can assure you that this is not going to be a monopoly. We also appreciate the comments of hon. Angwenyi. Lastly, I appreciate the comments made by the hon. Member for Nyakach, hon. Odoyo, my neighbour, and son of the mayor.

Mr. Temporary Deputy Speaker, Sir, to complete the circle, I want really to thank the hon. Members for appreciating what we have done. I think it is a credit to this House. This is an institute that was set up under a Gazette Notice in 1997. It has been operating and the rules are there. We are not changing anything. We are giving it an Act of Parliament to operate under. Therefore, there is nothing new.

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

*(Question put and agreed to)*

**The Temporary Deputy Speaker** (Mr. M'Mukindia): Next Order!

### MOTION

#### ADOPTION OF THE 13TH PIC REPORT

**Mr. Muturi:** Mr. Temporary Deputy Speaker, Sir, I beg to move the following Motion:- THAT, this House adopts the Report of the Public Investments Committee on the Accounts of State Corporations laid on the Table of the House on Tuesday 27th June, 2006.

Mr. Temporary Deputy Speaker, Sir, on behalf of the Members of the Public Investments Committee (PIC), I beg to move that the House adopts the 13th Report of the Committee on the annual reports and accounts of State Corporations. I need not belabour the point, to explain that the PIC is, like other Committees of this House, a Select Committee of the House created under Standing Order No.148. Its functions are clearly spelt out under Section 5 of that Standing Order. It includes, but not limited to the following; to examine the reports and accounts of public investments, to examine the reports, if any, of the Controller and Auditor-General on the public investments and, more importantly, to examine in the context of the autonomy and efficiency of public investments whether the affairs of the public investments are being managed in accordance with sound business principles and prudent commercial practices.

Mr. Temporary Deputy Speaker, Sir, this particular Committee that compiled this 13th Report was constituted in August, 2004. At its inception it comprised the following Members:

Hon. J.B.N. Muturi, MP, Chairman,  
Hon. W. Wamunyinyi, MP,  
Hon. J.K. Kingi, MP,  
Hon. J. Angwenyi, MP,  
Hon. P.G. Munya, MP,  
Hon. K.N. Sang, MP,  
Hon. W.A. Oparanya, MP,  
Hon. G.G. Muchiri, MP,  
Hon. G. Kabogo, MP,  
Hon. A.A. Hassan, MP,  
Hon. A. Bahari, MP.

Mr. J.K. Kingi, ceased being a Member of the Committee on 25th May, 2005, upon being appointed an Assistant Minister in the Office of the President.

Mr. Temporary Deputy Speaker, Sir, it held a total of 93 sittings in which it closely examined the audited accounts of a whopping 41 State Corporations and the reports thereon by the Controller and Auditor-General.

The Committee also undertook site inspection tours of the following facilities:-

The Kenya Ports Authority, Mombasa; Telkom Kenya Limited, Coast Headquarters in Mombasa; Kenya Ferry Services, Mombasa; Kenya Electricity Generating Company (KenGen), Kipevu Power Plant in Mombasa; the Coast Development Authority, Mariakani; Kenya Wildlife Service (KWS) parcels of land at Kisite and Malindi; and Kenya National Trading Corporation's Loita Street parcel of land, next to the Grand Regency Hotel, Nairobi.

Mr. Temporary Deputy Speaker, Sir, those site inspections were necessitated by the need to ascertain various issues arising from the audit reports raised by the Controller and Auditor-General. The proceedings of the site visits are recorded in the minutes of the Committee contained in this report. The minutes of the Committee are also attached hereto as annexure No.1, and copies of them are available in the HANSARD Report that has been placed in the library.

Mr. Temporary Deputy Speaker, Sir, the implementation status of the 12th Report has been printed separately as a Treasury Memorandum, and it is proposed to discuss this Report alongside that Treasury Memorandum on the implementation status of the previous Report, as is the traditional practice of this House.

In its inquiry into whether or not the affairs of public investments were managed in accordance with sound business principles and prudent commercial practices, the Committee heard and received evidence both oral and written from various chief executive officers of State Corporations and other witnesses. The recommendations on the issues raised by the Controller and Auditor-General would be found under the appropriate paragraphs of this Report. It is not my proposal that I shall deal with each and every reservation by the Controller and Auditor-General regarding the accounts of various State Corporations, as contained in the Report. But it suffices to say that, in the course of our hearings, we did take evidence on the accounts of various State Corporations as indicated. They were 41 in total, some of the reports covering periods as long ago as 1993, especially with regard to the case touching on Tana and Athi Rivers Development Authority, and recently, within that context, the 2002/2003 Audit Report by the Controller and Auditor-General for the National Hospital Insurance Fund (NHIF).

We believe that the observations and recommendations made by the Committee, if taken into account and implemented, will result in the enhanced accountability, effectiveness, transparency, efficiency, prudent management and profitability in State Corporations, and the public investments sector as a whole.

Mr. Temporary Deputy Speaker, Sir, in examining the audited accounts of State Corporations for various corporations, the Committee's primary approach was to elicit background information as to why particular courses of action were taken and/or not taken by various CEOs, and whether, when taken, they kept in mind the relevant financial circulars and principals as earlier on initiated and as contained in Standing Order No.148(5). That is the foundation of the Committee's provisions and recommendations. I must say that the Committee was appalled to observe that several State Corporations continued to operate under financial constraints generally occasioned by mismanagement and/or imprudent commercial arrangements. In addition, the Committee observed that some parent Ministries constantly engaged in micro-managing State Corporations under them, and severally undermined decisions made by the Boards of such corporations, even where such Boards were carrying out their statutory mandate.

Mr. Temporary Deputy Speaker, Sir, the Committee, therefore, upholds these sentences which dilute the principles under-pinned in establishing State Corporations, like the one we have just been discussing, which is about to be established, as well as the much-hyped about performance contract concept.

Furthermore, the Committee has continued to take great exception on the slow pace at which the Government has implemented the recommendations of this House as adopted, regarding the state of various State Corporations. In particular, the Committee upholds the apparent lacklustre approach employed by the offices of the Attorney-General and that of the Director of Criminal Investigations Department in implementing the recommendations of the House, particularly where the Committee recommends for investigations and/or prosecutions of people found to have engaged in malpractices.

Mr. Temporary Deputy Speaker, Sir, the Committee expressed great concern in the manner in which the Government handled, in particular, and executed the incidence of the importation of the



180,000 metric tonnes of white maize through the National Cereals and Produce Board in the Financial Year 2004/2005. Whereas observing that the justification for the zero-rating of import duties chargeable on maize imported into the country and other taxes was generally to replenish the strategic grain reserve, due to the prevailing famine which had been declared a national disaster, the Committee observed that the process failed to meet its intended purpose. This is because only 39.5 per cent of the intended grain, white maize, was eventually imported into the country. Indeed, the 39.5 per cent was imported into the country after the expiry of the initial duty-free period and long after the drought/famine had considerably reduced in the country. The other weakness was noted to be failure by the Government to declare the end of that drought and/or famine. In the end, the Committee found that the declaration of the drought and famine as a national disaster was merely used as an excuse for unjust enrichment of those traders who were allowed to import duty-free or at zero-rated duty, the maize that they were able to bring into the country. By the time the maize came in, there was no justification for it not to be charged duty. That undermined the farmer in the country who could not sell his maize in the market because other maize was being brought into the country duty-free. Mr. Temporary Deputy Speaker, Sir, it is also noteworthy that most of the reservations that we noted related to non-adherence to procurement procedures by various State Corporations on one hand, payment of board allowances, irregular allocation of land belonging to State corporations, lack of budgetary control, bad and doubtful debt management and/or provisioning and abandoned projects and pension schemes, especially in relation to the Kenya National Assurance Company. Consequently, it became necessary in the course of our hearings at the tail-end - as is normally the practice - to have a meeting with a group that is famously referred to as the "Big Five". The Big Five comprise of the Attorney-General of the Republic of Kenya, the Head of Civil Service and Secretary to the Cabinet, the Permanent Secretary to Treasury, the Controller and Auditor-General and the Permanent Secretary, Directorate of Personnel Management.

The reasons for meeting with these officers is that we wanted to understand why it is that year in, year out, recommendations by this House which are taken to Government are not implemented in the manner that they are supposed to. Shortly, I shall be demonstrating the casual manner in which the Government treats reports of this House by way of showing how they respond to recommendations. Even where this House has clearly made a recommendation that investigations be undertaken, you find responses in the Treasury Memorandum that "the Chief Executive confirms that action is being taken", even if he is the one who is actually supposed to be investigated. Your guess would be as good as mine, if I am the one that I have been recommended to be investigated and you write to me asking me to implement that kind of recommendation, and I am the one to draft the response. This is what this Treasury Memorandum is replete with. Obviously, Parliament is being taken for granted by the Executive and we, as a Committee, urge this House to firmly express itself that it wants concrete action taken on reports that it has adopted.

Mr. Temporary Deputy Speaker, Sir, as a watchdog of the public on the management of State Corporations, the reign of this Committee is to ensure that integrity, high standards of ethics and productive efficiency are collectively maintained in all public investments. It is on this premise that towards the end of the sittings, we chose that we had to meet with the so-called Big Five. We wanted them to share and exchange views on matters of public investments which the Committee viewed as requiring critical attention. The meetings with the Big Five deliberated on matters which were recurrent and outstanding in the reports of the Controller and Auditor-General, and on various State Corporations which the Committee reviewed.

Mr. Temporary Deputy Speaker, Sir, I may sound repetitive because I have just contributed to the KIPPRA Bill which we have just passed, but some of the issues that exercised the minds of the Committee include, but not limited to, the following: There is the issue of State Corporations which are set up by specific Acts of Parliament which make certain clear provisions, vis-a-vis the

provisions of State Corporations Act, Cap.446 of the Laws of Kenya. While deliberating on the report of the Controller and Auditor-General on various State Corporations, the Committee on several occasions heard that managements and boards of some of the State Corporations passed and implemented specific decisions according to enabling Acts like the one we have just passed, even though those decisions contravened the State Corporations Act, Cap.446.

In view of that, we needed to get the opinion of the Principal Legal Advisor to Government, who is the Attorney-General, in the presence of the PS, Treasury. One example is the National Hospital Insurance Fund (NHIF), which has continued to pay allowances to its board members at rates higher than those set by the Government, and contrary to Section 10 of the State Corporations Act, Cap.446 Laws of Kenya. As I said when I was contributing to the former Bill, we wanted the Attorney-General to make it clear which of the two laws prevails, so that the Controller and Auditor-General does not have to raise this issue year in, year out.

Mr. Temporary Deputy Speaker, Sir, the issue had been captured by the Controller and Auditor-General in Paragraph 6 of the accounts of the NHIF for the year ended 30th June, 2003. A similar issue had arisen with regard to the Export Processing Zones Authority (EPZA), and that has recurred since 1996 because the Act makes provisions that the board of EPZA can pay allowances which they determine themselves, yet the State Corporations Act says that is a function of the State Corporations Advisory Committee. This is the Act that prevails and had been captured by the Controller and Auditor-General in the accounts of the Electricity Regulatory Board (ERB) for the year ended 30th June, 2000. The provisions of the Electric Power Act of 1997 give some specific provisions regarding what allowances are to be paid. Therefore, the Committee sought advice on which law should prevail in case of conflict between the various enabling legislations setting up the various corporations under the State Corporations Act.

Mr. Temporary Deputy Speaker, Sir, we also sought advice whether it would, therefore, be prudent for the Government to introduce miscellaneous amendments to the affected statutes and or to establish a policy on which of the law is to prevail whenever there is a conflict. At the meeting of the Big Five, the Attorney-General informed the Committee that the State Corporations Act, Cap.446, applies to everybody corporate falling within the definition of State corporation, irrespective of whether a corporation could have been established before or after the commencement of the State Corporations Act, Cap.446, unless a specific provision is made. This is why, when I was contributing, I suggested that a specific provision be made to oust the jurisdiction of the State Corporations Act. It says:-

"Unless a specific provision gives precedence to the enabling legislation or any other written law establishing a State corporation."

It is actually provided for under Section 6(1) of the State Corporations Act. It provides that when a State Corporation is being created, a provision can be made that this other Act will not apply.

Mr. Temporary Deputy Speaker, Sir, for the rest, a lot of it is legality. However, the Committee, after hearing the opinion of the Attorney-General, recommends that all State corporations should adhere to the provisions of the State corporations Act, Cap.446, in the manner provided for in the advice of the Attorney-General in (1) and (3) above, and or make specific exclusion; and accordingly in view of the opinion of the Attorney-General, the excess allowances paid to members of the board of the National Hospital Insurance Fund (NHIF), unless they seek *post-facto* approval of the State Corporations Advisory Committee, must or should be immediately recovered from the recipients by way of surcharge as captured by the Report of the Controller and Auditor-General, Paragraph 5 of 2002/2003 accounts.

I have mentioned the State Corporations Advisory Committee. The Committee observed in its meeting with the Big Five. Indeed, that is why I said earlier on that we commend the Government that in 2003, after many years of calls by hon. Members to have this Committee set up, because it is

provided for under Cap.446, Section 26, was finally set up. However, we noted like had been noted, in the past, that even before and, indeed, during the infancy of the State Corporations Advisory Committee, decisions of that Committee were communicated to various State Corporations through the Permanent Secretary, Secretary to the Cabinet and Head of Public Service. The Committee sought to be appraised by the Big Five on whether, currently, the State Corporations Advisory Committee is properly established and operational and the legal status and sanctions of those decisions signed for by the Permanent Secretary, Secretary to the Cabinet and Head of Public Service, on behalf of that Committee. The Committee was informed that he was acting as an agent of necessity. He acted as an agent of necessity because the law provides for the establishment of the committee, but no committee was in place. Even when the committee was set up, it took time to operationalise. All decisions made by the Permanent Secretary were deemed to have been made by the committee when it became properly constituted.

Mr. Temporary Deputy Speaker, Sir, the Committee found and recommended that the chief executives should ensure that they have recourse to the Committee as provided for under Section 27 when revising personal emoluments, acquiring interest in any business proposal, entering into joint ventures with other bodies or persons and, or making management or consultant agreements with other persons.

Mr. Temporary Deputy Speaker, Sir, I know that there have been proposals to look into that law. I believe there is need to do so. Some State corporations will from time to time be required to enter into certain arrangements. It will be tedious and bureaucratic to always seek the concurrence of that committee, if it has to communicate its decisions through resolutions. Our advice to the Government, as a Committee, is that it should consider revising the provisions of the State Corporations Act, Cap.446, to accommodate new developments.

Mr. Temporary Deputy Speaker, Sir, on the issue of the action taken by the Government on the past recommendations of the House, I may not be able to go through all of them because I believe they are all in the Report. There are some touching on thefts that took place or misappropriation in the Teachers Service Commission (TSC). Some of them could not be recovered because the TSC took too long before it went to seek the assistance of the Attorney-General.

Mr. Temporary Deputy Speaker, Sir, there is one interesting case involving the Kenya National Trading Corporation (KNTC), now in limbo, that I would like to cite. That case involving the KNTC revolved around the loss of Kshs0.5 billion due to theft which occurred sometime in 1993. On 2nd August, 2000, a Mr. David K. Kirop, who was then Managing Director of the Corporation, was charged in court with the offence of abuse of office. The Committee heard that on the request of the accused, or on his application, the High Court ruled that the offence had taken place too long ago such that the accused could not defend himself appropriately and as such terminated the case in the lower court. The office of the Attorney-General then represented by two State Counsels, Messrs Momanyi Bwonwong'a and Dorcas Oduor, undertook to file an appeal. The Committee was concerned that the appeal was yet to be lodged and no satisfactory explanation was forthcoming from the Attorney-General. Indeed, the position is that no appeal has ever been lodged.

There was further a loss of Kshs7 million in the KNTC, where Messrs. Philip Kiplelei Magut, Joseph Manga Mugwe, Pascal Kiragu Mugwe and Rapsel Limited were accused. This matter was reported to the Criminal Investigations Department (CID) on 2nd February, 1998. Investigations were instituted and on completion, the file was forwarded to the Attorney-General for consent and advice. On 12th January, 1999, the Attorney-General gave consent for the suspects to be charged in court. On 29th March, 1999, just two months later, the accused persons were arrested with the aim of arraignment before court following the Attorney-General's directives. Strangely, on the same day, the Attorney-General ordered that the suspects be released and the files be re-forwarded to him.

Mr. Temporary Deputy Speaker, Sir, in January the files were re-forwarded to him, and in

January, 2000, the Attorney-General returned those files to the Office of the Director of Criminal Investigations Department with directives that it should be closed. Surprisingly in the month of October, 2004, the suspects were again summoned to the CID headquarters with the aim of charging them in court with the same offence. However, the CID was again instructed by the Attorney-General to re-forward the files to him so that he could advise them on when they could charge the suspects. The file has not been received back yet as of July, 2005, and the suspects are still free and roaming the streets and the countryside.

Mr. Temporary Deputy Speaker, Sir, there was another case involving the Kenya National Trading Corporation (KNTC) still, and it is important for me to go through this because we will be coming to our recommendations. This was a case involving KNTC Plot No.209/10343 which I referred to in my opening remarks as the Loita Street plot, which was fraudulently surrendered to the Commissioner of Lands and sold to Savings and Loans Kenya Limited. The case involves Messrs. Phillip Kiplelei Magut, Joseph Manga Mugwe, Grace Manyila Adera, Wilson Gachanja and Pascal Kiragu Mugwe. This issue has been outstanding for a long time. It came to the attention of the Committee that each time the Director of CID commenced investigations and possible prosecution, the Attorney-General always withdrew the files from the CID.

For instance, in October, 2004, those persons named were summoned to the CID headquarters with a view to preparing them to appear in court on charges of abuse of office and conspiracy to defraud. However, before their fingerprints could be taken, the Attorney-General directed that the file be as usual forwarded to him for perusal and advice. It was not all lost. One more case involving the loss of about Kshs14 million, involving a certain Mr. Reuben ole Nakuo, Mary Nasikei Nakuo and Kimani Mbugua, who is since deceased, has finally been filed in court and the suspects are facing trial.

Mr. Temporary Deputy Speaker, Sir, having heard all this, it was important that the Attorney-General, in the presence of his colleagues, the so-called "Big Five", told us what it is they felt and, therefore, we requested for a progress report from the Attorney-General on the cases in respect of the KNTC and others like the Teachers Service Commission (TSC). We also sought explanations from the Attorney-General on the reasons for the inordinate delays in expediting the cases in respect of losses at the KNTC and the constant withdrawals of files by himself in cases involving Joseph Manga Mugwe, Rapsel Limited, Pascal Kiragu Mugwe and Magut.

The Attorney-General informed the Committee that quite often some State Corporations failed to seek legal remedy from him on timely basis and that he had since filed an appeal in respect to the discharge of Mr. David Tirop who had filed a notice of appeal. He also informed the Committee that in February, 1999, he directed and sanctioned prosecution of four suspects in the case of Phillip Magut, Joseph Mugwe, Pascal Mugwe and Rapsel Limited. He even told the Committee that in August, 2000, the Director of CID re-submitted the file to him.

Mr. Temporary Deputy Speaker, Sir, it was very clear from what the Attorney-General and the Criminal Investigations Department were telling us, that each would always blame the other. The Attorney-General would say the CID re-submitted the file, but the CID would say that the Attorney-General recalled the files or asked that they be re-forwarded to him. The Attorney-General indicated that the two cases had been filed on the same subject matter. A civil suit had been filed. He said that the CID had wanted to deal with the matter by way of civil resolution. It is in that instance that the Attorney-General, himself, said that he forbore the prosecution of those culprits. The file was re-submitted to him four years later. On 13th September, 2005, he wrote to the Director of CID requesting for the status of the two civil cases and information whether the KNTC was still keen on pressing on with the charges. The Attorney-General informed the Committee that having perused the file relating to KNTC/209/10343, he wrote to the Director of CID on 22nd, August, 2005, pointing out areas of further investigations, subsequent to which he would give further directions. On the case

of Reuben ole Nakuo, that had already been filed.

Mr. Temporary deputy Speaker, Sir, to date, no action has been taken with regard to that parcel of land. The Attorney-General is still waiting for information from the Director of CID.

He further said, generally, that in some instances, some State Corporations lost cases due to what may appear to be lack of due diligence on the part of their lawyers effectively pursuing the cases, and particularly where they were required to pursue civil suits to recover lost funds. That is because they would find themselves being time-barred.

He also informed the Committee that his office is under-staffed and lacks adequate capacity to prosecute. The Committee took great exception to the delays and the slow pace at which the Attorney-General continued to implement its recommendations, particularly on the cases involving Joseph Manga Mugwe and others, citing that the delay may appear to be intentional. Consequently, the Committee recommends that:-

(i) The Attorney-General expedites all the cases referred to his office by the House.

(ii) The chief executives of State Corporations ensure that they seek timely legal advice from either the Attorney-General or their lawyers, to avoid situations where such legal redress would be rendered nugatory due to time-bar.

(iii) The Office of the Attorney-General should be strengthened by recruiting more lawyers and remunerating them at competitive rates.

Mr. Temporary Deputy Speaker, Sir, those are the recommendations of the Committee after listening to the Attorney-General. It is clear that the recommendations of this House, which had been adopted, apparently will never see the light of the day. There appears to be a deliberate effort on the part of the CID and the Office of the Attorney-General not to successively prosecute any of the cases that this House has recommended for prosecution. It is very clear! The seesaw behaviour--- The Attorney-General says he has asked for files and other information, and yet the letter he quotes is a year old. He writes a letter in August, 2004, and when he appears before the Committee in November, 2005, he has not received the response. Clearly, that is a manifestation of the lacklustre nature of that office.

Mr. Temporary Deputy Speaker, Sir, as a House, I believe we do not want to be dragged into that. We must express ourselves, whether by way of strengthening the Office of the Attorney-General or by employing more lawyers and remunerating them well. But the decision-maker at the top must be willing to act.

Mr. Temporary Deputy Speaker, Sir, the Committee is fully aware that the Attorney-General, in prosecuting or not prosecuting, is not under the direct control of any person, body or authority. However, in the fight against corruption, we will be wasting our time day in, day out, talking about our commitment to eradicating the vice, if we keep hiding under legal niceties and technicalities like: "I am not under the direction or control of anybody; person or authority". A recommendation by Parliament cannot be wasted on the basis of a legal technicality that we are directing the Attorney-General. We are recommending investigations. The Attorney-General is under duty to direct the Commissioner of Police to undertake investigations and report to him. The Attorney-General can then report to Parliament that investigations have been carried out and they have revealed that the persons directed to be investigated have not committed any crime. This House will be satisfied!

## ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. M'Mukindia): Order, Mr. Muturi! When the debate resumes, you will continue with your presentation. The Motion will be seconded on that day.

Hon. Members, it is now time for the interruption of business, and Tuesday being a public

holiday, the House is adjourned until Wednesday, 11th October, 2006, at 9.00 a.m.

The House rose at 6.30 p.m.