

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday 5th April, 2005

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

The Quarterly Report of Kenya Anti-Corruption Commission covering May, 2003 to December, 2004.

The Annual Report in respect of prosecutions of Anti-Corruption and Economic Crimes related to cases for the period May to December, 2003.

The Annual Report in respect of prosecution of Anti-Corruption and Economic Crimes related to cases for the period January to December, 2004.

*(By the Attorney-General (Mr. Wako) on
behalf of the Minister for
Justice and Constitutional Affairs)*

The Report of the Controller and Auditor-General together with the Appropriations Accounts, Other Public Accounts and Accounts of Funds for the year 2002/2003 together with Appendices 1, 2 and 3.

Amended Report and Accounts of Kenya Accountants and Secretaries National Examinations Board (KASNEB) for the year ended 30th June, 2003 and the Certificate thereon by the Controller and Auditor-General.

The Annual Report and Accounts of State Corporations Appeals Tribunal for the year 30th June, 2003 and the Certificate thereon by the Controller and Auditor-General.

Sessional Paper No.2 of 2005 on Development of Micro and Small Enterprises for Wealth and Employment Creation for Poverty Reduction.

Sessional Paper No.8 of 2005 on Government Bank Guarantee to the Kenya Farmers Association (KFA).

Statistical Abstract, 2004.

The Quarterly Budget Review of the 4th Quarter for the Fiscal Year 2003/2004.

*(By the Attorney-General (Mr. Wako) on
behalf of the Minister for Finance)*

The Annual Report and Accounts of Kenya National Examinations Council (KNEC) for the year ended 30th June, 2004 and the Certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of Higher Education Loans Board (HELB) for the year 30th June, 2003 and the Certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of Egerton University for the year ended 30th June, 2000 and

30th June, 2001 and the Certificate thereon by the Controller and Auditor-General.

Annual Report and Accounts of Kenyatta University for the year ended 30th June, 2002 and the Certificate thereon by the Controller and Auditor-General.

*(By the Attorney-General (Mr. Wako)
on behalf of the Minister for
Education, Science and Technology)*

The Report of the Parliamentary Select Committee on Constitutional Review concerning consensus building and the way forward in the constitutional review process.

(By Mr. Samoei)

NOTICES OF MOTIONS

Mr. Sungu: Mr. Deputy Speaker, Sir, I wish to give notices of the following Motions:-

INTRODUCTION OF CONSUMER PROTECTION BILL

THAT, in order to ensure comprehensive protection of the Kenyan consumer, this House do grant leave for the introduction of an Act of Parliament entitled The Consumer Protection Bill to establish consumer protection law that will contribute towards the improvement of consumer welfare and for matters incidental thereto and connected therewith.

INTRODUCTION OF ADVERTISING CONTROL BILL

THAT, aware that the Government does not have a comprehensive policy regarding advertisement, cognisant of the fact that the industry has used unethical practices in pushing, dangerous and substandard products on the lives of consumers, this House do grant leave to introduce a Bill for an Act of Parliament entitled The Advertising Control Bill to legislate against such practices and to ensure that advertisements are truthful, ethical and recognise cultural and social values of the Kenyan society.

INTRODUCTION OF COMPETITION BILL

THAT, this House do grant leave to introduce a Bill for an Act of Parliament to repeal The Restrictive Trade Practices, Monopolies and Trade Control Act Cap.504 of the Laws of Kenya, and to replace the same with an appropriate law entitled The Competition Act, in order to reduce monopolisation and collusive behaviour between firms and matters incidental thereto and connected therewith.

ADOPTION OF SESSIONAL PAPER NO.2 ON DEVELOPMENT OF MICRO AND SMALL ENTERPRISES

The Minister for Labour and Manpower Development (Dr. Kulundu): Mr. Deputy Speaker, Sir, I would like to give notice of the following Motion:-

THAT, this House adopts Sessional Paper No.2 of 2005 on Development of Micro and Small Enterprises for wealth and employment creation for poverty reduction, laid on the Table of the House on Tuesday, 5th April, 2005.

ADOPTION OF SESSIONAL PAPER NO.8
ON GOVERNMENT OF KENYA BANK GUARANTEE TO KFA

The Assistant Minister for Finance (Mr. Obwocha): Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts Sessional Paper No.8 on Government of Kenya Bank Guarantee to the Kenya Farmers Association (KFA), laid on the Table of the House on Tuesday, 5th April, 2005.

EQUITABLE DISTRIBUTION OF
EMPLOYMENT OPPORTUNITIES

Mr. Kimeto: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:- THAT, taking into consideration the Government's desire to create over 500,000 employment opportunities annually; considering further that, in the past, some constituencies have been under-represented in the recruitment of their youths in the public sector such as the Police Force and army, this House urges the Government to come up with a mechanism to ensure that the recruitment in the public sector is not only based on merit, but also on equitable distribution in the constituencies.

ADOPTION OF PSC REPORT ON
CONSENSUS BUILDING IN
CONSTITUTION REVIEW PROCESS

Mr. Samoei: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:- THAT, this House adopts the Report of the Parliamentary Select Committee on the Constitution Review concerning consensus building and the way forward in the constitution review process laid on the table of this House on Tuesday, 5th April, 2005.

ORAL ANSWERS TO QUESTIONS

Question No.007

RESETTLEMENT OF 1992
TRIBAL CLASH VICTIMS

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

- (a) when the Government will resettle the 1992 tribal clash victims of the Chepakundi adjudication area in Olenguruone Division of Kuresoi constituency; and,
- (b) why the Government resettled victims from one community in Kapsita settlement scheme and left out victims from other communities.

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

(a) The NARC Government is determined to resettle the 1992 tribal clash victims. In its endeavour, the Government has set up a task force with the following terms of reference:-

- (i) To enquire into the factors/causes of displacement of persons.
- (ii) To reveal and ascertain the extent of genuine displacement.
- (iii) To identify the extent of loss of land in respect of displaced people.
- (iv) To make recommendations on modalities of resettlement for genuine victims.

The task force will make visits to the areas that were affected during the 1992 tribal clashes, including Chepakundi and Kapsita. The Government will consider and, where possible, implement the recommendations made by the task force.

(b) In Kapsita Settlement Scheme, victims were resettled after the clashes from all the communities which were displaced. There was no resettlement of one community as alleged. Since Kapsita did not have the capacity to take all clash victims, others were settled at Bargat Settlement Scheme in Keringet Division.

Mr. Cheboi: Mr. Deputy Speaker, Sir, I have a lot of respect for my senior colleague with whom we were practising in the same town. This is a constitutional issue. There were clashes in 1992 in Olunguruone and Chepakundi. It pitted two tribes. One tribe has been compensated three times; first from the United Nation Development Programmes (UNDP), secondly from the Catholic Church, and they went ahead to receive compensation from the Government in Kapsita Settlement Scheme. What I am saying is that the people who remained there from the Kalenjin community were also promised compensation and, as a result, their land was declared a forest. But now, 14 years down the line, they have not been compensated. They cannot plant anything. They cannot buy or sell land. We do not have land control boards. They cannot even plant tea because they need to have a permanent residence.

Mr. Deputy Speaker, Sir, I want to ask the Assistant Minister one question: You have formed a task force. Could we, first of all, know the constitution of that task force because I know my constituency, which was greatly affected by those clashes, is not represented?

Mr. M. Kariuki: Mr. Deputy Speaker, Sir, Mr. Cheboi appreciates that we practise law in the same town. He should also appreciate that he was my pupil and I signed his certificate of moral fitness.

I have already pointed out the terms of reference of the task force. Among other things, it is to establish the genuine displaced people and the extent of loss of their land. In 1997, 858 victims of tribal clashes were resettled at Kapsita, majority of whom were Kikuyus. But there were other communities who were settled at Bargat scheme in Keringet. Those ones were not Kikuyus. Therefore, it is not true to say that it is one particular community which was favoured.

Since the task force has to complete its recommendations and forward them to the Government, I would rather we left their recommendations at that. Let them carry out their mandate.

Mr. Deputy Speaker, Sir, on Thursday last week, I tabled before this House the members of the task force. I believe the hon. Member was here. Mr. Mukiri had requested that we table the list of members, which we did. I cannot repeat the same thing that I said last week. The HANSARD will bear us out that we tabled the list here.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, it looks like the resettlement of clash victims took care of only two communities, one of which caused the clashes in the first place! The Kisii community was victimised and nobody is talking about their resettlement. I would like to know the people who have been resettled, their communities and even their names! Could the Assistant Minister give that assurance?

Mr. M. Kariuki: Mr. Deputy Speaker, Sir, we are not addressing the issue of tribes. We are addressing the issue of displaced people across Kenya. That particular task force has been to Mombasa, Bungoma, Nakuru and Molo. It is now in Eldoret. It will go to Naivasha and other places. So, among the persons who are being addressed, I believe, are genuinely displaced people from the

Kisii community. We treat all Kenyans equally.

Mr. Keter: Mr. Deputy Speaker, Sir, could the Assistant Minister undertake to provide the names of those resettled victims in Kapsita and Bargat schemes?

Mr. M. Kariuki: Mr. Deputy Speaker, Sir, I do not want to pre-empt the work of the task force. That is precisely what they are supposed to establish. I can assure Mr. Cheboi that nobody is going to get more than one piece of land. The fact that they were resettled and did not surrender their title deeds for the land they owned is what the task force is going to address. Will they go back to their original pieces of land or are they going to remain in the new resettled areas?

Mr. Mukiri: Mr. Deputy Speaker, Sir, majority of the people who were settled in Kapsita, which is in my constituency, came from Chepakundi. Most of them had their title deeds. There was an exchange which was done by the Government, but the majority of the people who had title deeds at Chepakundi were never settled. When is the Government going to settle those people who were promised land in Kapsita and they were never settled?

Mr. M. Kariuki: Mr. Deputy Speaker, Sir, I have already said that, that is the work of the task force. They will have to make their recommendations. Let us not pre-empt what they are carrying out right now.

Mr. Cheboi: Mr. Deputy Speaker, Sir, I think my good friend Mr. M. Kariuki is lying because---

Mr. Deputy Speaker: Order! Order! Withdraw that remark!

Mr. Cheboi: I am sorry, Mr. Deputy Speaker, Sir! I withdraw that! He is my good friend. I withdraw with apologies to my senior!

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

Mr. Deputy Speaker: Order, Mr. Kimeto! Could you sit down. That is an order from the Chair.

Mr. Cheboi: Mr. Deputy Speaker, Sir, I meant to say in English terms that he is misleading the House! He is representing many of the people that I am trying to complain about---

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

(Laughter)

Mr. Deputy Speaker: What is it, Mr. Kimeto!

Mr. Kimeto: Mr. Deputy Speaker, Sir, Mr. Cheboi has talked about people from Chepakundi and from Kapsita. Chepakundi means *arap kundi*; the people of that area. Kapsita means *arap sita*; the people of that area. Those are the original inhabitants of that area.

Is it in order for the Assistant Minister not to address the issue as to why those people have not been settled?

Mr. Deputy Speaker: That is not a point of order, Mr. Kimeto!

Mr. Cheboi: Mr. Deputy Speaker, Sir, the main issue is that the place has been declared a forest. Members of one community have been settled in Kapsita and members of the other community have been promised to be settled. The people who have been settled in Kapsita should cease visiting that area to sell their lands because it is creating a lot of tension and this might even cause clashes. Could the Assistant Minister assure this House that these people will not be going there to sell their land?

Mr. M. Kariuki: Mr. Deputy Speaker, Sir, right now, there are no transfers of land in the affected areas. Mr. Cheboi is aware, as much as I am, that there have been cases of fraudulent transfers of title deeds in that particular area. The task force is going to investigate and find out about the fraudulent transfers. Right now, in compliance with what the Minister for Lands and Housing had said

earlier, no transfers of land will be carried out before the task force completes its report.

Question No.006

REMOVAL OF VAT ON SUGAR

Mr. Osundwa asked the Minister for Finance whether in view of the strategic importance of sugar, both as a cash and food crop, he could consider removing VAT and other taxes to enable the locally produced commodity compete favourably with imports from other countries.

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

I concur with the hon. Member's view regarding the importance of sugar, both as a cash crop and a food crop, which supports a large part of the population from the western part of Kenya. However, after careful consideration of the proposal to remove VAT and other taxes on locally produced sugar, the Government considered the proposal not viable or helpful to the local sugar industry. The Government's position is justified on the following grounds:-

- (1) Imposition of VAT at 16 per cent on sugar enables millers to deduct all input taxes that they would otherwise have passed to consumers.
- (2) The Sugar Development Levy (SDL) at 7 per cent is imposed on all sugar, locally produced as well as the imported one. The purpose for the levy is well known and its blanket removal may not only lead to a decline in the development of the sugar industry, but also escalate the production costs and may eventually render the locally produced sugar even more uncompetitive.
- (3) Sugar is recognised as a sensitive product, and for this reason, the commodity enjoys a higher duty rate of 100 per cent, an equivalent of US\$100 per tonne, under the Common External Tariff. This is intended to protect the local sugar from competition from the imported sugar.

I wish to reiterate that contrary to the common belief, exempting sugar from the VAT would make the commodity much more expensive because millers would not be in a position to deduct all the input taxes. These costs would then be passed on to the consumers through higher prices of the commodity, which I am sure, is not the wish of the hon. Members. Under the circumstances, I, therefore, consider the *status quo* on taxation of sugar to be the most prudent thing.

Mr. Deputy Speaker: I want to request Ministers to be quick with their answers.

Mr. Osundwa: Mr. Deputy Speaker, Sir, some of the answers we get from Ministers are very annoying. One hon. Member referred to an answer from a Minister as "stupid". Last year, when His Excellency the President toured Western Province, he addressed the issue of high taxation in the sugar industry. He promised the leaders, including the Vice-President and Minister for Home Affairs, who is seated here, that he is going to look into the issue of removing taxes from sugar.

Some of these Ministers are making the President very unpopular. He made this pronouncement in broad daylight and said that he was going to remove taxes. The Assistant Minister has said that they are going to retain the *status quo*. Who do we believe; the President or the Assistant Minister?

Mr. Katuku: Mr. Deputy Speaker, Sir, I want to clarify one thing. The President promised to look into the issue. What I am giving here is the Government's position.

Mr. Sungu: Mr. Deputy Speaker, Sir, the Assistant Minister has accepted the fact that sugar is of immense importance. In fact, a tax of 23 per cent is being levied on sugar as follows:- 16 per cent Value Added Tax (VAT) and 7 per cent Sugar Development Levy. The Assistant Minister and his officials at the Kenya Revenue Authority (KRA) allow sugar barons to import sugar into this country

with impunity at the expense of over 10 million people who depend on sugar. He should remember that these people voted for the Government and at least, reduce the VAT from 16 per cent to, at least, 9 per cent. This would assist the sugar industry.

Mr. Katuku: Mr. Deputy Speaker, Sir, it is not true that the Government has allowed the importation of sugar without any regulations. The Government only allows the importation of up to 200,000 metric tonnes of sugar into this country and of this, 89,000 tonnes is non-industrial sugar. The issue of the Government allowing the importation of sugar into this country with uncontrollably does not arise. There is control in the sugar industry.

Mr. Deputy Speaker, Sir, I want to assure the hon. Members that the money which we collect from the VAT goes into assisting the sugar industry through the Kenya Sugar Board where millers and the players in the industry can borrow money to improve the sector.

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

Mr. Deputy Speaker: Mr. Sungu, let the Assistant Minister finish. You have just asked him a question.

Mr. Katuku: Mr. Deputy Speaker, Sir, in order to make our sugar competitive, we should look at other factors and not the VAT. These include the cost of the inputs and the type of the seeds we are using. We should try to reduce the cost of production by coming up with better mills which can produce at a lesser cost and crush at a higher rate.

Mr. Omingo: Mr. Deputy Speaker, Sir, sugar is important, both as food and as energy, to the sugar growers. Considering the fact that this Ministry waives duty to people who are close to them, why can the Assistant Minister not reduce taxes in the sector to make the sugar production cheaper? They know that the COMESA tariffs will come down in 2007. What is the Ministry doing in line with the COMESA tariffs and the friendly waivers that they give to their friends?

Mr. Katuku: Mr. Deputy Speaker, Sir, the Ministry of Agriculture is addressing the issue of how to improve the sugar sector. With regard to coming to an end of the COMESA tariff scheme, the Government has put in place machineries to address this issue by ensuring that the cost of production in the sugar sector is reduced and the input costs are lowered. We also want to ensure that we produce sugar which can compete with the the sugar produced in any other part of the world.

Mr. Osundwa: Mr. Deputy Speaker, Sir, I think the Assistant Minister is going round in circles on this Question. My Question is on farmers and not consumers. I talked about removing Value Added Tax (VAT) on the farmer's cane. Why is he then talking about consumers? I do not represent consumers in this country.

Mr. Katuku: Mr. Deputy Speaker, Sir, I think the hon. Member is mistaken. He also represents consumers because, in his constituency, sugar is consumed at a very high rate. So, we are trying to protect both consumers and farmers. We do not want this to be passed over to the consumers who will start complaining that we have really raised the cost of sugar. Mr. Deputy Speaker, Sir, likewise, we want also the farmers to benefit from this VAT through the Kenya Sugar Board. In fact, we have raised it to Kshs1.8 billion which the farmers can borrow.

Question No.012

IMPROVEMENT OF BUSIA AIRSTRIP

Mr. Deputy Speaker: Hon. Members, Prof. Olweny has been given permission to go to Arusha on official business. Therefore, his Question is deferred.

(Question deferred)

Next Question by Dr. Kibunguchy!

Question No.008

POOR PERFORMANCE BY LUGARI SECONDARY SCHOOLS

Mr. Deputy Speaker: Is Dr. Kibunguchy still not here?

Hon. Members: Yes!

Mr. Deputy Speaker: The Question is dropped.

(Question dropped)

The Minister for Roads and Public Works (Mr. Raila): On a point of order, Mr. Deputy Speaker, Sir. I understand that Prof. Olweny has gone to Arusha. But could the Ministers also be informed in advance that a Member will not be available to ask a Question? In the past, we have had Members complaining when a Minister is not here to answer a Question.

Mr. Deputy Speaker: That is a good point and the Clerk is expected to note it. We did actually write Prof. Olweny a letter this morning approving his travel to Arusha. Therefore, I agree that the Minister who was supposed to answer his Question should have been informed.

Next Question by Mr. Karaba!

Question No.019

BENEFITS OF NYAYO TEA ZONES

Mr. Karaba asked the Minister for Agriculture:-

(a) whether he is aware that for the last 15 years, Nyayo Tea Zones Corporation has been making losses; and,

(b) whether he could justify the Corporation's continued operations by enumerating its benefits to the country.

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

(a) I am not aware that for the last 15 years, Nyayo Tea Zones Corporation has been making losses. Between 1989 and 1994, it made a total profit of Kshs166,977,203 with Government grants totalling to Kshs181,200,000. From 1997 to 2004, the corporation made a profit of Kshs340,729,500, without grants from the Government.

(b) The corporation's continued operation is justified since it has continued to discharge its mandate effectively. It has been making profit and is a foreign exchange earner. In addition, it provides employment to the communities around the tea zones, thus, playing a major role in the alleviation of poverty.

Mr. Karaba: Mr. Deputy Speaker, Sir, we reckon that the Nyayo Tea Zones were carved from the natural forests in Kenya, thus, leading to soil erosion. This also rendered many people who were living near those zones landless. So, I do not agree with the answer given by the Assistant Minister because, even the farmers in the neighbouring districts, make more profits than what he is attesting today. So, could he tell us how much profit is being realised by each tea zone in every district?

(Mr. Mukiri consulted while standing)

Mr. Deputy Speaker: Just before the Assistant Minister answers, I want to draw the attention of Mr. Mukiri to Standing Order No.85. What you are doing is out of order.

Proceed, Mr. Assistant Minister!

Mr. Akaranga: Mr. Deputy Speaker, Sir, if we look at the profit and loss account of the corporation since 1989, we find that this corporation has been making profit. However, I did not look into these profits per district. I have just brought the figures for the corporation itself.

Mr. Sambu: Mr. Deputy Speaker, Sir, the Public Investments Committee (PIC), in its Eighth Report of the accounts of State Corporations, on page 120, recommended that since the Corporation has failed to achieve its objectives and deviated from its original purpose, it should be de gazetted. The Committee further recommended that the land where tea is planted and all the tea bushes thereon, should revert back to the local authorities.

The Eighth Report was adopted by the House without any amendments. If the Constitution of the nation, and lawful state of this country is to be upheld, then the decisions of Parliament must be implemented. Could the Ministry now allow all the local authorities where the Nyayo Tea Zones are to take over the operations of the tea zones?

Mr. Akaranga: Mr. Deputy Speaker, Sir, indeed, I have not looked at that Report which the hon. Member has just referred to. But the corporation's audited accounts indicated that between 1988/1990, and 1994 to 1999 financial years, the corporation was doing very well. Therefore, I do not know the basis which that Committee used to give the recommendations. At the moment, the corporation's profit and loss account shows that its liquidity position is good.

Mr. Sambu: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to question the basis on which the House makes a decision? This was a report forwarded to the House by the Auditor-General (Corporations). The House did make its decision. Therefore, is the Assistant Minister in order to defy a decision of the House?

Mr. Akaranga: Mr. Deputy Speaker, Sir, I did not defy the order of the House. I said I have not looked at what he has. Let me assure the hon. Member that the Government will look into it, and where possible, we will implement the recommendations.

Mr. Karaba: Mr. Deputy Speaker, Sir, the answer given by the hon. Assistant Minister is very inadequate and unsatisfying, even to the people living where these tea zones are. Yesterday, I visited some of those tea zones and I found out that some animals are even living in them. This means that people no longer pick that tea and the zones have reverted to bushes. It is, therefore, very uneconomical to utilise them. Is the Assistant Minister satisfied that this answer is true to the letter? We all know that even the neighbouring tea farms are making more profits than the Nyayo Tea Zones. Could we, therefore, have those people who are landless in the neighbourhood resettled immediately, so that they can be picking tea and paying taxes to the Government? It is a major responsibility of Government to collect tax.

Mr. Akaranga: Mr. Deputy Speaker, Sir, the hon. Member's Question was whether the Minister was aware that for the last 15 years, the Nyayo Tea Zones Corporation has been making losses. I have replied that it has been making some profits. I will give the hon. Member some of the statistics which show very clearly that the Nyayo Tea Zones Corporation is making profit. They are doing very well in annual green leaf production. I beg to lay this document on the Table.

*(The Assistant Minister for
Agriculture (Mr. Akaranga)
laid the document on the Table)*

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

*Question No.038*INSTALLATION OF TV/RADIO
TRANSMISSION STATIONS IN
MANDERA DISTRICT

Mr. Deputy Speaker: Hon. Members, Mr. Shaaban, with some other legislators, are now in Mandera on official duty. Therefore, the Question is deferred.

(Question deferred)

Let us move on to Questions by Private Notice.
Mr. Ndolo, please, proceed!

QUESTIONS BY PRIVATE NOTICE

DERAILING OF PRESIDENT'S PROGRAMME

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

(a) Is the Minister aware that His Excellency the President was stranded for two hours outside the Nakuru State House on his way from Kisii on 9th February, 2005 due to lack of staff to open the guest house?

(b) Is he further aware that the President was further delayed due to lack of adequate transport to Nairobi?

(c) What steps has the Minister taken to ensure that the President's programmes are not derailed by inadequacy of staff or facilities at his disposal?

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

The answer to parts (a) and (b) is that I am not aware. Therefore, part (c) of the Question does not arise.

(Laughter)

Mr. Ndolo: Mr. Deputy Speaker, Sir, I thank the Minister for that answer. He is not aware---

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! Please, continue Mr. Ndolo! Why are you intimidated?

Mr. Ndolo: Mr. Deputy Speaker, Sir, he is not aware! I do not know who is going to be aware! I think the whole world is aware of what happened. Which world does he live in?

Mr. Deputy Speaker, Sir, could the Minister tell this House what criteria is used to appoint the State House Comptroller and his assistant in this country?

Mr. Michuki: Mr. Deputy Speaker, Sir, I will be ready to answer that question when due notice has been given.

Mr. Wanjala: Mr. Deputy Speaker, Sir, the Head of State is not supposed to travel after 6.00 p.m. On that day, what made the President travel from Nakuru to Nairobi after 6.00 p.m.? That is the time when buses travelling to western Kenya speed so fast, especially those belonging to Eldoret Express.

Mr. Michuki: Mr. Deputy Speaker, Sir, may I request that, before a Question like this is asked, whoever wants to raise it should obtain facts first. On the date in question, the President left Nakuru at 1.15 p.m. in a helicopter and arrived in Nairobi at 1.54 p.m. the same day. He never went anywhere or came from anywhere else. The President also does not stay in a guest house!

Mr. Deputy Speaker: Last question, Mr. Ndolo!

Mr. Ndolo: Mr. Deputy Speaker, Sir, the Minister has told us to get facts before we ask Questions. Could the Minister tell this House where the President's bodyguard was on the day he travelled from Nakuru to Nairobi in a helicopter? It was reported in the media, which we trust, that the President was still in Nakuru late that evening. Where was the bodyguard on that day?

Mr. Deputy Speaker: Mr. Ndolo, you are now going beyond.

*(The Minister for Health
(Mrs. Ngilu) was applauded as
she entered the Chamber)*

Mr. Michuki: Mr. Deputy Speaker, Sir, as I have stated, the President, on the date in question, that is 9th of the month that has been referred to by the gentleman who has asked the Question---

An hon. Member: You do not know his name?

Mr. Michuki: The President did not go anywhere. He left Nakuru as I have stated. He was not in any way involved in what the hon. Member wants to convey to this House and the rest of the world. It is not true.

Mr. Deputy Speaker: Next Question by Maj-Gen Nkaissery!

Maj-Gen Nkaissery: Mr. Deputy Speaker, Sir, I beg the indulgence of the House. I have consulted with the Minister and we are in agreement that, in the interest of this august House and that of the family, we put this Question on hold for two weeks. Then, he will be able to give us the correct answer.

Mr. Deputy Speaker: Order, Maj-Gen Nkaissery! Will you ask the Question, then we will hear what the Minister has to say?

MURDER OF MR. ELIJAH MARIMA SEMPETA

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

(a) Is the Minister aware that a lawyer, Mr. Elijah Marima Sempeta, was murdered at Ngong on 9th March, 2005?

(b) Is he further aware that the late Mr. Sempeta was handling court cases related to land ownership as a result of which he reported receiving death threats?

(c) What action has the Minister taken to trace and bring the murderers to book?

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Deputy Speaker, Sir, I am ready with the answer. However, the hon. Member requested to withdraw the Question in the interest of the family. I do not know whether he still stands by that request.

Mr. Deputy Speaker: Maj-Gen. Nkaissery, the Question now belongs to the House. Do you

want to proceed with it?

Maj-Gen. Nkaissery: Mr. Deputy Speaker, Sir, having consulted with the family, I think it is important that this Question is given, at least, two weeks, after which I can bring it back to the House. So, I request the Chair to defer the Question.

Mr. Deputy Speaker: Well, you request the Chair, but then on behalf of the House, it looks like the sentiments are that I defer the Question. However, I am very reluctant to do that. The Assistant Minister has an answer and the hon. Member asked the Question. We can confidently--- Then, you can ask it in another sitting after six months. Will it be fine that we drop the Question?

An hon. Member: Drop it why? Why do we drop it?

Mr. Deputy Speaker: But the Assistant Minister has an answer.

Maj-Gen. Nkaissery: Mr. Deputy Speaker, Sir, I consulted with the Minister and I requested him, on behalf of the family--- There are more details which will require a more detailed answer. The Minister was in agreement. Therefore, I request the House to defer this Question for two weeks.

Mr. Deputy Speaker: Mr. Assistant Minister, what do you say about that?

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Deputy Speaker, Sir, the solution is not to defer the Question because I have an answer. I wanted the hon. Member to drop the Question and, after consultations, if he wants to raise it once again, that is entirely upon him. Otherwise, I am ready to answer the Question.

Mr. Deputy Speaker: Very well. In that case, it is very clear that the hon. Member does not wish to proceed with the Question. He cannot say he needs more details when the Assistant Minister has not said he needs them. He has the details!

The Minister of State, Office of the President (Mr. Michuki): On a point of order, Mr. Deputy Speaker, Sir. There have been past rulings by Mr. Speaker that, once a Question is on the Order Paper, it belongs to this House. Is it not the case, therefore, that the Question having been within the domain of the House it should be dealt with by the House?

Mr. Deputy Speaker: Yes, but it is up to you, Maj-Gen. Nkaissery, to decide.

Maj-Gen. Nkaissery: Mr. Deputy Speaker, Sir, I requested the Assistant Minister that this Question be deferred. In fact, I also called him and requested that due to circumstances from the family side, this Question should be deferred to a time when we have collected more details because the most likely answer he is going to give is: "We have not arrested the culprits".

Mr. Deputy Speaker, Sir, I do not want to pre-empt that answer. So, I request that we defer this Question.

Mr. Deputy Speaker: All right! I think there is so much plea. Therefore, we will defer the Question for two weeks and if it comes next time and you are not ready, it will be dropped.

(Applause)

(Question deferred)

Next Question by Mr. Wanjala!

RELOCATION OF SOMALIA
GOVERNMENT FROM KENYA

Mr. Wanjala: Mr. Deputy Speaker, Sir, I beg to ask the Minister for East African and Regional Co-operation the following Question by Private Notice.

(a) Could the Minister inform the House when the newly elected Somalia government will

relocate to Somalia?

(b) Is the Minister aware that the continued stay of the Somalia government in Kenya poses a serious threat to the security and stability of Kenya?

(c) What measures have been effected to implement the IGAD plan of disarming warlords?

The Assistant Minister for East African and Regional Co-operation (Mr. J. Nyagah): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The exact date for relocation of the Somalia government will be determined by the security guarantee for the government that is based on consultations between IGAD and the African Union which will eventually involve deployment of an IGAD peace support mission.

(b) The continued stay of the Somalia government does not pose any serious threat to the security and stability of this country. The Somali people have always been with us since the collapse of their government and we have lived as brothers and sisters all the while.

(c) The people of Somalia, including the warlords, will assist the transitional federal government in the disbandment of the militia.

Mr. Wanjala: Mr. Deputy Speaker, Sir, all Kenyans know that since the collapse of the Somalia government there has been an influx of arms into this country. These arms are sold even in Eastleigh. Now that the Assistant Minister has said that we have stayed with the people of Somalia like brothers and sisters, could he consider annexing Somalia to be one of the provinces of Kenya?

(Laughter)

Mr. J. Nyagah: Mr. Deputy Speaker, Sir, the boundary lines of African countries were defined at the Berlin Conference two centuries ago. So, it will be very difficult at this vital point to do so. However, let me also draw the attention of the hon. Member to the fact that the small arms influx into Kenya was not created by Somalia alone. It was also created by Ethiopia, Sudan, Uganda, the Democratic Republic of Congo and so on and so forth. So, I plead with you to give us time since we are almost there. We have spent a lot of energy, time, money and resources. Give us time and we will get them there.

Mr. ole Metito: Mr. Deputy Speaker, Sir, last week this House was informed that our Government incurred a debt of over Kshs450 million in the process of bringing peace to Somalia only. The reply from the Government was that there was no clear and precise plan to pay our business people this money. Why continue keeping these people at an extra cost when we are not even ready to pay the Kshs450 million debt?

(Applause)

Mr. J. Nyagah: Mr. Deputy Speaker, Sir, I do not think we said we are not ready. We just said we are working day and night to find the release of the money because we do appreciate the problems our Kenyan business community is experiencing as a result of that huge debt that was incurred. However, we are talking to donors and other people and we believe that part of the solution will be found when they have gone back home. One of the reasons we are keen to get them back home is because some of the resources will truly come back as a result of them having physically left Kenya. The donors are making it a condition that any funds that will be available, will only come once they have relocated. So, if you can assist us in getting them out of the country, we will be very happy.

Mr. Wanjala: Mr. Deputy Speaker, Sir, recently, the Somalia Members of Parliament caused damages to one of our hotels. The impression that was given by CNN to the world was that it was Kenyan Members of Parliament who fought in this House. You saw how those people were so brutal that they hit each other mercilessly with chairs!

Mr. Deputy Speaker: Ask your question!

Mr. Wanjala: Mr. Deputy Speaker, Sir, that alone shows that they are a security threat to this country. Could the Assistant Minister tell this House the exact date when these people will go home? They have even taken over our businesses like in Kisumu. They must go by the end of June!

Mr. J. Nyagah: Mr. Deputy Speaker, Sir, we should be grateful that they exercised that violence in Kenya. Had they done it in Somalia they would have used guns and killed each other. So, we should create the atmosphere whereby they can fight that way and eventually get out of the country. Let us give them time because we are almost there. I know it is difficult but give us time and then we can get them out. They have learnt their lesson and they will not fight again that way. They will fight in other ways but not in this way.

Mr. Deputy Speaker: Next Question by Mr. Sasura! This Question is directed to the Minister for Justice and Constitutional Affairs and not the Attorney-General as indicated in the Order Paper.

SUBMISSION OF RETURNS BY
POLITICAL PARTIES

Mr. Sasura: Mr. Deputy, Speaker, Sir, I beg to ask the Minister for Justice and Constitutional Affairs the following Question by Private Notice.

(a) How many political parties have submitted returns to the Registrar of Societies following the Justice Minister's directive last year?

(b) What action will the Attorney-General take against parties that did not file returns at the expiry of the 31st March 2005 ultimatum.

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Seventeen political parties have submitted returns to the Registrar of Societies.

(b) Letters of notification of intended cancellation or suspension of registration have already been issued to the political parties that have not submitted their returns.

Mr. Kajwang: On a point of order, Mr. Deputy Speaker, Sir. We have to get certain things right. Political parties are actually the province of the Registrar of Societies and if you look at circulars number one and three of the President, the societies are actually under the Office of the Attorney-General. So, how does the Minister for Justice and Constitutional Affairs come into this matter?

Mr. Deputy Speaker: Mr. Githae, would you like to respond? This is because the reason given in the letter from the hon. Attorney-General is that in that circular, political parties have been moved to the Minister for Justice and Constitutional Affairs. That is the information we have!

Mr. Kajwang: Mr. Deputy Speaker, in law there is nothing called political parties other than in the Constitution itself. However, otherwise by way of registration they are all societies. We have not changed the law.

Mr. Githae: Mr. Deputy Speaker, Sir, the question by hon. Kajwang is purely academic. Even under the doctrine of collective responsibility, any Minister can answer this Question.

Mr. Deputy Speaker, Sir, nevertheless, the portfolio of political parties governance falls under this Ministry and I have already answered this Question.

Mr. Sasura: Mr. Deputy Speaker, Sir, I have not even asked my supplementary question! You gave a chance to hon. Kajwang to raise a point of order.

Mr. Deputy Speaker: I stand to be corrected; I am sorry.

Mr. Sasura: Mr. Deputy Speaker, Sir, could the Assistant Minister tell us which are the 17

political parties that have filed returns to the Registrar of Societies?

Mr. Githae: Mr. Deputy Speaker, Sir, the parties which have filed their returns are as follows: United Patriotic Party of Kenya; National Progressive Party; National Alliance Party; National Rainbow Coalition; Kenya African National Union; Chama cha Umma; National Patriotic Party of Kenya; People's Party for Progress; Kenya National Congress; Kenya People's Party; National Party of Kenya; Chama cha Majimbo na Mwangaza; Green African Party; Kenya Citizens Congress; and Liberal Alliance Coalition of Kenya.

Mr. Deputy Speaker, Sir, it might be of benefit to this House to say that only two parties have filed both their annual returns and accounts. As I speak now, the only two parties that have completely complied with all the regulations under the Societies Act are: National Patriotic Party of Kenya and People's Party of Kenya. The others have either not filed their returns or have done so without filing their accounts.

Dr. Godana: Mr. Deputy Speaker, Sir, this Question has been elicited by the pronouncement by the Minister for Justice and Constitutional Affairs some months back. He said that any party which will not have held elections and filed its returns by 31st March, 2005 will be deregistered.

We have heard the Assistant Minister mention in his answer, among others, National Rainbow Coalition (NARC) as one of those parties which has filed its returns. When did NARC carry out elections and what returns did it file?

Mr. Githae: Mr. Deputy Speaker, Sir, the National Rainbow Coalition which is listed as number--- Just allow me to get the number.

(Laughter)

Mr. Deputy Speaker: Order, Members!

Mr. Githae: Mr. Deputy Speaker, Sir, NARC filed its returns although I do not have the exact date when they did so. I am not talking about the elections because they are governed by the constitutions of the various parties. On the other hand, annual returns are a requirement everyday and filing of annual accounts is a requirement too.

Dr. Khalwale: Mr. Deputy Speaker, Sir, on 4th January, 2004 the Forum for the Restoration of Democracy, Kenya (FORD(K) paid Kshs1,500 at the Sheria House when making returns. As you have clearly heard, the Assistant Minister has excluded from his list the name of FORD(K).

Could he confirm to this House that this is a deliberate effort to arm-twist parties so that they can comply with their desire to create a monolith called NARC?

Mr. Githae: Mr. Deputy Speaker, Sir, as I have explained before, NARC was elected on a platform of the rule of law. It is a fact that political parties have in the past not been complying with the Societies Act and, therefore, all we are doing is requiring the political parties to follow the law which requires them to file their accounts annually and their returns showing who the current party officials are.

According to the Registrar of Societies, FORD(K) has neither filed its accounts nor returns.

Mr. Deputy Speaker: Last question, Mr. Sasura! Hon. Members, we are already five minutes past Question Time.

(Loud consultations)

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mention here the parties which have filed their returns without mentioning FORD(P) which did its elections on 10th December, 2004 and filed its returns three days later? What has the Assistant Minister done with our file? Has he lost it?

Mr. Deputy Speaker: Order, Mr. Angwenyi! You know if I allow every Member of a political party in this House to raise a point of order in relation to his party, we will not finish our business today.

Mr. Sasura: Mr. Deputy Speaker, Sir, if you look at the list of names of the 17 political parties read by the Assistant Minister, you will realise that the only party that has Members in this House is NARC. The Assistant Minister has not included the names of KANU, FORD(K), and FORD(P) and yet they have filed their returns. Could he assure us that the directive by the Minister for Justice and Constitutional Affairs - we do not know where he derives his powers from - is not a move meant to intimidate political parties and make peace with other corporate parties within NARC by saying that NARC is registered? Could he also clarify which NARC faction has filed its returns? Is it the Katuku faction or the other one?

Mr. Githae: Mr. Deputy Speaker, Sir, when I was mentioning the political parties that have filed their returns up to today, I mentioned Kenya African National Union (KANU). I do not know why you are saying that KANU is not appearing in the list.

(Loud consultations)

Mr. Deputy Speaker: Order, Members! You should not communicate to the Assistant Minister across the Benches. You should communicate through the Chair. **Mr. Githae:** Mr. Deputy Speaker, Sir, as far as the Registrar of Societies is concerned, there is only one KANU. There is no "Uhuru KANU" or "Biwott KANU". Similarly, there is only one NARC. There is no "Katuku NARC" or any other person's NARC.

Let us not bring the disagreements in political parties into this House. Let us follow the law. The directive by the Minister still stands and political parties have been given one month to put their houses in order. We must start following the law from now on.

*(Several Members stood up
in their places)*

Mr. Deputy Speaker: Order, Members! We have now come to the end of Question Time. We are already eight minutes past Question Time.

We will now have a Ministerial Statement from the Minister for Labour and Human Resource Development in connection with the fate of sacked workers by TSS Mombasa. The Statement was requested by hon. Khamisi.

MINISTERIAL STATEMENT

PLIGHT OF WORKERS SACKED BY TSS

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Deputy Speaker, Sir, before I make this Statement, I wish to take this early opportunity to apologise for failing to deliver a Statement in this House twice; first, in December last year and on Tuesday, last week. I do not think I need to go into the reasons for doing so, but I do apologise.

Mr. Deputy Speaker, Sir, I wish to respond to the issues raised by hon. Khamisi with regard to the outstanding dispute between 32 employees of Twahir Sheikh Seyyid (TSS) Transporters.

The Shipping, Clearing and Warehouse Workers Union on 4th March, 2003 formally reported the existence of a dispute between itself and its employers on alleged wrongful termination of service of 32 employees. I appointed an investigator to look into the matter after which I communicated my

findings and recommendations to both parties on 25th August, 2003. Neither party indicated that they had accepted or rejected my recommendations. I advised the union to make statutory application to enable the case to be forwarded to the Industrial Court for arbitration. However, the employer was not co-operative and declined to sign and return to me a consent form. Consequently, I referred the matter to the Industrial Court for arbitration as required by the law.

I wish to confirm that the case has not been finalized. So, there is no court order as alleged or as reported by the Questioner. I would also like to point out that, by law, my recommendations are not binding upon any party and that is why the matter has been referred to the Industrial Court, whose ruling will be binding. The matter is now before the Industrial Court as case No.131 of 2004, and it is scheduled for hearing on 3rd May, 2005, at 10.00 a.m.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Thank you. Mr. Khamisi, do you need a clarification? How many people need clarifications? One, two? All right, Mr. Bahari and Mr. Khamisi.

Mr. Khamisi: Thank you, Mr. Deputy Speaker, Sir. It is not quite true that this matter is being referred to the Industrial Court for the first time, because here in front of me, I have a judgement of the Industrial Court dated 2001, and signed by Judge Charles Chemuttut. In this judgement, it was very clear that judgement was done in favour of the employees and, unfortunately, the employer refused to comply with the judgement of this court, and nothing has been done. Could the Minister tell this House what he is going to do in view of the contempt of court that was entered into by the employer?

Mr. Bahari: Thank you, Mr. Deputy Speaker, Sir. I seek further clarification. According to the Minister's answer, this dispute was reported on 4th March, 2003. I wanted him to clarify that, in view of the fact that the loss of a job is a serious matter, why did it take the Minister five months before his recommendations were received? The loss of a job is a very serious matter in this country!

(Loud consultations)

Mr. Deputy Speaker: Order, Members! Let us now give the Minister an opportunity to respond to the two clarifications.

The Minister for Labour and Human Resource Development (Dr. Kulundu): Mr. Deputy Speaker, Sir, I will respond to the last question first. When an employee's services are terminated, we have to go through certain procedures, which include appointing an investigator to investigate the employer as well as the employee, and that takes a bit of time, now that we do not even have money to sustain this practice. So, it took a long time because the investigator in this case was supposed to investigate the employee as well as the employer.

*(The Assistant Minister for Environment
and Natural Resources (Prof. Maathai)
was applauded as she entered the Chamber)*

Mr. Deputy Speaker, Sir, the question raised by hon. Khamisi requires further investigation. We could be dealing with two cases here. The case I am referring to happened on 4th March, 2003. If he has any information regarding an incident which took place earlier than March 2003, I would be more than happy to have it.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Now, are there any requests for Ministerial Statements? Proceed, Dr. Galgallo!

POINT OF ORDER**SUSPENSION OF FOOD AID
TO FAMINE-STRICKEN AREAS**

Dr. Galgalo: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I rise to seek a Ministerial Statement from the Minister of State in the Office of the President in charge of Special Programmes.

We all know that several parts of this country are suffering from famine because of many factors. Moyale District is one of those districts which are suffering. But recently---

Mr. Deputy Speaker: Dr. Galgalo, this question is being addressed by the Minister of State in the Office of the President in charge of Special Programmes. So, please, take note.

Proceed!

Dr. Galgalo: Yes, Mr. Deputy Speaker, Sir, I can see that the KANU Minister is there. Right now, the World Food Programme (WFP) has suspended aid to several districts, including Moyale, and we have a big problem there because people in many families are starving.

Mr. Deputy Speaker, Sir, I want the Minister to explain to us why they are unable to secure food aid for our people from the WFP. What other measures is the Minister going to put in place to ensure that all those starving families are given food?

The Minister of State, Office of the President (Mr. Karume): Mr. Deputy Speaker, Sir, I shall be ready with the Ministerial Statement next Tuesday.

Mr. Deputy Speaker: Very well. Thank you, Mr. Karume.
Next Order!

BILL*First Reading***THE PUBLIC PROCUREMENT
AND DISPOSAL BILL**

*(Order for First Reading read -
Read the First Time -
Ordered to be referred to the
relevant Departmental Committee)*

COMMUNICATIONS FROM THE CHAIR**DEFERRMENT OF THE NATIONAL SOCIAL
HEALTH INSURANCE BILL, 2004**

Mr. Deputy Speaker: Hon. Members, before we move to the next Order, which is the Committee of the Whole House, I would like to give the following Communication and also announce that when we go to the Committee of the Whole House, we will be considering the Banking (Amendment) Bill 2004, and it has been requested by the Minister in charge of the other Bill on the Order Paper that we defer the said Bill. Therefore, we will go ahead and defer that Bill and move on to the next Order after the Committee of the Whole House, which will be the Motion by the Minister for

Education, Science and Technology.

(The Bill was accordingly deferred)

In the meantime, I would like to make the following communication to clarify the procedure that we are going to use when we go to the Committee of the whole House.

RULES AND PROCEDURE ON
RECOMMITTAL OF BILLS

Hon. Members, you will recall that after the House passed the Banking (Amendment) Bill, 2004, on Thursday, 9th December 2004, His Excellency the President declined to give his assent to the Bill, pursuant to Section 46(4) of the Constitution.

Hon. Members, you will also recall that His Excellency the President submitted a memorandum to my office which has since been circulated to all hon. Members indicating the specific provisions of the Bill which require to be reconsidered by the House. I communicated that to this House and read out the full memorandum from His Excellency the President.

I have once again availed copies of the memorandum by His Excellency the President to all hon. Members.

Section 46(5) provides that the National Assembly shall reconsider a Bill referred to it by the President taking into account the recommendations of the President and shall either approve the recommendations with or without amendments or refuse to accept the recommendations and, therefore, approve the Bill in its original form by a resolution supported by votes of not less than 65 per cent of all hon. Members of the National Assembly excluding the *ex-officio* Members. As hon. Members are aware, Standing Order No.111(1) and (2) provides that on recommitment of Bills, the Committee of the Whole House considers only those matters which are specifically referred to it for reconsideration. The procedure on a Bill recommitted shall be *mutatis mutandis*. This means that only amendments to the specific clause being reconsidered shall be entertained.

The following is the procedure that is to be followed in The Banking (Amendment) Bill, 2004 (Bill No.11).

As soon as the order of the Committee is read, the House will proceed to the Committee. The Minister in charge of the Bill; that is the Minister for Finance, will move a Motion for consideration of the Bill as recommitted. The Committee will then consider the specific recommendations by His Excellency the President as indicated on the Order Paper and approve the same with or without amendments.

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

The essence of Section 46(5)(a) and (b) is that in order for the House to reject the recommendation by His Excellency the President, it requires a requisite number of 145 Members; that is 65 per cent of the total membership of the House.

On reporting procedure, the Bill will not be read a Third Time as it was done when it was passed on 9th December, 2004.

It is, therefore, sufficient that a resolution of the House adopting or rejecting the Report of the

Committee of the Whole House in accordance with Standing Order No.113, read together with Standing Order No.109(1) and (2) which states: "That the House doth agree with the Committee in the said report", will satisfy section 45(5) of the Constitution, and will be in conformity with the rules and procedure on recommitment of Bills as amplified by Standing Orders No.111(1) and (2).

Hon. Members, let us move on to the next Order!

Mr. Kajwang: On a point of order, Mr. Deputy Speaker, Sir. I would like to seek a clarification on this matter which I discussed with my colleague.

Assuming that we do not agree with the President but we lack a 65 per cent majority vote, what will happen to the Bill? Will it die or hang in the balance? I do not think that the Constitution adequately dealt with that aspect. We may not have the 65 per cent majority vote, but the Bill will still be with us here. What will happen to it?

Mr. Deputy Speaker: According to me, as long as you do not have 65 per cent, the President's recommendations stand because you can only override them by getting that majority.

Hon. Members: No! No!

Mr. Kajwang: Mr. Deputy Speaker, Sir, the Constitution does not give the President power to amend an Act of Parliament. That is why he has brought this Bill back to this House so that we can look at it afresh. The Constitution says that we can reject his recommendations by raising a 65 per cent majority vote. If we do not raise that majority vote, and we do not agree with him even on a simple majority, what will happen to the Bill?

Dr. Godana: Mr. Deputy Speaker, Sir, if there is a two-thirds majority, we override the President and the Bill passes in its original form. However, if we do not have a two-thirds majority but we have a simple majority, the Bill collapses.

Mr. Muite: Mr. Deputy Speaker, Sir, I agree entirely with Dr. Godana. If we do not get a two-thirds majority, but get a simple majority, the Bill does not become law. The law remains the way it was as if the Bill was never brought to this House.

Mr. Deputy Speaker: Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

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

THE BANKING (AMENDMENT) BILL

(Loud consultations)

The Temporary Deputy Chairman (Mr. Khamasi): Order, hon. Members! We are in the Committee of the Whole House to consider The Banking (Amendment) Bill. We shall proceed in accordance with our Constitution and Standing Orders.

I request the Minister to move the amendments.

Clause 12

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

THAT, a New Section 16A be inserted as follows:

New Section 16A (1) THAT,

Imposition of no institution shall impose any

Charges and form of charges on savings

Payment of seven day call or seen day call or ^{Interest} fixed account

(2) THAT, an institution shall, in respect of a savings account, pay interest accruing to that account as long as the minimum balance is maintained.

(3) THAT, an institution shall, in respect of a seven day call or fixed deposit account, pay interest accruing to the account on agreed contractual terms:

Provided that such interest may be forfeited where the deposit is uplifted before the maturity date.

*(Question of the amendment
proposed)*

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, I have no problem with the proposed amendment to Clause 12, but I wish to make one point. The amendment being proposed here by His Excellency the President, ought to have been considered by the Government when they were generating this Bill. This amendment should have been introduced in the original Bill. It is not, therefore, fair for the Government to generate this Bill, wait for the House to pass it and then wait for the President to suggest this amendment. I recommend very strongly that, in future, the Cabinet itself, should introduce this sort of amendment in the course of drafting or when the Bill is being debated on the Floor of this House.

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, looking at the President's Speech, especially on this amendment, he actually said he was bringing this Bill back after indepth analysis. In my contribution on the President's Speech, I asked: "How come the President is carrying out an indepth analysis after the Bill had passed through the Cabinet, experts and debate in this House?" Who was advising the President on this indepth analysis, other than the Cabinet itself? In fact, for that reason alone, I would have rejected this amendment, but after reading it, I think it is good.

The Minister for Trade and Industry (Dr. Kituyi): Mr. Temporary Deputy Chairman, Sir, thank you for giving me a chance to make my contribution. I share the sense that it is always good to be very meticulous in the preparatory stages of a Bill. However, we should acknowledge reality that we are always wiser afterwards. Sometimes, there is a wind of opportunity for us to see good things we did not see. For example, Mr. Kajwang has looked at the Bill and now says the amendment actually looks good. It means there are other people out there, whose wisdom informs the thinking of hon. Members of Parliament and we are big enough to accept that we did not think adequately at the time, let us take on board their consideration. So, I do not think it is a weakness to say: "Sorry, we did not look at this properly." We are wiser now because somebody has brought us an idea. We thank His Excellency the President for saying: "Look at this Bill again, maybe it makes sense to you like it has made to me."

Mr. M. Kilonzo: Mr. Temporary Deputy Chairman, Sir, over the last several years, it has been my understanding that the Government wants to introduce liberalisation. It is my very firm conviction that the amendment proposed by the President is bringing in Government control in private institutions through the back door. No country in the world will formulate a law of this nature. I think the President is being carried away by the sycophancy that has crept in his Government, to be encouraged to think that he can allow Parliament, at this day and age, to be dictating how to charge interest rates. It means that every time a rate of interest is imposed, the Government will be coming to Parliament to discuss how to handle banks. It is wrong. I, therefore, oppose this amendment.

Mr. Kipchumba: Mr. Temporary Deputy Chairman, Sir, I wish to second what Mr. M. Kilonzo has said. In some sections of this Bill, it says that banks are supposed to seek authority from the Minister, so that they are given power to amend interest rates. Therefore, to give an order to banks is quite unacceptable. Banks have a contractual obligations with their customers. We are entitled to deposit our money under some contractual obligations. Therefore, the Government should not impose its own orders on banks. This is purely administrative on the part of the banks. Therefore, I oppose the amendment.

The Minister for Co-operative Development and Marketing (Mr. Ndwiga): Mr. Temporary Deputy Chairman, Sir, I get mesmerized when I listen to some hon. Members of Parliament opposing this amendment. There is not any self respecting legislator who does not know where this country is coming from. Kenyans have been milked dry by these banks. We have seen foreign banks siphon billions of shillings from very poor Kenyans.

I am so surprised to hear legislators in this House say we should liberalise and allow these "cannibals" to kill our people. I am shocked!

(Applause)

The Temporary Deputy Chairman (Mr. Khamasi): Hon. Members, I will give a chance to Mr. Angwenyi and, lastly, to Mr. Mwiraria to make their contributions.

Mr. Angwenyi: Mr. Temporary Deputy Chairman, Sir, I am also shocked that an hon. Member of Parliament of this country, can advocate for banks to continue fleecing our people. As you know, since 1990, banks were told not to increase their charges without the concurrence of the Minister for Finance. However, they defied that law. They have put our people in complete bankruptcy. So, I really get shocked when an hon. Member stands in this House to say by controlling these rates, we are trying to control the private sector.

Mr. Temporary Deputy Chairman, Sir, I support this amendment because it is in the interest of our people.

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Chairman, Sir, I stand up to say that we should get the facts right. This amendment was brought by Mr. Kagwe, the Chairman of the Departmental Committee on Finance, Planning and Trade. Now, the only problem with what was brought into the Bill was that it was worded in such a way that it became really restrictive and inoperable. So, what His Excellency the President has done is to say: "The idea was good, but how can we make it acceptable and operable." This is what we are doing here. I do not want people to get away with the idea that the Bill was half baked.

Mr. Temporary Deputy Chairman, Sir, in fact, it would be very wrong if Bills come to this House and hon. Members are not free to amend them; to make the law better for the nation. I really agree with those hon. Members who say what is happening in the banking sector really leaves a lot to be desired. The spread between the interest rate which is paid for deposits and what we pay for the loan is so wide that it has not been experienced any where else in the world. I am sure that is why Mr. Kagwe took the liberty to propose an amendment which we, as a Government, have accepted, but which we have amended to make it acceptable and operable.

Mr. Mwandawiro: Mr. Temporary Deputy Chairman, Sir, it is the duty of any Government in the world to intervene in any sector of the economy, whether private or public, on behalf of its people. I, therefore, support this amendment.

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

(Clause 12 as amended agreed to)

Clause 16

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

- (1) THAT, the Banking Act be amended by deleting Section 44.
- (2) THAT, all increases in an institution's rate of banking or other charges that were made before the deletion of Section 44 shall be deemed, for the purposes of the past application of that section, to have had the prior approval of the Minister.
- (3) THAT, sub-section (2) does not apply with respect to a suit commenced before 10th June, 2004.

(Question of the amendment proposed)

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, permit me to oppose this amendment.

(Applause)

The Minister has admitted that what is happening in the banking sector leaves a lot to be desired. Since 1990, banks have been charging illegal interest as high as 30 per cent. They have been putting penalties so that if you borrow Kshs1 million today, tomorrow you would be required to pay Kshs30 million. The borrowers, particularly, the small businesses are collapsing because of these illegal interests and charges. Banks have been aware that since 1990 what they have been charging does not have the force of law. Permit me to point out one contradiction: In the President's Memorandum, he says that we should repeal or give the Minister this consent retrospectively back to 1990 to protect banks. What about the rights of borrowers? When it comes to the *In Duplum Rule*, Section 44(a), the President's Memorandum says that you cannot do it retrospectively. This is a contradiction! When it comes to the rights of the borrower, do it retrospectively so as to protect banks but when it comes to the *In Duplum Rule* which says that if you borrow Kshs2 million, the maximum you should be required to pay is Kshs4 million, then the President's Memorandum says that you cannot do it retrospectively. What is good enough for the goose is good enough for the gander. I appeal to hon. Members that this time round, our focus should be on the interest of the Kenyan people and not multi-national banks.

Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment.

(Applause)

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, while what Mr. Muite has said makes some sense, we must also be practical. Banks and their customers had entered into arrangements without this rule. If this rule is not deemed to have been in operation, then a lot of banks may go into problems and we do not want to create problems. This rule is good---

(Loud consultations)

The Temporary Deputy Chairman (Mr. Khamasi): Order! Hon. Members on my left, please give him a chance to state his position! When time comes, I will give you your chance.

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Thank you, Mr. Temporary Deputy Chairman, Sir. What I am saying is that over time, banks increased their charges yet the Ministry in charge did not object to this. All that we are saying is that since that is what has been applying for the last 10 to 15 years, let us accept that reality and say that from now on, if you want to increase your charges, then you have to seek approval.

On Section 3, we are again saying that this is a good rule that is going to help our people.

However, we are saying that in view of the fact that banks had entered into contracts with borrowers, let us not make it half retrospective application.

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

Mr. Samoei: Mr. Temporary Deputy Chairman, Sir, it would be very correct for this House to be consistent. I agree with what Mr. Muite says but in this House, if we have said on one hand that the President has agreed on the retrospective application of one side of the law, we should not be inconsistent while we are dealing with other sections of the law. If it is correct and legal for banks to declare their customers bankrupt, it should be perfectly legal for banks to answer for illegal charges levied against their customers in the same way that customers have taken the consequence of banks declaring them bankrupt. Those institutions or banks that charge illegal fees and interests to the extent that they bankrupted Kenyans should equally answer for their actions.

(Applause)

We should reject anything that makes this House do things that look like double standards when we are dealing with Kenyans as well as banks. We should be uniform and have both sections of the law retrospectively applied.

I, therefore, beg to oppose this amendment.

Dr. Godana: Mr. Temporary Deputy Chairman, Sir, I also stand to oppose this amendment for two reasons. One, as regards paragraph 2, it is important as speakers have already said that we be consistent. More than that, the Minister, his staff and lawyers who assist them from the Attorney-General's Chambers have not done enough work. It is clear from contributions made that people are talking of charges that were not just exorbitant, but in certain cases, clearly illegal. To say that if this Bill passes, all those charges, irrespective of whether they were illegal or legal are deemed to have been approved, is to ask the House to legalise what we believe was illegal. That will be improper function of this House.

Secondly, on paragraph 3 that provides that sub-section 2 does not apply with respect to a court suit commenced before 10th June, 2004, what is the magic about that date? Are we trying to excuse some particular individuals and institutions? Here, the Minister needs to explain to us why he picked on this date. Is he trying to be generous to certain friends or individuals who may have already filed cases without letting that benefit reach out to all Kenyans? The Minister should consider withdrawing this Bill so that he goes to re-work on this paragraph.

Otherwise, I beg to oppose this amendment.

Mr. Muchiri: Mr. Temporary Deputy Chairman, Sir, we are aware that banks have become very notorious on these charges to the extent that when you bank your money, they charge you for giving them your deposit.

I am a valuer and I know how Kenyans have suffered. Quite often, we have so much property to value because banks want to auction it. This House must now wake up to the occasion to safeguard Kenyans.

(Applause)

I will say this, and I beg that there should be no intimidation at all because I am talking from knowledge. I am a valuer and we are the people who value property when it is going to be auctioned.

I would like to tell Parliament that Kenyans are suffering. There is no doubt about that! Valuers are not happy to earn that fees when they have to transverse the whole of Nyandarua, Muranga, Kisii and wherever.

Mr. Temporary Deputy Chairman, Sir, on behalf of Kenyans, and Ndaragua people, I wish to oppose this amendment.

(Applause)

Mr. Munya: Mr. Temporary Deputy Chairman, Sir, from the outset, I want to oppose this amendment. Our people have suffered under the draconian laws which banks have been adopting to increase their profits, without giving any returns to shareholders and people who get their services. The President is asking us to legalise an illegality which has been taking place in the last 20 years. If the Minister made a mistake at the time when this Bill was structured, it is not the role of this Parliament to correct what the Government could have corrected at that time. Indigenous businesses in this country have suffered under the hands of banks.

As we speak now, businesses belonging to Mr. Matiba have been taken over because of the current laws of banking. Many people have suffered due to these banks. Time has come for them to know that this Parliament has the power to oppose them.

Mr. Temporary Deputy Chairman, Sir, I beg to oppose.

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I want to add my voice to that of those who have opposed this amendment. I agree with hon. Dr. Godana that the Government should withdraw the proposed amendment for one reason. An argument has been advanced that banks have entered into contractual arrangements with borrowers. We live in this country. What choices do poor businessmen have going to seek for loans and abiding by the terms that banks give? If those conditions are questionable, this House, as the representative of millions of Kenyans, has the responsibility to reject what banks are charging.

I beg to oppose.

Mr. Osundwa: Mr. Temporary Deputy Chairman, Sir, I want to add my voice to that of those who have opposed this amendment. Today, small business people are going to the macro-finance institutions because they cannot afford loans from big banks. This amendment has been proposed by the President but I want to appeal to those hon. Members in the Front Bench to search their consciences. Do not just go out because of collective responsibility. Search your conscience because we are talking for the small savers. Let us all reject the proposed amendment.

The Temporary Deputy Chairman (Mr. Khamasi): I have just received notice of an amendment from hon. Muite. I will allow him to move it.

Mr. Muite: Thank you, Mr. Temporary Deputy Chairman, Sir. In the interest of making progress, I propose that Clause 16, paragraph 2 be amended as follows:-

By deleting all the words appearing after the word "shall" in the third line and inserting in place thereof the words "be subject to negotiation between the borrower and the bank as to the amount payable. In case of disagreement, the parties shall have recourse to the courts."

Hon. Members: No!

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Muite, we expect you to tell us why you want it to be so.

Mr. Muite: I have said that it is in the interest of compromising and looking for a balance between the banks and the borrowers.

I beg to move.

(Question of the amendment proposed)

The Minister For Water and Irrigation (Ms. Karua): Mr. Temporary Deputy Chairman, I wish to support this amendment. If you look at Clause 16(2), it is trying to bring the seal of approval by the Minister on previous interest charged without any approval. Therefore, in a way, it tries to retro actively approve what the banks have done. One of the reasons this Bill has been brought back is to avoid retro active application. If we pass it as it is, we will be locking out any negotiations between the banks and the borrowers and we will be encouraging the banks to charge the unquestionable interest

they had put.

The amendment proposed by Mr. Muite encourages negotiations and in case of disagreements, and just like in everyday, the courts will arbitrate. It leaves a window of opportunity and means that the borrower can then negotiate.

Even after the passing of the Donde Bill, even without any law being applied, banks have been negotiating with their customers and agreeing on lesser interest rates than had previously been charged. To conclude, this gives a window of opportunity to the borrower to negotiate with the bank and the rest the court can arbitrate by applying principles of equity.

I beg to support.

Mr. Muiruri: Thank you, Mr. Temporary Deputy Chairman, Sir. I stand to oppose what Mr. Muite has proposed and what has been seconded by Ms. Karua. We are not talking about negotiations here. We are talking about the amendment Bill. This matter was at first brought to this House by the Minister for Finance himself. In his own admission, he said that Kenyans have suffered for a long time by doubling and increasing interests without any questions whatsoever. That was the purpose of the Donde Bill.

I remember very well that when the Donde Bill came here, Mr. Mwiraria got euphoric. How come now Mr. Mwiraria is retracting on the promises he made to this House during his Budget Speech? I propose that the entire Clause 16 be removed.

Mr. Manoti: Mr. Temporary Deputy Chairman, Sir, I stand to oppose this amendment. When we say the borrower will negotiate with the bank, we must know that the borrower is very weak. By the time they are supposed to pay the money, they have no power to negotiate on the interest.

I oppose the amendment.

The Temporary Deputy Chairman (Mr. Khamasi): Order, hon. Members! I will remind you that only communication from the Chair can rule on who will give contribution to this House.

Eng. Muriuki: Thank you, Mr. Temporary Deputy Chairman, Sir. I oppose the amendment by hon. Muite.

Mr. Muite: On a point of order, Mr. Temporary Deputy Chairman Sir. Given the mood of the House, I wish to withdraw my amendment.

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Muite, you know the rules of this House. I have already proposed the question of your amendment. It is no longer your property. It is the property of this House. So, I will allow the Minister to speak on it. But first, let us allow Eng. Muriuki to say what he had to say on it.

Eng. Muriuki: Mr. Temporary Deputy Chairman, Sir, I stand to oppose the amendment by hon. Muite. With the kind of experience we have with our banks today, saying that there will be a negotiation between banks and borrowers is like having an antelope which is about to be eaten by a cheetah and asking the animals to negotiate. We have a valuer who is an hon. Member of this House and he told us that he is called all the time to value property for the purposes of auction. I would like to oppose the amendment.

Dr. Godana: Mr. Temporary Deputy Chairman, Sir, I want to plead for understanding from the FrontBench. I realise the mood of the House. However, I want to play the devil's advocate by supporting the amendment. I gave my explanation when you asked for my input. There are elements which are in this Bill and which should not be thrown out. I may find it difficult to vote for this clause as proposed by the Minister if we do not modify it with the proposed amendment. If we throw it out, it means that the whole Bill has failed. We will then go back to the people we represent and make the situation worse than it has been.

Mr. Temporary Deputy Chairman,
Sir, I, therefore, want to make a plea that the Minister takes this opportunity to withdraw this Bill to go and rework on this paragraph.

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Chairman, Sir, I thought

that hon. Dr. Godana was going to say that according to the procedure given to us by the Speaker, if we throw away any given recommendation from His Excellency the President, then the whole Bill is thrown out. The problem I foresee here is that if we move to Clause 17, which introduces what I consider to have been one of the best legal provisions to protect our people; the *In Duplum Rule* which states that, "once a loan becomes non-performing, interest cannot exceed the principal amount," it is like throwing away the baby in the bath water. What I think is critical is that if we can have a way like what has been proposed by hon. Muite, to protect the borrower, those who have suffered in the past will be protected to a certain extent.

Mr. Temporary Deputy Chairman, Sir, I have made my appeal and I hope hon. Members will look at the greater good; the best for this nation. To me, the *In Duplum Rule* is really what I want to be approved. It is a pity that we have stayed for all those months without it and it would be regrettable if we continued getting people's property sold because interest has become 20 times the amount borrowed.

Mr. Kajwang: Thank you, Mr. Temporary Deputy Chairman, Sir. I agree with the Minister that these banks have milked us dry. If I heard hon. Mwiraria properly when he was, first of all, moving this Banking (Amendment) Bill, actually these two sections were the real reason why he brought them. He brought them to protect our people. Now, if we accept these proposals by the President, then we shall actually say that what hon. Mwiraria brought earlier is thrown out. There are no half-way measures. Now, hon. Muite wants us to negotiate about an illegality; that somebody charged me interest unlawfully, but now I can go and negotiate with him. There is no law which provides a right to negotiation. There is no such law. This thing is just bad! These banks robbed our people and they must pay back. There is no other way. Those people who have been ruined must have a window of opportunity of coming back to life. That is the simple rule. We just reject it, the Government will have its own problems, they can go and rewrite it and bring it to this House. But our people will never have this kind of thing. We cannot approve it.

Mr. M. Kilonzo: Mr. Temporary Deputy Chairman, Sir, I will be very brief. All the lawyers here will confirm that a transaction tainted with illegality is null and void, and it is null and void *ab initio*. This means, it is null and void from the very beginning and, as a matter of fact, no court of law can legalise it. Now, what this House is being asked to do by the Government, in its so-called effort to protect the public, is to legalise transactions that were completely and remain completely illegal.

Mr. Temporary Deputy Chairman, Sir, in fact, and I say this without fear of contradiction, what it would mean is that any Kenyan who is then charged this illegal interest will have the right to sue the Government to recover that money, because Government legalised it through this House.

With those remarks, I oppose the amendment.

Mr. Angwenyi: Mr. Temporary Deputy Chairman, Sir, as we discuss this important memorandum, we should read the words at the entrance of the House; "For the Welfare of Society and a Just Government of Men." We must keep those words in our minds. In whatever we are doing, are we doing it "for the Welfare of Society and the Just Government of Men?" If we are going to legalise those illegal charges, we would not be working "For the Welfare of Society and the Just Government of Men."

I, therefore, would like to oppose the amendment.

Mr. Muchiri: Mr. Temporary Deputy Chairman, Sir, I rise to oppose the amendment. Whereas we know the dangers and disadvantages of retro-active application of the law, if there is one time in this

country that the law must be applied retro-actively, it is this time. I disagree with the Minister for Finance when he says that the borrowers can be protected by the Central Bank of Kenya coming up with conditions that render a loan from a borrower non-performing. The Central Bank of Kenya has been there all along and it does not have the history of protecting common borrowers. This is one

instance where we must retro-actively apply the law as Parliament to protect the Kenyan borrowers.

Mr. Muiruri: On a point of order, Mr. Temporary Deputy Chairman, Sir. It is the opinion of most hon. Members that we have had enough discussions on the amendments. Could you now put the Question on the amendment by Mr. Muite?

The Temporary Deputy Chairman: (Mr. Khamasi): Mr. Muiruri, you know very well that you have already had your shot at it. So, you cannot say that we should stop debate on the amendments. I think the Chair is reasonable enough to know when the debate stops.

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, I think it is in the interest of this House to know how we came to have the Donde Bill. I think hon. Members who are on that side of the House were in the Opposition at the time. I was the Minister for Finance at that time and I strenuously argued that the Donde Bill should not come into effect because it imposed controls and yet, we had embraced liberalisation. I think this specific clause is inconsistent with what the Minister stated earlier.

Mr. Temporary Deputy Chairman, Sir, if, in one respect, we are saying we do not want the *In Duplum Rule* to be retro-active, we cannot again, be able to say in another breath that we waive the actions by the banks to charge other charges other than interest, without the authority from the Minister for Finance. I do know that the consequences on the banking sector are very grave. It is important for us to know what will happen. If you quantify all those claims that are going to come out, you will end up with billions and billions of shillings. But I am not saying that we justify the waiving of those charges or the authority by the Minister. I think it is in the interest of the Minister to withdraw the entire Bill, go back and look at it afresh. What is going to happen is that we are going to throw the entire Bill out. Once we do that, even the benefits of the *In Duplum Rule*, which I think was the main focus---

Mr. Temporary Deputy Chairman, Sir, we will actually end up controlling interests, so that the amount that is charged is not exceeding the principal amount. We can all go back and re-looks at the entire question of the Bill.

I, therefore, recommend that the Minister for Finance - in his own interest and that of Kenyans - withdraws the entire Bill, re-looks at it afresh and looks at the various clauses to see what is best for this country.

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Temporary Deputy Chairman, Sir, I want to make two points. One point has already been made. It is quite clear that this House has no moral or legal authority to legitimise a breach of the law. Secondly, appreciating the implication of the rejection of the amendment proposed by Mr. Muite, I think that the customer would not be negotiating from a point of weakness. That is because Section 44 as it is now will be, in a way, preserved.

Mr. Temporary Deputy Chairman, Sir, if the increases of the charges and interests were illegal, we are leaving that. That will take care of the customer. But the other negotiations that we are talking about will certainly leave the banks in a very vulnerable position.

Mr. Temporary Deputy Chairman, Sir, I plead with hon. Members to embrace the proposed amendment because that way, we shall ensure that the people who borrowed would still enjoy some protection in the law while, at the same time, we will be able to move forward.

With those few remarks, I support the proposed amendment.

The Minister for Trade and Industry (Dr. Kituyi): Mr. Temporary Deputy Chairman, Sir, I enjoy the privilege of serving in a Parliament where, on matters of national interest, we do not have partisan divides on how we are conducting business. I do not think the business here is about victory and defeat. The business we have here is how to protect Kenyans from the pangs and agonies they have suffered from Shylocks in the banking industry. That is the spirit in which the original legislation was made.

It is for the purposes of operationalizing it that His Excellency the President has recommended

certain amendments to the original draft. We have got to a point where, across the partisan divide, we have agreed that more than a half of those proposed amendments are actually good. But we are saying that there is one bit of it which might derail what is, otherwise, a good Bill. We do not want to lose sight of the bigger picture. I want to propose that the Mover should not withdraw. You can defer debate to seek consultations whether, in his wisdom, His Excellency the President could amend the Memorandum that he wants to present to Parliament.

Mr. Wamwere: Bw. Naibu Mwenyekiti wa Muda, naomba kuunga mkono pendekezo la Dr. Kituyi. Kuna haja kubwa ya kusimamisha majadiliano haya hadi tuweze kukubaliana. Ukweli wa mambo ni kwamba, benki zimetunyonya sana kwa muda mrefu. Watu wengi wamefilisishwa na hizo benki. Ukweli ni kwamba Serikali ina wajibu mkubwa wa kulinda wananchi kutokana na unyonyaji unaozidi. Tunasema kwamba unyonyaji umezidi.

Leo, nimetoka kufunga akaunti yangu ya benki kwa sababu ya kutozwa ada za kila aina ambazo sielewi ni za nini. Hata kuweka pesa, unalipishwa. Sasa, tunafikiria kuweka pesa nyumbani kwa sababu tumechoshwa na benki. Kwa hivyo, Waziri wa Fedha ana wajibu ya kusikiliza tunayoyasema. Tunamtaka asimamishwe majadiliano haya ili tushauriane na tukifikia uamuzi, arudishe Mswada huo hapa na tuupitishwe. Akifanya hivyo, yeye na wananchi wa Kenya watapona.

Mr. Kimathi: Mr. Temporary Deputy Chairman, Sir, I heard one hon. Member say that we should protect banks. We can never protect imperialists against our people. We are here because of our people. I am here because of the people of Lari. Unfortunately, the President comes from Central Province where 70 per cent of the people who have been victimised by banks hail from. I have never opposed a Government Motion but this one--- I am kindly supporting the proposal that---

I have a lot of respect for His Excellency the President! The Minister for Finance must go back to His Excellency the President, so that this Bill is properly drafted. We can then talk with one voice and safeguard the interests of our people.

I will give you an example of one case. I borrowed Kshs6.5 million seven years ago from a bank. I have paid Kshs13,200,000. I still owe Kshs5.9 million. That is a shame! I have evidence for Parliament to investigate. I borrowed Kshs6.5 million from an imperial bank and I still owe Kshs5.9 million after paying Kshs13.2 million! We must protect our people. We are the best cream in the Republic of Kenya and we are suffering! What about our people?

(Loud consultations)

The Temporary Deputy Chairman (Mr. Khamasi): Order, hon. Members! I will now put the Question on Mr. Muite's amendment.

Dr. Godana: On a point of order, Mr. Temporary Deputy Chairman, Sir. This is a matter which has elicited a lot of interest. We would like to hear from real African businessmen like Mr. Karume, who came from the very bottom, before you put the Question.

An hon. Member: Put the Question!

The Temporary Deputy Chairman (Mr. Khamasi): Order! Dr. Godana, you know the rules. You have been a Deputy Speaker and you cannot usurp my power.

I will then put the Question---

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

The Temporary Deputy Chairman (Mr. Khamasi): Order, Dr. Khalwale!

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

(RESUMPTION OF DEBATE ON
THE ORIGINAL AMENDMENTS)

The Minister of State, Office of the President (Mr. Karume): Bw. Naibu Mwenyekiti wa Muda, ningetaka kuunga mkono pendekezo la Dr. Kituyi. Waziri wa Fedha amesikia maoni ya Wabunge na inafaa arudi kwa Rais amwambie afikirie jambo lingine. Wakati mimi na Waziri wa Fedha tulikuwa upande wa Upinzani, Mswada wa the Central Bank (Amendment) Bill, 2000, unaojulikana kama "The Donde Bill", uliletwa hapa na tukaupitisha, lakini ilipopelekwa kwa Rais Moi, akakataa kutia sahihi. Badala ya kutupa Mswada huu, ningemuomba Waziri wa Fedha aende amshauri Rais, halafu arudishe Mswada huu Bungeni.

Kwa hayo machache, ninaunga mkono.

The Minister for Roads and Public Works (Mr. Raila): Mr. Temporary Deputy Chairman, Sir, I have listened carefully with a lot of interest to the hon. Members. The hon. Members are the true representatives of the people. So, what they are saying here is an echo of what the Kenyan people feel. The Government also is a representative of the people and it looks at the greater interests of the people.

I am sure the Government has considered other implications to the economy if this Bill was to be passed. I would strongly support the proposal which has been made by my colleague, Dr. Kituyi. The Government has listened to the representatives of the people and it is conscious of what is happening. There is need, therefore, for further consultations within the Government before this Bill comes back to the House. There are great implications, particularly when we consider the advantages that will accrue to the people if the *in Duplum Rule* is implemented. Mr. Temporary Deputy Chairman, therefore, I support the proposal that the Mover withdraws this Bill for further consultations.

Mr. Samoei: On a point of order, Mr. Temporary Deputy Chairman, Sir. The last four speakers have been talking about the same thing. We seem to be singing to the Mover as if he is on the moon and yet, he is right here. Why can he not reply, so that we can know the next course of action?

The Temporary Deputy Chairman (Mr. Khamasi): Mr. Samoei, that is not a point of order!

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Speaker, Sir, in view of the very healthy discussions which have taken place, I wish to request that the Committee do report its progress to the House.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

PROGRESS REPORTED

THE BANKING (AMENDMENT) BILL

Mr. Khamasi: Mr. Deputy Speaker, Sir, the Committee of the whole House is considering the Banking (Amendment) Bill and has instructed me to report progress and seek leave to sit again.

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, the Committee of the whole House has considered the Banking (Amendment) Bill, 2004, and has reported the same to the House. I, therefore, beg to move that the House do agree with the Committee in the said Report.

(Question proposed)

(Question put and agreed to)

Mr. Muite: On a point of order, Mr. Deputy Speaker, Sir. I stand to seek the Chair's guidance. In the light of the very stringent provisions of Section 46 of the Constitution of the Republic of Kenya, governing the procedure when the President has brought in a Memorandum, I am not entirely sure that we can act within those provisions. I am not sure that we can ask the Minister, constitutionally, to go back and have the Memorandum amended and then brought back here.

I am not sure that, that is contemplated by Section 46. Would it not be better for the Minister to go and get the Bill assented to as it was, and then immediately bring the amendments that he wants to bring, so that we can amend the Bill?

The Minister for Finance (Mr. Mwiraria): Mr. Deputy Speaker, Sir, I just want to say that I have no intention of going to ask the President to think again. I am intending to sit with my colleagues further, to find out if there is a solution within the existing Constitution to the present problem. I am sure that if we really want to find a solution, we will find one.

Mr. Deputy Speaker: That will be up to the Minister when the matter is adjourned. He has not said that he is going to see anyone. He has asked the Committee to defer the Bill and the Committee has agreed to do that. The House has given its consent to defer the Bill until it is again put on the Order Paper.

I hope that we will be able to give a ruling on certain issues that have been raised earlier on, when we come to that.

Next Order!

MOTION

ADOPTION OF SESSIONAL PAPER NO.1 ON POLICY FRAMEWORK ON EDUCATION, TRAINING AND RESEARCH

*(The Minister of Education, Science
and Technology on 31.3.2005)*

*(Resumption of Debate interrupted
on 31.3.2005)*

The Minister for Education, Science and Technology (Prof. Saitoti): Thank you, Mr. Deputy Speaker, Sir. Last Thursday, before the House rose, I had already informed Members about the motivation behind the formulation of the Sessional Paper. I did also talk about the very big increase---

*(Several hon. Members started to
withdraw from the Chamber)*

Mr. Deputy Speaker: Order, hon. Members! Those of you withdrawing from the Chamber may do so quietly, to allow the Minister to move the Motion.

Proceed, Prof. Saitoti!

The Minister for Education, Science and Technology (Prof. Saitoti): Mr. Deputy Speaker, Sir, I did make it clear to the House that, indeed, there has been a very great increase in terms of enrolment at all levels of our own education sector. For example, in the case of the primary education sub-sector, at the time of Independence in 1963, the total enrolment was about 800,000. Today, we have about 7.5 million pupils enrolled in the public institutions. There is also an additional of 300,000 pupils enrolled in the non-formal education. In 1963, at the time of Independence, we had enrolled 30,000 students in secondary schools. Today, we have an enrolment of over 900,000 students in our secondary schools.

Mr. Deputy Speaker, Sir, despite this very major achievement in the education sector, we face challenges, especially in the area of access, equity, transition and quality at all levels. We also face very major challenges in terms of teacher quality as well as the cost of financing of education and training programmes.

Mr. Deputy Speaker, Sir, let me just make a very quick reference to the Sessional Paper. For example, in the case of the Early Childhood Development (ECD), which is covered on page 37, it will be noticed that there are very many challenges. Initially, we did see a very big record of enrolment. However, there are problems which have come up as a result of poverty to the extent that parents do not send their children to pre-primary schools, instead, they send them directly to primary schools. That is a very major challenge as far as ECD is concerned.

Mr. Deputy Speaker, Sir, the ECD can only succeed with the quality of teaching. But the fact of the matter is that not all teachers in the ECD sub-sector are fully trained. This is because the Government is not very much involved in the ECD. The whole responsibility of ECD has now been left to the communities and other stakeholders. At times, teachers of ECD are not even paid their salaries.

Mr. Deputy Speaker, Sir, on page 37 of the Sessional Paper, we have indicated that we will be working with partners to develop a legal framework for the ECD. It is important to note that this has been an area where sound legal framework needs to be put in place. We do envisage a situation where the Government will design a programme in order to build community capacities for the development and equipment of the ECD centres in partnership with other stakeholders. More importantly, we do also envisage a situation, especially in the poor areas, where the Government will have to intervene financially. We will also develop a scheme of service for the ECD teachers. We would like to see ECD teachers, especially in poor areas, paid by the Government or other stakeholders. We need to motivate them so that they teach properly.

Mr. Deputy Speaker, Sir, I want to refer hon. Members to the primary education sub-sector. This is already covered in the Sessional Paper on page 38. It is a well known fact that with the implementation of the free primary education programme which was started in January 2003, there has been a very big increase of enrolment in primary schools. The enrolment rose from 5.9 million pupils to the current 7.2 million pupils in the public primary schools. We have also an additional 300,000 pupils in the non-formal institutions. We are doing everything possible to make sure that we send money to the non-formal institutions. One of the challenges which has come up with this fantastic increase, is the infrastructure; classrooms and toilet facilities. They were built for a certain number of pupils. But with this very phenomenon increase, these facilities have been overstretched. While we are doing everything possible to make sure we do ameliorate them, it is one of the major challenges we are facing in the education sector.

Mr. Deputy Speaker, Sir, the second challenge which the hon. Members have spoken about many times in this House, is lack of enough teachers. We do have a situation where we have an unbalanced distribution of teachers. In other words, there are some areas with more teachers than others. There is also a shortage of teachers in some schools. Indeed, this is a major challenge to us.

Mr. Deputy Speaker, Sir, another important challenge as far as this sub-sector is concerned is

gender disparity. In some areas, there are some socio-cultural practices and beliefs which tend to discriminate against the girl-child as far as education is concerned.

That is what has led to big gender discrepancies in some of our regions. Whereas a great deal of achievement has been recorded in terms of closing the gender gap, that remains a big challenge because we want to make education accessible to all. Another challenge is children with special needs. Again, not all of them are tapped.

We have also met major challenges in the area of HIV/AIDS pandemic. It has affected parents, children and teachers. Quite a number of our teachers are dying as a result of HIV/AIDS. Many families have died and left children who are orphans. That, in itself, is a challenge and we see it. Those challenges are there. But let me just say what we are trying to do, as far as the Ministry is concerned.

Mr. Deputy Speaker, Sir, in the case of HIV/AIDS, the Ministry has already formulated a HIV/AIDS Education Policy. The effect of that is that HIV/AIDS has been mainstreamed in the curriculum and is being taught. The important emphasis we are making here is to de-stigmatise HIV/AIDS. That, in itself, is very important.

The other thing has to do with the infrastructure. We are already in some very difficult areas especially in the Arid and Semi-Arid Lands (ASALs), pockets of poverty in high potential areas and slums, providing some grounds to those schools in order to ameliorate the situation as a result of over-crowding. We are working on a financial favour along with other donors in order to mobilise substantial resources, so that we may improve learning facilities in areas where the environment today, is not what it used to be. The result of that is: We are in the process of discussing with the development partners on a Sectorwide Assistance Programme (SWAP).

Mr. Deputy Speaker, Sir, we believe that, if things go well in the next financial year, there will be resources to be directed to that.

Mr. Deputy Speaker, Sir, we are not entirely depending on the donors. We are trying to cast a very wide net and explore resources from domestic resources, other stakeholders and development partners. We believe that, although the free primary education is a big success, we are committed to sustaining it. It is an important tool for the achievement of the Millennium Development Goals. So, we will be doing that.

Mr. Deputy Speaker, Sir, in the education sector, there is the question of improving access. That, of course, has been made much easier by removing all the fees and making it easier for all the children to have access to primary education. But we do not want to just provide education *per se*. We are committed to providing relevant and quality education. It is for that reason that the syllabus that we have had, has continuously been rationalised. The original 8-4-4 syllabus clearly put a very heavy load on the students, teachers and parents. It was very expensive for parents to source for all the materials required.

To that extent, we have rationalised the number of subjects. It will make it much easier for students to concentrate and retain the material that is taught. It is also going to be much easier because the teachers are not going to be overworked. We say in this Sessional Paper; that we are going to continue with that process.

We are also saying that, as far as the quality is concerned, we are going to mainstream some aspects which are important in the day-to-day life. Like I said, in the case of HIV/AIDS, it is going to be mainstreamed.

We are also saying that, in the philosophy that is going to guide our education, other areas like honesty and tolerance are going to be factored in. Many of those things have been brought about by globalisation.

Mr. Deputy Speaker, Sir, we also believe that time has come for us to address the teachers, to make sure they are properly prepared to teach. The teacher must be able to keep up with the change in

knowledge. It is for that reason that we are proposing this Sessional Paper. We are now going to step up the in-service programmes so that, over the vacation, the teachers can attend in-service courses to upgrade their knowledge and capacity. We believe that, that is important.

Mr. Deputy Speaker, Sir, in the marginal ASALs and areas of poverty, we will continue with the low-cost boarding schools and, much more important, girls schools. We know that in the marginal areas, unless we are able to provide the girls with boarding schools, they are unlikely to be retained in schools. They are likely to be moving around with their parents whenever they are shifting from one place to another in search of pasture for their animals. The only way we can retain those children in schools is to ensure that there are low-cost boarding schools. We commit ourselves that, in the ASAL and poor areas, we will continue funding those schools. We think that, that is important.

The Schools Feeding Programme in those areas will also continue. That is important. If the poor children in the slums go to school and do not have meals, they are not likely to attend the next day. We want to increase student retention in those schools. So, it is important that the School Feeding Programme continues.

Mr. Deputy Speaker, Sir, there are quite a number of things that are going to be done in primary schools. Hon. Members will read all that. Let me give out some other challenges in another very important area of secondary education. This is an area which has grown very rapidly to the extent that, we have more than 800,000 students in our primary schools. Having said that, it is important for us to know that, indeed, in terms of the general enrolment in the secondary schools, the percentage has fallen in the last one decade from 29.4 per cent to 22.2 per cent. Therefore, we now have the challenge of trying to increase the general enrolment.

Mr. Deputy Speaker, Sir, another challenge that is going to be faced here and we now face it, is that with the success of the free primary education; with that very large enrolment figure, we are now beginning to see that bigger numbers of students are now leaving Standard Eight and are now in need of going to secondary schools. Why is that the case? It is because, as we have been able to observe, that when we declared free primary education, although we had initially thought that the largest number of enrolment was going to be in Standard One, we found there were quite a number of students who had actually dropped out of school because their parents could not pay the fees and other charges. When we made primary education free, therefore there were enrolments at various levels although clearly the largest enrolment is in Standard One. So, that has meant that there is a big challenge for us to be able to improve the transition from primary to secondary school.

From what it has been, in 2003 it was 47 per cent, but we are setting a target in this Sessional Paper that, indeed, we are looking for a situation where we are going to be able to achieve 70 per cent transition rate from primary school to secondary school by the year 2008. I am fairly optimistic that this goal can be achieved and I am saying so because only in the last two years, the transition rate was 46 per cent. This particular year we have actually been able to hit 52 per cent and, in fact, I believe when we come down to counting all the figures accurately we are likely to see a scenario of 54 per cent. That in itself is a major issue.

However, what are we going to do with that challenge? We are saying here in this Sessional Paper that:- (a) We are going to embark on a major advocacy for more schools; and (b) more secondary schools, be day schools because boarding schools have become very expensive, especially for the poor". If we succeed, then a number of day secondary schools will be able to produce quality education provided these day secondary schools are provided with the right facilities and equipment. We are saying that in our respect, we will continue the policy we have now started; of making sure that nine secondary schools per district whose priority has been signified by the District Education Board (DEB) will continue to receive grants for their laboratory equipment. We are doing that. As a matter of fact, once we get more resources which we are sourcing, then, of course, that number will increase in various other schools.

(Applause)

Mr. Deputy Speaker, Sir, we also do see the need for some of the schools to be able to establish another stream. In fact, what we are saying here is that we are going to advocate and encourage those secondary schools which do not have at least the three streams to add another one. That does make sense in terms of the economy in the sense that already the infrastructure is there. It is a question of adding an extra classroom. It will perhaps need adding another block of the dormitories and maybe another one as far as the laboratories are concerned. Maybe one or two teachers may be added but it is much easier than to build a new one. Through that, we will be able to get more students.

Mr. Deputy Speaker, Sir, however, having said that, we do know that there are some areas where it will become necessary to put up some new secondary schools and to that extent the Government maybe involved. Let me inform the hon. Members here that we have so far been able to reach an agreement with the African Development Bank (ADB) for a sum of Kshs3.2 billion but this is going to be spread out over the next three years. Large sums of this money is going to be dedicated to secondary schools. That will entail the improvement of existing secondary schools, expansion and the building of a number of them. However, that will be where it will be required. That is therefore going to increase that transition rate.

Mr. Deputy Speaker, Sir, I say that the general enrolment in secondary schools did actually come down from 29 per cent to 22 per cent. We have seen that there are two reasons for that. Clearly one causative factor has been the cost of education and materials especially before rationalisation. We are going to rationalise the number of the subjects to be taken and, therefore, reduce the money parents will have to pay. At the same time, we will also make sure we rationalise the fees much more seriously once this Sessional Paper is in place. We hope to come up with a legal mechanism that will ensure that we can enforce those things.

Mr. Deputy Speaker, Sir, the other causative factor for this drop is as a result of poverty and we all do know that almost 59 per cent of the population of this country now live under one dollar a day. So, not many of them would be able to afford. So, what are we doing to remedy that? The bursaries programmes that we have already established is the Constituency Bursary Programme. We believe that all this is going to continue but we hope to be able to find more resources so that it is properly funded but, even much more important, to ensure that indeed the allocation of these bursaries does target the needy children. We hope to be able to formulate mechanisms to ensure that the disbursement of these bursaries or their allocations to the students is much more accurately targeted than is the case today.

I would like to inform the hon. Members that we are all aware that there are complaints that some of us may be dragging in a little bit of politics into the bursary schemes and please let us make sure that we remove politics from the bursaries and make sure that the money goes to those students who deserve first of all, beginning with the orphans and then the very poor. But the undertaking we are making in this particular Sessional Paper is the fact that additional resources is going to be required and we hope that more resources will be found. Secondly, we shall refine the mechanisms of the allocations.

Mr. Deputy Speaker, Sir, the other challenge we also face in secondary education is that in the very important subjects which are key in terms of improving Kenya's competitiveness in the global world, are either not being pursued sufficiently or they are not being taught properly. I refer here to the subjects of mathematics and the sciences. Whenever the results come out, we have found that, as far as these core subjects are concerned, the students could have performed better.

However, there is no way we will be able to compete in the technological world unless we

improve the performance of our students in these subjects.

Mr. Deputy Speaker, Sir, the Ministry has already put in place a mechanism that will ensure improvement of the teaching of mathematics and science subjects. I am happy to report to this House that only the other day, we established a centre for mathematics and science subjects as far as teaching in secondary schools is concerned. The centre is for Africa, but it is located here in Kenya. It is fully staffed by Kenyans and the largest number of teachers in our secondary schools will continue being upgraded in this institution. We started it earlier on as a pilot scheme and realised that in the areas where this scheme was started, the results were positive.

Mr. Deputy Speaker, Sir, so, what we have now decided is that the scheme should now cover all the secondary schools in this country. We have no doubt, as we have outlined in the Sessional Paper, that the centre for improvement of mathematics and sciences in Africa will improve the teaching of the subjects and the general performance by students. We think that will produce quality education.

Mr. Deputy Speaker, Sir, the practice in the world has been that what is called basic education; and which goes up to Standard Eight in our country, takes a much longer period. In the long-term, with resources being available, that will be our target. We want to ensure that in the long-run our own basic education is very much alive to the international concept of basic education.

With regard to special education, this is an area that poses major challenges to us because not all children who are in need of it have been identified. As a matter of fact, those who have been identified, and are in school presently, form only about 10 per cent. What we have stipulated on pages 48 and 49 of the Sessional Paper is:

"In order to increase access and improve on the quality of education, the Government needs to do the following: Rehabilitate and strengthen the assessment programmes in order to facilitate identification and placement of learners with special needs."

Unfortunately, that has not been done because there is no mechanism yet. However, my Ministry is determined to do that in the event that this Sessional Paper is adopted. Also, we are going to integrate special education programmes in all learning and training institutions. That will be the modification of--

(Hon. Kimeto consulted loudly)

Mr. Deputy Speaker: Order, Mr. Kimeto! Please, tone down your consultations.

The Minister for Education, Science and Technology (Prof. Saitoti): Mr. Deputy Speaker, Sir, I think this is very important. We intend to integrate special education in all our learning and training institutions. We are also going to work very closely with the various providers of special education. We shall provide instruction materials through the waiving of duty on specialised equipment. Unfortunately, today, the equipment required by children who are in need of special education still attracts taxation in the form of duty, VAT and so on. It is high time that taxation was waived. We intend to formulate a policy on special education so that it is properly refined and well known by everybody. Mr. Deputy Speaker, Sir, another area that poses major challenges to us is university education. In the Sessional Paper on pages 53 to 56 - I will not go into the details, but I will highlight some of the fundamental issues. Higher education is extremely important in as far as the development of a nation is concerned. Skills of the highest level are developed at the higher education level. It is in the universities where researchers and teachers who are supposed to teach in secondary schools and other tertiary institutions are trained. Therefore, we would wish to have a viable higher education sub-sector.

We seek to do the following as far as university education is concerned: We want to seek to ensure the development of a diversified, financial-based and enhancement of managerial

independence as far as our university education is concerned while at the same time paying special attention to issues of relevance and responsiveness to the market and national priorities. University education and training will, therefore, need to be demand-driven, of higher quality, gender-sensitive, technologically informed, research supported, democratically managed and globally marketable. Those are the important targets of the kind of higher education we are thinking about.

Mr. Deputy Speaker, Sir, there are several challenges in our education sector and one of them is accessibility to education. We do realise that after the announcement of the Kenya Certificate of Secondary Education (KCSE) examination results, there is large number of students who have attained the minimum university entry requirements to our public universities, but will not be admitted. Also, the private universities cannot absorb all of them because they only admit a small number of students.

Mr. Deputy Speaker, Sir, we believe that equity is important when offering university education chances to our students. We know what is exactly happening. We have disparities in our regions and, therefore, gender equity is an issue that we need to address. However, we also want relevance in our universities because we have found out that, perhaps, the graduates we produce from our universities may not be matching the job market needs. That is an issue which we are going to look into. So, what will our response be like? What kind of a university are we going to have? I have said it before; but how are going to achieve that?

Mr. Deputy Speaker, Sir, as far as the Sessional Paper is concerned, we have pronounced our objectives on page 54:-

"We are going to promote the expansion of university education and training, in tandem with the population growth".

Yes, Kenya's population growth has continued to grow at slightly more than 2 per cent. We have to take that into account and understand that the current facilities in our universities cannot remain static. So, we are going to look into that issue.

Mr. Deputy Speaker, Sir, we are saying that we want a much more dynamic activity on the part of the private sector in the university sub-sector. We are happy that there are a number of private universities, but we do believe that if we came up with various incentives, such as the rebate of certain taxation and waiver, that could spur investment on the part of the private sector to set up a number of private universities, that, in itself, is going to widen access to universities.

Mr. Deputy Speaker, Sir, we do believe that it is important for us to strengthen the quality mechanisms in all our public institutions. We believe that time has come to set up some peer mechanisms, so that there are ways in which the universities can be able to compare themselves. We do believe that the autonomy that we have given to universities is going to be much more deepened, so that every university can be able to develop its own unique niche.

We want to ensure that there is going to be a great deal of competition among universities, so that they are going to be ranked on which is the best and which is not. We have a peer mechanism which will enable us to assess the quality of every university.

Mr. Deputy Speaker, Sir, university education is expensive and clearly, unless those who are admitted are assisted in one way or the other, especially those coming from the poor families, they may very well not be able to take advantage of the opportunities to attend universities. So, to that extent, we are committing ourselves in the Sessional Paper that, we shall provide scholarships. This will not just be done haphazardly, but on the needs of the economy. Budgeted bursaries and loans to the needy will take into account gender disparity.

So, in other words, we must make sure that the scholarships we offer to the students take care of those who are very poor. We must, of course, make sure that we do put emphasis on the subjects which are going to be studied, as to whether they are badly needed in the economy or not. We think that, that is very important. At the same time, we have to close the gender gap in our universities.

Today, only about 38 per cent comprises females in the universities. The rest are males. That gender gap has got to be closed, and we can, therefore, be able to use the tool of scholarship to ensure that we do make sure that, that gender disparity can be closed.

Mr. Deputy Speaker, Sir, we want to work with public universities to develop a performance-based system of appointment and promotion. That is already on-going. Right now, we have started with a scenario where all positions in the universities other than that of the vice-chancellors, are all to be advertised and are all competitive. We want that practice to continue, so that those who are hired are hired on the basis that they are able to do a good job; that they can make proper contribution to the universities. We do not also want to forget the students with special needs. So, all our universities are going to develop a mechanism requiring that they have facilities to ensure that students with special needs are not in any way barred by the lack of facilities.

Mr. Deputy Speaker, Sir, there is something else which is much more important, Mr. Deputy Speaker Sir. We do see the situation of student population growing, both in the public and private universities. As a result, there is going to be a large number of students who may require some assistance; who may require to borrow money to advance their education. Since we do have a mechanism known as the Higher Education Loans Board (HELB), we are postulating here that this institution will do everything possible to, one, increase the subvention but even more important, to enhance the capacity of the HELB to be able to source for more resources outside the Government. Indeed, we want to build the capacity of this institution to enable it to operate like a financial institution. That way, it will be able to be in command of more resources than it has, which it can be able to loan to the students to pursue university education. But then, it will also have the capacity of tracking down the loans it advanced to the students, recover and then recycle the funds. This is a very, very important institution.

Mr. Deputy Speaker, Sir, we do have an extremely important institution called the Commission for Higher Education. Although it was intended to really oversee the activities and the performance of the higher education sub-sector, unfortunately, given the fact that every public university has got its own statute, it has been extremely difficult for the commission to be able to monitor what happens in those institutions. Therefore, its role has been reduced to that of approving the granting of the charters to private institutions and even monitoring them much more than the public universities. This has generated an outcry of bias; that, the Commission is much more concerned with the private universities than the other ones. What we are saying here is that, as far as the legislation of the Commission is concerned, we are going to recast it so that the Commission for Higher Education shall be the supreme body in terms of overseeing the activities of all the public universities.

We are also saying that apart from the universities offering knowledge, they must also be centres of excellence as far as research is concerned. A university don is educated to teach and to carry out research, and it is for that reason we are saying that each university in this country shall be required to maintain records on academic productivity, including publications, awards, projects from third-parties for research, patents and royalties.

Mr. Deputy Speaker, Sir, each university will also be required to work out a mechanism for this purpose and maintain an inventory of short-term and medium-term national skills needs. So, we are entrenching the need for universities not only just to teach, but also to carry out research.

[Mr. Deputy Speaker left the Chair]

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

On the question of funds, Mr. Temporary Deputy Speaker, Sir, I would like to say that, in a chapter under research and development, we have proposed in this Sessional Paper that a research and development fund be set up. Although we are supposed to spend 1 per cent of the Gross Domestic Product (GDP) on research, hardly is that money used. However, we have proposed in this Sessional Paper that a research and development fund should be established to avail funds to researchers. I think that will assist our universities to carry out research.

Mr. Temporary Deputy Speaker, Sir, we believe that our universities should have a minimum number of enrolment. We have proposed that each university should not have less than 5,000 students so that they can be viable and admit more students.

Mr. Temporary Deputy Speaker, Sir, there is something else I will talk about later on when I come to technical education. However, I think the important thing we are also saying is, because it is lying between technical education and our universities, that the four national polytechnics in this country should be allowed to offer degree courses while at the same time retaining their mandate to offer certificate and diploma courses. We do not think that this is very difficult. We have visited a number of universities which evolved from polytechnics but which offer degree courses up to doctorate level (Ph.D) level today. These polytechnics still retain their original mandate; that is they still offer certificate, ordinary and higher national diploma courses. That is important.

Mr. Temporary Deputy Speaker, Sir, as a short-term measure, we have recommended in this Sessional Paper that we should develop the two oldest national polytechnics in this country; namely, the Kenya Polytechnic, which is here in Nairobi and Mombasa Polytechnic to enable them offer technical degrees. Our belief is based on the understanding that the two institutions have the facilities which perhaps require upgrading. Those institutions also have the infrastructure in place. The staff who teach in the two polytechnics may not be very competent. There is no reason as to why they cannot be upgraded and sent to pursue important courses so that they can be in a position to teach degree courses in those institutions. Arrangements are already at an advanced stage to have the two polytechnics offer degree courses.

As a matter of fact, with the help of the Italian Government, we have picked two departments, one at Mombasa Polytechnic and another one at the Kenya Polytechnic, to offer degree courses. The Mechanical Engineering Department of Mombasa Polytechnic is being rehabilitated so that it can offer degree courses in the province. We have upgraded the Telecommunications Department of the Kenya Polytechnic to enable it offer degree courses. We believe that, over a period of time, all the departments in those polytechnics will be upgraded to offer degrees. This is important as we will see later when I turn to the technical education. Let me now turn to the technical education.

Mr. Temporary Deputy Speaker, Sir, technical education is extremely important. We have four national polytechnics; namely, the Kenya Polytechnic, the Mombasa Polytechnic, the Kisumu Polytechnic and Eldoret Polytechnic as the highest institutions of learning in this area. We also have technical institutes, which used to be called technical high schools. Further down, we have youth polytechnics, where those who are unable to join secondary school after primary education can join.

This area also has institutions which are spread out in various Ministries. Virtually, every Ministry has got a college or a technical institute. It is also in this area that there is proliferation of various institutes which are run by the private sector. So, there are many major challenges in this area. One of the challenges is the fact that the curriculum which has been taught in these institutions is outdated.

Mr. Temporary Deputy Speaker, Sir, the other problem is that the infrastructure of the technical institutions run by the Government is dilapidated and the equipment is obsolete. Even more worse, there is no organisation or body which co-ordinates the teaching and training in all technical institutions. Even the examinations which are offered in those institutions are set by the Council for Higher Education.

Mr. Temporary Deputy Speaker, Sir, there is something which is even more damaging. The students who join technical institutions and national polytechnics with hopes that they will get a degree come to a dead end. This has created lack of credibility on the part of the students and parents as to whether it is worth pursuing technical education and yet we badly need technical education for the development of this country. Mr. Temporary Deputy Speaker, we have proposed in this Sessional Paper that we will develop a credible pathway which will ensure that a student who decides, after secondary school or earlier on, to pursue technical education can eventually learn and get a degree. That is why we have proposed that the national polytechnics should offer degrees and we have started with the Kenya Polytechnic and Mombasa Polytechnic.

It is a pity that this has not been done in this country before although it has been in many countries. We have lost many potential people who could have earned this country praise in innovation. This is because they could not further their studies or did not want to pursue technical education because it was not recognized. We want to enable students in technical institutions to pursue degree courses. We have proposed many things in this Sessional Paper towards that end.

Mr. Temporary Deputy Speaker, Sir, we have proposed the establishment of the Technical and Vocational Education Authority (TVEA) to collaborate with the Commission for Higher Education (CHE). We have also proposed that, the TVEA should be in charge of all technical institutions, including national polytechnics.

Our national polytechnics should enjoy the same autonomy as our universities. Currently, most of them have Board of Governors (BOGs). We are envisaging a scenario where they might even have polytechnic councils.

Mr. Temporary Deputy Speaker, Sir, we will also provide resources to rehabilitate all learning institutions at all levels, from youth polytechnics to national polytechnics. We hope to use the funding we will get from the African Development Bank (ADB), to start rehabilitating a number of youth polytechnics. As a matter of fact, there is money set aside to rehabilitate ten youth polytechnics. That will be the beginning.

We hope, through other sources, it will be possible for us to put more resources to rehabilitate many of our polytechnics in the country.

We also want to create opportunities for our national polytechnics to offer degree courses. We also want to ensure that they carry out research work. In other words, we hope that fairly soon, Nairobi and Mombasa polytechnics will be in a position to offer degree courses. In addition to teaching, we expect them to carry out research work. They will draw funds for this purpose from the proposed Research and Development Fund.

We intend to collaborate with other stakeholders to create the necessary linkages between tertiary institutions and universities. We want to create a mechanism so that whatever grades students obtain in technical institutes, are recognized by universities and that they may further their studies.

We will also review the current training delivery mechanism to include mandatory on the job training to enhance quality and relevance of trained experts of various academic programmes. Our experience is that what is being taught in a number of technical institutions is not in keeping with what the market needs. The only way of addressing that shortcoming is to make sure students who are undergoing training and education in these institutions spend some time in work places. Only then, will they be able to come out and fit in the job market without any trouble.

The first thing we will do is to carry out an audit of all these institutions. We have already carried out part of it. However, another very thorough audit will be carried out to be able to determine their shortcomings, strengths and potential.

Mr. Temporary Deputy Speaker, Sir, I would like to move very quickly to the area of management, planning and training in education. We believe that it will be important for us to make sure that administration of education needs to be delegated from the headquarters to the field. That is

very important. At the same time, we also want to make sure that stakeholders are involved in management of institutions. The role of the Parents Teachers Associations (PTAs) and the Boards of Governors (BOGs) should also be very well reflected. Only then, will they be able to work well.

Mr. Temporary Deputy Speaker, Sir, we also believe that at the Ministry of Education, Science and Technology, we have to train our staff, so that they are well equipped with strong managerial skills to deal with modern demands. It is important that managers are exposed to Information Communication Technology (ICT) skills because this will make their work easier.

The other area that we touched on in this Sessional Paper is on teacher development and utilisation. On this score, I would like to say three things; first of all, we know primary school teachers are only trained for two years. These two years are devoted to pedagogue, the very little education added to their field. We believe that since education is becoming difficult and complex, students who attend teacher training colleges should graduate with diplomas. This will entail them to study for a longer period of about three years, so that they have the opportunity of deepening their understanding of the knowledge of the subjects they will teach. They can then spend the other year on pedagogue. They should also be subjected to the regular in-servicing so that they are knowledgeable about current trends of knowledge.

Mr. Temporary Deputy Speaker, Sir, another problem that we also face with primary school teachers is that when they graduate from teacher training colleges, they are expected to teach all the seven subjects. That is not possible. We also have to look into that. Maybe one can teach one, two or three subjects, but certainly not seven. No one can be competent to teach a multiplicity of subjects.

Thirdly, I would like to talk about the manner in which we deploy teachers. The unbalanced methods of deployment of teachers has created a situation where some areas have more teachers than others. That is one area we will look into. However, we also want to make sure that the Teachers Service Commission (TSC), in its recruitment drive, will devolve its powers much more than has been the case.

Mr. Temporary Deputy Speaker, Sir, I also want to turn to the issue of secondary school teachers. In many countries, if you are a graduate of a certain subject and you want to become a teacher, you cannot be allowed to teach unless you pursue a one-year post-graduate diploma in teaching. We want to make sure that is in place. We want to make sure that secondary school teachers are competent in the subjects they will teach. Secondly, they must also be taught how to teach.

In other words, in our secondary schools today, we have found out that a number of teachers may very well be teaching subjects which they never studied at university level. It is no wonder that the results sometimes are low. That is a situation that we will address.

Mr. Temporary Deputy Speaker, Sir, since I want to finish today, we are saying that Information and Communication Technology (ICT) is now a necessity in education. This is so fundamental that we have to ensure that our graduates who are coming out of secondary schools, universities or the TIVET are all computer literate. Therefore, the Ministry of Education, Science and Technology's policy on ICT is to integrate ICT education and training into our education and training systems in order to prepare learners of today for the Kenyan economy of tomorrow and, therefore, enhance the nation's ICT skills.

To address these needs, the Government will develop a national ICT education policy and strategy as well as facilitate the formation of a national ICT co-ordination mechanism with sectoral committees, one of which should represent the education sector.

It is important for us, hon. Members, to know that IT in other countries now is being taught right at primary schools level. In many of those countries, computer is now being used as a teaching aid, to prepare briefs for lecturers and materials for students. As a matter of fact, what you have today in a number of these countries is that students and teachers have laptops and a digital blackboard and all the various things are done on computer. The advantage with this is that, one, there is a great deal

of interaction among the students and teachers as they are able to follow these things and, since students have the computers, they carry the materials home. Of course, I am not saying that we are going to achieve this one in the short-run. It is damn expensive!

Mr. Temporary Deputy Speaker, Sir, however, what we aim to do is to ensure that our students understand the computer language, are able to manipulate it and use it to solve the day-to-day problems, know how an e-mail is sent and carry out computation. We think this is important because computer is the language of the 21st Century.

It is our intention and we hope that by the year 2008, we should have at least 60 per cent or 70 per cent of our secondary school graduates computer literate. First, we want to make sure that we concentrate there while at the same time doing something in primary schools. We believe that universities will have no choice but to ensure that computer literacy is available to all students and that is already being done. However, as far as TIVET institutions and secondary schools are concerned, we are going to put more resources there so as to ensure that students coming out of those institutions are computer literate.

Mr. Temporary Deputy Speaker, Sir, more important also is that a teacher cannot teach computer unless he or she is knowledgeable about computer. The ICT in our schools, therefore, begins with our teacher-training colleges. What we are committing ourselves to here is that we are going to embark on a programme in the duration of this Sessional Paper to ensure that every teacher-training college will have computers to make sure that every teacher who rolls out of the institution will be computer literate. That way, they will be able to teach students in our schools. Without that, we cannot go very far.

Mr. Temporary Deputy Speaker, Sir, this area, of course, faces many challenges. There is the problem of infrastructure and hardware that is expensive and we, therefore, are going to have to mobilise resources. There is also the design of the software and connectivity because as we all know, electricity is not available all over. However, our commitment here is that even where there is no electricity, we are going to have to explore other modes of power to ensure that there is connectivity as this has been done in many other places through satellite. This is an important area, if indeed, Kenya is going to fight the war of closing the digital divide.

We do not have an alternative and we have to invest more resources in education.

I have already said something about research and development and stated how important it is for the country. We have had a problem in this country where research is carried out in our universities and there is no linkage between the research carried out and the private sector, which is the greater user of our research. When there is no such a linkage, clearly there is no development. Research is carried out but then you do not develop it and when this happens, then it does not benefit the country.

Mr. Temporary Deputy Speaker, Sir, our strategy in the Sessional Paper is to increase that linkage between the research being carried out in our universities and research institutions with the private sector. That is going to make it easier to develop research that is relevant. That is why we have said in this Sessional Paper that we are going to put in place a fund for research and development and fund it fully. That will be an affirmation on the part of the Government that we are holding research and development as an extremely important tool for the economic development of this country.

Mr. Temporary Deputy Speaker, Sir, there is also something else which we are saying here. Rarely do our own eminent researchers or scholars ever get nationally recognised in this country. In fact, we are very happy that we have Prof. Maathai who has been honoured by the international community for her great work. She represents one of the greatest and recognised researchers and scientists. However, we are saying that we have other researchers in this country who are doing extremely good work.

(Applause)

However, during national awards, we do not hear of these people being recognised. Other countries do so and unless we reward these people - they do not even want to be rewarded with money - we are not doing much. They just want to be recognised. That recognition will encourage them to do more and many others will emulate them. We are, therefore, saying that there is an important recommendation and once you pass it, it is going to be done. Our outstanding researchers are important and need to be honoured nationally.

Mr. Temporary Deputy Speaker, Sir, I want to end by saying that the legal framework which governs our education is the Education Act. That is the umbrella of our education. However, there are many others. There is the Teachers Service Commission Act, the National Examinations Council Act and many others, including the Universities Act.

Unfortunately, all these Acts are not coherent with each other. Time has come to re-look at those Acts and ensure that there is coherence. I would like to commend this document to hon. Members. I have just highlighted a number of issues although I have not been exhaustive.

Mr. Temporary Deputy Speaker, Sir, after presenting this Sessional Paper, I hope hon. Members will go through it because it is supposed to be the framework of the kind of education and training that we want to have in the 21st Century. We are now talking in terms of education and training. Before, we were talking in terms of education only. That was an extremely different period.

Our education was formulated by philosophers during a period they referred to as the period of modernism. During the period of modernism, various developments took place. We all wanted to be educated and knowledge was important. The emphasis as far as modernism is concerned in philosophy, meant that one had to seek education. Now, we are in a post-modernism era. Post-modernism has knowledge but asks the question, knowledge for what? One must have the knowledge and skills to implement their education.

That is important. That is why the title of this Sessional Paper is "Education and Training". We want to impart knowledge because it is a right. Those who want to impart knowledge and training, there is still time to do so. Problems and many challenges have emerged in the 21st Century. I hope hon. Members will deliberate on this Policy Paper. Be at liberty, hon. Members, to add as much as possible. You can tell us where we have gone wrong.

Mr. Temporary Deputy Speaker, Sir, we want to have an education system which is relevant and can be used to solve our problems. There is one area which I want to refer to. If I do not do so, I may be considered to have taken an unclear or hypocritical position.

Mr. Temporary Deputy Speaker, Sir, I know that many hon. Members and members of the public have been arguing that it is the right time to change our own education system, and that we need to go back to the "A"- Level System of Education arguing that our education system is not in tandem with what is being taught elsewhere. I want to inform hon. Members that education is not defined by the title of the system. Education is what is taught in a system. The national conference we had on education came up with a resolution that we need to concentrate much more on what is in the system rather than the name.

Mr. Temporary Deputy Speaker, Sir, to that extent, recommendations were made at the national conference for us to purge the various irrelevancies and elements which were in our education system that were creating problems for students, teachers and parents. We have been trying to improve the system we have and not change it. We want to ensure that, indeed, people who opt to go for technical education can also get university education.

With those few remarks, I wish to move the Motion.

Mr. Karaba: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to second the Motion by the Minister for Education, Science and Technology. He started moving the Motion last week and he has continued to do so today.

I thank the Minister for finding time to come and tell us more about education. Education is very important to all of us. That is why the Minister took a lot of time to talk about it. I will take you back a bit.

Mr. Temporary Deputy Speaker, Sir, many reports have been written on improvement of education systems and proper management. We had as early as in 1940s the Dicha Report which was aimed at starting the African Education. There are also many other reports which have been written. We had the Ominde, Gachathi, MacKay, Kamunge and recently the Koech reports. All these including the Naomi Report are aimed at improving standards and introducing reforms in our education system. That tells you how important education is to our country. That is why we support and echo what our Minister has said.

We thank the Minister for being efficient and not involved in bickering as some Ministers are. If the other Ministers were like Prof. Saitoti, we would be far ahead of other countries. As we stand to support this Sessional Paper, it is important to note that many countries in this world have developed through the many reforms they introduced in their education systems. That is why the Tigers in South East Asia found it better to develop educational reforms so as to develop technologically. That is where we want to start from now; 40 years after attaining our Independence.

It is sad that we are coming late in effecting reforms which have been experimented on by other countries and succeeded. Ours is to emulate and, if anything implement what we have seen in other countries of the world as regards for development of education.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Khamasi): Hon. Karaba, when this Debate resumes, you will still have 26 minutes to contribute. Hon. Members, it now time for the interruption of business. The House stands adjourned until tomorrow, Wednesday, 6th April, 2005, at 9.00 a.m.

The House rose at 6.30 p.m