

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

**Tuesday, 5th July, 2005**

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

**Mr. Speaker:** I would like to know from the Minister for Finance how long he will take to respond to the matter which was raised by Mr. Billow so that I can plan Question Time accordingly. Mr. Mwiraria, how long do you think you will take?

**The Minister for Finance** (Mr. Mwiraria): Mr. Speaker, Sir, I will take about five minutes.

**Mr. Speaker:** Then I will have to end Question Time by 3.30 p.m. just in case other hon. Members will be interested in seeking any clarification.

### QUESTIONS BY PRIVATE NOTICE

#### WITHHOLDING OF HIV/AIDS FUNDING BY WORLD BANK

**Dr. Khalwale:** Mr. 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 the World Bank intends to withhold funding for HIV/AIDS projects worth Kshs8 billion due to misappropriation of the funds earlier released to the National AIDS Control Council (NACC)?

(b) What urgent action is he taking to pre-empt the catastrophe that would jeopardize the lives of people living with HIV/AIDS and those at risk of infection?

**Mr. Speaker:** Anyone here from the Office of the President? The Member for Ikolomani, could I defer the Question to tomorrow afternoon?

**Dr. Khalwale:** Yes, Mr. Speaker, Sir.

**Mr. Speaker:** The Question is deferred to tomorrow afternoon.

*(Question deferred)*

#### ASSISTANCE TO KCPE CANDIDATES DISPLACED FROM NAROK

**(Mr. Kimeto)** to ask the Minister for Education, Science and Technology:-

(a) What measures has the Minister taken to assist school-going children who have been evicted from schools in Sagamian, Ormegenyo and Sisiyan areas of Narok District?

(b) What specific measures have been put in place for this year's KCPE candidates who have been displaced in the evictions from Chepitet, Losagam, Kitoben, Kebeneti, Koitabai and Olesuhunye primary schools?

(c) Could the Minister further consider including the pupils currently camping at Sogoo Primary School in the school feeding programme?

**Mr. Speaker:** Mr. Kimeto's Question is deferred at his request to Thursday afternoon!

*(Question deferred)*

EMBARGO ON LAND TRANSACTIONS IN  
CHEMBE-KIBABAMCHE SCHEME

**Mr. L. Maitha:** Mr. Speaker, Sir, I beg to ask the Minister for Lands and Housing the following Question by Private Notice.

(a) When was the embargo on transactions on the parcels of land in Chembe-Kibabamche Settlement Scheme imposed?

(b) Is the Minister aware that despite the existence of the embargo, land transactions are currently going on causing tension and anxiety amongst the residents of the area?

**The Assistant Minister for Lands and Housing** (Mrs. Tett): Mr. Speaker, Sir, I beg to reply.

(a) The embargo on transactions on parcels of land in Chembe-Kibabamche Settlement Scheme was imposed in April, 2001.

(b) I am not aware of land transactions currently going on in the area as my Ministry has not facilitated any since the embargo was imposed.

**Mr. L. Maitha:** Mr. Speaker, Sir, I am happy that the Assistant Minister has said that an embargo on transactions on parcels of land in Chembe-Kibabamche Settlement Scheme was imposed in 2001. Surprisingly, land transactions are going on in that scheme up-to-day.

I am surprised that the Assistant Minister has denied this. Is she aware that title deeds were issued after 2001? There are so many title deeds which were issued in 2002, 2003 and the latest in 2005.

**Mrs. Tett:** Mr. Speaker, Sir, we are not aware whatsoever of any title deeds issued to people by my Ministry. All those title deeds are *bandia*.

**Mr. Mwandawiro:** Bw. Spika, ikiwa Waziri Msaidizi hana habari kwamba hati za umilikaji ardhi zinaendelea kutolewa baada ya vizuizi kuwekwa, lakini mhe. Mbunge wa eneo hilo amethibitisha hayo; je, Waziri Msaidizi anaweza kuchunguza jambo hilo?

**Mrs. Tett:** Mr. Speaker, Sir, we will find out where those title deeds came from if the hon. Member lays their photocopies on the Table.

**Mr. Speaker:** Mr. L. Maitha, would you like to respond to that?

**Mr. L. Maitha:** Mr. Speaker, Sir, I do not have photocopies of those title deeds right now. However, I will lay them on the Table later on. Could this Question be deferred to next week?

**Mr. Speaker:** Surely, you knew your Question was on the Order Paper! Did you not?

**Mr. L. Maitha:** Mr. Speaker, Sir, I knew that but I did not know that the Assistant Minister will deny that title deeds have been issued as late as 2005.

**Mr. Speaker:** Anyway, we will dispose of the Question! If you wish, you can lay the title deeds on the Table.

**Mr. Serut:** Thank you, Mr. Speaker, Sir. Issuance of title deeds registers interest that vest ownership in individuals. The Assistant Minister has said that an embargo on transactions on parcels of land in Chembe-Kibabamche Settlement Scheme was imposed in 2001. What is the Ministry doing to ensure that even those title deeds which were issued in 2001 do not change hands?

I presume the reason for the embargo is to ensure that the land does not move from the Government to any other individual.

**Mrs. Tett:** Mr. Speaker, Sir, we are unable to do that because it is the local people who sell the land to each other. Those people do not come to my Ministry because they know that there is an embargo on land transactions in that scheme.

Mr. Speaker, Sir, the Ministry has nothing to do with the agreement entered between the

local people. That agreement is out of our hands.

TARMACKING OF ROADS C30/D251

**Mr. Wanjala:** Mr. Speaker, Sir, I beg to ask the Minister for Roads and Public Works the following Question by Private Notice.

(a) Why has the contractor awarded the contract for tarmacking Road C30, Bumala-Nangina-Bukiri-Namalo-Rwambwa and Road D251 Nambengele-Mundere-Port Victoria, in March, 2005, not commenced the work?

(b) Could the Minister confirm to the House that the amount allocated to these roads has not been misappropriated?

(c) What urgent measures is the Minister taking to commence the project and complete it within the contractual period?

**The Assistant Minister for Roads and Public Works (Eng. Toro):** Mr. Speaker, Sir, I beg to reply.

(a) It is not true that the contractor awarded the contract to tarmac Road C30 Bumala-Nangina-Bukiri-Namalo-Rwambwa and Road D251 Nambengele-Mundere-Port Victoria has not started work. On the contrary, I confirm that the contractor commenced work on 27th April, 2005, and it is ongoing.

(b) I confirm that the amount allocated to these roads has not been misappropriated.

(c) I will not take any urgent measures because the project has already commenced and the work shall be completed within the contract period of 24 months.

**Mr. Wanjala:** Mr. Speaker, Sir, the distance between Nairobi and the road we are talking about is over 550 kilometres. I would like to say that the Assistant Minister might be speaking out of ignorance. Work on that road was launched in March, 2005 in the presence of the Minister for Roads and Public Works and the Vice-President and the Minister for Home Affairs. If the latter was here, he could have confirmed that work has not commenced. It was on Thursday last week that the contractor brought in two graders which have hardly done 100 metres.

Mr. Speaker, Sir, the contract stated that the contractor should start repairing the road from both sides; that is from Port Victoria and Bumala. Why has the contractor also not started work from Port Victoria?

**Eng. Toro:** Mr. Speaker, Sir, the hon. Member is exactly saying that work has started. His problem is that work has not started from both sides of the road. I would like to inform him what has happened so far. The contractor is continuously carrying out mobilisation and setting out road works; how he will do his civil works.

Mr. Speaker, Sir, the contractor has also to put up the resident engineer's office and laboratory, rent a house or construct one for him, erect publicity signs to show that work has commenced, do preliminary and general work. All these has been ongoing. No work can commence until this has been done. The fact that the contractor has done 100 metres shows that work has commenced.

**Mr. Ojaamong:** Mr. Speaker, Sir, I was at Bumala in March, 2005 when the project was being launched. What Mr. Wanjala has said is true. What is happening is that a grader is clearing a bush, which is normal in grading a road. However, real work has not started. Could the Assistant Minister confirm what Mr. Wanjala said that the construction of that road is being frustrated either because it will benefit the Vice-President and Minister for Home Affairs or to sabotage Mr. Raila?

**Hon. Members:** No! No!

**Eng. Toro:** Mr. Speaker, Sir, I think the Member for Amagoro has something other than the issue of roads, which he should let us know.

M/s Hayer Bishan Singh and Sons has already been awarded the contract and is on the ground. If there is anybody who is frustrating the Vice-President and Minister for Home Affairs or the Minister for Roads and Public Works, then it should be the contractor because he is on the ground. Hon. Members can accuse my Ministry of frustrating the Vice-President and Minister for Home Affairs if we had refused to award the tender.

However, we have already done that. Mr. Wanjala knows this, because I and the Minister for Roads and Public Works were with him when we launched the project. So, the issue of frustrating anybody does not arise. In any case, Mr. Wanjala knows that work is not progressing because mobilization by the contractor has been a bit slow.

Mr. Speaker, Sir, since we give contractors ample time to mobilise and start work, we cannot blame that contractor because we are concerned with the contract period of 24 months. Before that period is over, we cannot determine the speed of the contractor. He might start slowly, and accelerate within three months.

**Mr. Wanjala:** Mr. Speaker, Sir, the Assistant Minister is telling this House that work on that road was to be done within 24 months. Already, four months have elapsed. The contractor is now left with 20 months. The Assistant Minister has not told this House why the contractor started work at Bumala and not from Port Victoria. What urgent measures is he taking to ensure that the contractor, who is four months late, will complete the work within the remaining 20 months, while all his equipment was taken to Sudan?

**Eng. Toro:** Mr. Speaker, Sir, I will ignore the last part of the question that Mr. Wanjala has just asked, because I am not aware of any equipment being taken to Sudan. We will leave this matter to the contractor to decide how he wants to work. We cannot tell the contractor how he can mobilise himself to finish the work. We want the work to be completed within 24 months.

Mr. Speaker, Sir, we do not know the speed of the contractor in doing the work. We will determine his speed after this month. It is up to him to determine the pace he will work at.

Since he has not even raised the first certificate, where he can say that we are frustrating him for non-payment, we will continue to mobilise him to start work so as to achieve the first certificate. After that, we can then pay him.

## ORAL ANSWERS TO QUESTIONS

### *Question No.050*

#### TERMS OF CONTRACT FOR MUHORONI SUGAR FACTORY RECEIVER MANAGER

**Prof. Olweny** asked the Minister for Agriculture:-

- (a) under what terms the Receiver Manager was contracted to run Muhoroni Sugar Factory;
- (b) whether he could inform the House how much money the Receiver Manager has spent to rehabilitate Muhoroni Sugar Factory;
- (c) when the receivership management will end; and,
- (d) how much profit the Company has posted since the Receiver Manager took over.

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

(a) The terms on which the Receiver Manager was contracted to run Muhoroni Sugar Company were to take over the assets of the company, restructure the management, revamp its operations and to offset the huge debt burden the Company had.

(b) The Receiver Manager has so far spent Kshs626.5 million to rehabilitate Muhoroni

Sugar Factory.

(c) The Government has received the audit reports on the performance of the Receiver Manager and I have directed the Kenya Sugar Board (KSB) to review the reports and recommend the way forward for the receivership management.

(d) The company posted a profit of Kshs67 million during the year 2003/2004 and is projected to post Kshs30 million in the Financial Year 2004/2005.

**Prof. Olweny:** Thank you, Mr. Speaker, Sir. Sometime last year, before the Government commissioned an auditing team to look at the financial status of this company, there was an allegation that the Receiver Manager had taken out of the company over Kshs500 million to an unknown destination. Did the audit report reflect that? Where was the money taken to and for what purpose?

**Mr. Akaranga:** Mr. Speaker, Sir, there was, indeed, an audit report by Ernst and Young Company. The report is being studied by an Inter-Ministerial Committee which has been formed. We will bring the report of its findings to this House as soon as it is ready.

**Dr. Godana:** Mr. Speaker, Sir, part "a" of the Question has asked under what conditions the Receiver Manager had been contracted to run Muhoroni Sugar Company. I expected the Assistant Minister to tell us, for instance, the remuneration paid to the Receiver Manager.

**Mr. Akaranga:** Mr. Speaker, Sir, that is tabulated in the contract or the letter which was given to the Receiver Manager by the KSB. Indeed, I do not have the figure of how much the Receiver Manager is being paid.

**Dr. Godana:** On a point of order, Mr. Speaker, Sir. In view of the admission by the Assistant Minister that he does not have the figure relating to part "a" of the Question, would I be in order to ask him to go back and bring details of this Question?

*(Applause)*

**Mr. Speaker:** What is your response?

**Mr. Akaranga:** Mr. Speaker, Sir, the hon. Member is asking about the remuneration of the Receiver Manager. But I can lay on the Table, all the other terms of the receivership.

**Mr. Speaker:** Hon. Members are wondering why you should show all the other terms except the remuneration.

**Mr. Akaranga:** Mr. Speaker, Sir, if you look at the question, the hon. Member seeks to know under what terms the Receiver Manager was contracted to run Muhoroni Sugar Company. It does not ask how much remuneration the Receiver Manager is getting.

**Mr. Bett:** Mr. Speaker, Sir, one more reason why this Assistant Minister should go back to bring a proper answer is because he has told this House that Kshs626.5 million was used to rehabilitate the plant. The Committee which I Chair was there last year. It could not see what new equipment had been brought to the plant. Could he give us a list of the new equipment which had been brought and which could cost Kshs626.5 million?

**Mr. Akaranga:** Mr. Speaker, Sir, indeed, this House should look at the performance of various companies which have gone under receivership. It is only Muhoroni Sugar Company which went under receivership, and has posted profit. The rest of the companies which have gone under receivership have gone under.

**Mr. Nderitu:** Mr. Speaker, Sir, the issue is very simple. Kenyans and this House want to know what equipment was bought with the money in question, regardless of the fact that the company is posting profits. Secondly, the Receiver Manager's terms of service include his salary, remuneration, sleeping and waking up details. Could he bring all this information here?

**Mr. Billow:** On a point of order, Mr. Speaker, Sir. In view of the concerns raised by Mr. Bett, would it not be in order for the Assistant Minister to table the audit report which was carried out because of the circumstances in this receivership? We will also be in a position to scrutinize it.

**Mr. Speaker:** Hon. Members, I will reluctantly defer this Question to Tuesday next week with the following rider, I do not expect to defer Questions. Those Ministers being asked Questions and hon. Members asking Questions should come here prepared. This will not be the usual practice. So, could we do that on Tuesday, next week but only from where have left. We will not begin issues on this Question afresh. Is that alright, Mr. Akaranga?

**Mr. Akaranga:** Yes, Mr. Speaker, Sir. However, could I table the special audit report?

**Mr. Speaker:** You have it?

**Mr. Akaranga:** Mr. Speaker, Sir, I have it.

**Mr. Speaker:** Then I do not have to defer this Question. Proceed and table it!

*(Mr. Akaranga laid the document  
on the Table)*

**Mr. Osundwa:** On a point of order, Mr. Speaker, Sir. We have had cases in this country where receivers realise money and pay themselves billions of shillings. It will do this House some good if we are told how much the Receiver Manager in this case is making and how much he is remunerating himself. I suspect that, that remuneration may not be in that report.

**Mr. Speaker:** Order, hon. Members! Let us not make suspicion the basis of our debate. The report has been tabled, look at it and if you are not satisfied with it, then you could proceed to query it under Standing Order No.18. Do you get what I mean?

**Mr. Osundwa:** Yes, Mr. Speaker, Sir.

**Mr. Speaker:** Next Question, Mr. Korir!

**Prof. Olweny:** On a point of order, Mr. Speaker, Sir. I have not asked my last question.

**Mr. Speaker:** Alright, proceed!

**Prof. Olweny:** Mr. Speaker, Sir, according to what the Assistant Minister has told us, the Receiver Manager was supposed to offset some of the debts.

Mr. Speaker, Sir, could he indicate to us which debts have been paid since the arrears of the workers and farmers have never been handled apart from the money which was loaned to them by the Kenya Sugar Board (KSB) last year?

**Mr. Akaranga:** Mr. Speaker, Sir, I would like to confirm to this House that farmers at Muhoroni have been paid their money.

**Mr. Billow:** On a point of order, Mr. Speaker, Sir. The Assistant Minister told the House that one of the reasons we should not be concerned with the remuneration of the receivers is because the company has been making profits.

In the report, the latest accounts for March, 2004 indicate that the company made a loss of Kshs160 million. So, is he in order to mislead the House that this company is, indeed, making profits when it is making huge losses?

**Hon. Members:** He does not know what he is talking about! How can he mislead the House? That is in contempt of the House!

**Mr. Akaranga:** Mr. Speaker, Sir, I do not know which page of the report Mr. Billow is referring to. We have scrutinized the report and found out that the firm posted a profit of Kshs67 million during the year.

**Mr. Speaker:** Hon. Members, the report has been tabled. As I have advised, any hon. Member who wishes to query this information may proceed under Standing Order No.18.

Next Question, Mr. Korir!

*Question No.171*

REINSTATEMENT OF MR. CHERUTICH'S PENSION PAYMENTS

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

(a) if he could explain why pension payments for retired police officer, Mr. Chepkirwok Cherutich alias Chepkimo Cherutich - Pension No.KPSF - 026292/8 was stopped with effect from August, 2004; and,

(b) if he could rectify the anomaly and reinstate pension payments to this retired officer.

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

(a) Mr. Chepkirwok Cherutich's pension was stopped following his written instructions requesting the Pensions Department to change his pension pay point from Post Bank Eldama Ravine to Post Bank Mwatate, Voi. This turned out to be a false pay point thus prompting the Pensions Department to stop channelling payments to the pay point.

(b) Upon obtaining fresh instructions on where to channel pension dues, that is, Post Bank Mogotio, the Pensions Department effected the changes in February, 2005. The resultant arrears of 17 months have since been paid and Mr. Cherutich's name remains on the payroll to date.

**Mr. Korir:** Mr. Speaker, Sir, first of all, I would like to correct the Assistant Minister who is pronouncing this complainant's name as Mr. Chepkorir. The correct name is Mr. Chepkirwok. However, he has indicated that somebody wrote a letter that these pension payments should be channelled to Post Bank, Mwatate, Voi yet this pensioner is a resident of Mogotio Constituency. He has no business or residence in Voi. Now, has the Assistant Minister identified the person who wrote this letter? What action has he taken against this person?

**Mr. Katuku:** Mr. Speaker, Sir, the information I have is that it is the pensioner who wrote this letter unless the hon. Member proves otherwise.

**Mr. Kagwima:** Mr. Speaker, Sir, if it is the pensioner who wrote this letter, why were the instructions not obeyed?

**Mr. Katuku:** Mr. Speaker, Sir, we obeyed the instructions of the pensioner. We sent the pension to the new pay point, which he could not access. We collected that money back and we have now sent it to the right place that is, Post Bank, Mogotio.

**Mr. Speaker:** Very well!

Next Question, Mr. O.K. Mwangi!

*Question No.453*

MEASURES TO SAVE MR. KARIUKI'S  
PROPERTY FROM AUCTIONEERS

**Mr. Speaker:** Hon. Members, since Mr. O.K. Mwangi is absent, his Question is dropped.

*(Question dropped)*

*Question No.294*

## RESETTLEMENT OF TRIBAL CLASHES VICTIMS IN THARAKA DISTRICT

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

- (a) when the Government will settle 2,280 families displaced during the 1997 political and tribal clashes affecting Macabini sub-location of Ntoroni location of Tharaka District;
- (b) what measures he has taken against those responsible for the conflicts; and,
- (c) what plans he has to assist the families support themselves.

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

(a) Currently, the Government, in conjunction with the Catholic Diocese of Meru is making attempts to build peace among the communities that were affected by the clashes. The peace initiative is geared towards settling the victims who include the Tharaka, Igembe and Tigania communities, with the co-operation of the local leaders including the local hon. Members of Parliament. The Government initiative will be able to settle the victims very soon.

(b) Since the conflicts involved all the communities that is, the Tharaka, Igembe and Tigania, it has been difficult to pin point a particular community for being responsible for the conflicts.

(c) Since the 1997 clashes, most Tharakas have settled on some parts of an unadjudicated section of Kanzoro Location and others live as squatters within the area under dispute. It should be noted that the area under Tharaka has been getting relief food whenever it is available.

**Mr. Kagwima:** Mr. Speaker, Sir, I am happy the Assistant Minister has addressed this issue. He also referred to Kenyans and not just one community. However, it is the Government's responsibility to ensure there is security for all. Why can the Government not move with speed and ensure that people settle back in their former areas?

**Mr. Kingi:** Mr. Speaker, Sir, it is true this is an old issue, but we have made quite a number of moves including using the church and local leaders. As of now, quite a number of resolutions have been made. We would like to move in to ensure that those resolutions are implemented soon.

**Mr. Muriungi:** Mr. Speaker, Sir, it is about eight years since the alleged displacement took place.

**Mr. Speaker:** How many years?

**Mr. Muriungi:** Mr. Speaker, Sir, it is about eight years since this alleged displacement took place. The hon. Member who has asked this Question was the hon. Member of Parliament for Tharaka Constituency then.

Mr. Speaker, Sir, is it in order for him to ask who were responsible for the clashes when he was the hon. Member of that area at that time? There was a lot of peace between 1997 and 2002---

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! Order! Mr. Muriungi, are you saying the hon. Member for Tharaka Constituency was in Parliament 48 years ago?

**Mr. Muriungi:** Mr. Speaker, Sir, I am referring to eight years ago.

**Mr. Speaker:** Order! I will not have altercation between the two of you. The hon. Member has a right to ask the Question, which will be answered.

**Mr. Muiruri:** Mr. Speaker, Sir, the question of settling displaced persons throughout Kenya is a matter of great concern. There are about 550 squatters who live in Kieni Forest, who were evicted from their homes in Rift Valley Province as a result of tribal clashes.



So, this is not just a case of Tharaka Constituency. What plans has the Government put in place to resettle all the displaced people as a result of the tribal clashes that occurred from 1992 to 2002? The Government must come up with a permanent solution to resettle all these people. How much money will the Government allocate to resettle these people?

**Mr. Kingi:** Mr. Speaker, Sir, as far as resettling other tribal clashes victims is concerned, the Government formed a commission that went round the country collecting views. We are currently assessing that report.

Once we go through it, we will be in a position to table it in Parliament. We will then be in a position to know the exact policy and procedure to follow in order to resettle those clashes victims.

**Mrs. Kihara:** Mr. Speaker, Sir, it has come out clearly that it is not only in Macabini area that people were displaced. Has the Assistant Minister established how many families need to be resettled?

**Mr. Kingi:** Mr. Speaker, Sir, the Question that came to us was very particular about Tharaka. However, I have also said that there was a Commission that collected views and we have received its report. We are looking at it and I am sure that it will address all those other issues that hon. Members have raised.

**Mr. Mukiri:** On a point of order, Mr. Speaker, Sir. Mr. Muiruri has asked a very specific question about how much money the Government has set aside for this resettlement. However, the Assistant Minister did not answer that question. Is he in order not to do so?

**Mr. Speaker:** Order, Mr. Mukiri! He is absolutely in order. If you look at the Question, it is relating to a specific place in Tharaka. It is not a general Question that would expect the Assistant Minister to come with the finance country wide. He is perfectly in order!

I will end this Question.

**Mr. Munya:** No!

**Mr. Speaker:** Who is saying no?

**An hon. Member:** Mr. Munya!

**Mr. Speaker:** How can you say no?

**Hon. Member:** Mumunya Munya! Out!

**Mr. Speaker:** Mr. Munya, are you hard pressed to ask a question?

**Mr. Munya:** Yes, Mr. Speaker, Sir. The leaders of the entire Meru region visited the President in State House and he personally asked for this problem between the Tharaka, Tigania and Igembe to be resolved once and for all. It has taken more than six months and the Government has still not done anything even with the directive from the His Excellency the President. Could the Assistant Minister give us a specific timeframe when he is going to visit that area, consult with the elders and solve this problem? This will make the people of Tigania and Igembe to live peacefully.

**Mr. Muturi:** On a point of order, Mr. Speaker, Sir. Is Mr. Munya in order to quote the name of the President as the source of authority for the supplementary question he has put?

**Mr. Speaker:** He is out of order!

**Mr. Kagwima:** Mr. Speaker, Sir, before I ask the last question, I would want to put on record that it is true that I was here in 1997. Mr. Muriungi is aware that our people were displaced by the *askaris* of the previous Government. His predecessor was the Minister of State, Office of the President. He used that position to displace those communities. The Assistant Minister should, therefore, take note of that. He should probably be one of the people to be punished for displacing our people.

**Mr. Speaker:** Order, Mr. Kagwima! We must be careful in some of these very sensitive issues involving clans and communities. Sometimes we may fan a problem rather than solve it.

*(Mr. Maore stood up  
in his place)*

Order, Mr. Maore! This is a Parliamentary Question and not a Meru affair! What is it Mr. Maore?

*(Laughter)*

*(Mr. Maore went to the Dispatch Box)*

**Mr. Maore:** Mr. Speaker, Sir, if you read the Question, it is misleading. It is neither tribal nor apolitical. All the neighbours of the Tharaka have been victims of the Tharaka expansionists system. What system has the Assistant Minister put in place?

*(Laughter)*

**Mr. Speaker:** Order, hon. Members! I will not accept that! That is the end of it! Proceed, Mr. Kagwima!

*(Mr. Maore stood up  
in his place)*

Order, Mr. Maore! You cannot use that language in the House!

**Mr. Kagwima:** Mr. Speaker, Sir, part "c" of the Question requests the Assistant Minister to offer long-term solutions in terms of giving them basic necessities like shelter and special bursary funds for school going children because they have no income. What long-term measures will the Government take to ensure that the people are settled back into normal lives?

**Mr. Kingi:** Mr. Speaker, Sir, our prime concern is the settlement of these victims. That is why we have brought in the churches and local leaders. They have had some discussions and we are very sure that soon we will resettle all those displaced people.

*Question No. 063*

MORTUARY FOR NUNGUNI  
SUB-DISTRICT HOSPITAL

**Mr. Ndambuki** asked the Minister for Health whether she could inform the House if there are any plans to construct a mortuary at Nunguni Sub-District hospital.

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

Although the facility is gazetted as a sub-district hospital, its infrastructure and operations are those of a health centre. The Ministry has no plans to construct a mortuary at Nunguni Sub-District Hospital during this financial year.

Currently, the area is served by Makueni District Hospital Mortuary. However, we have provided a vehicle for this facility.

**Mr. Ndambuki:** Mr. Speaker, Sir, you have heard the Assistant Minister say that the infrastructure of Nunguni Sub-District Hospital is not good to cater for the area. When is he going to make sure that the infrastructure is in order for such a facility to be there? The distance from

Nunguni to Machakos and Makueni is long for people to take their dead people.

**Mr. Konchella:** Mr. Speaker, Sir, due to financial constraints, the Ministry has prioritised the construction of facilities in that area as follows:-

The Ministry will finance Mbooni Sub-District Hospital during this financial year while Nunguni Sub-District Hospital will be financed in the 2006/2007 financial year. The other requirements of the hospital will also be met at the same time. When the construction of the mortuary will commence, we will also look at some of the requirements to make them operational by that time.

**Mr. Ndambuki:** Mr. Speaker, Sir, you have heard the Assistant Minister say that they will build a mortuary for that hospital in the 2006/2007 Financial Year. I thank him for that. But what are we going to do in the meantime? The people of that area continue to use traditional methods of preserving bodies due to lack of a mortuary. Even the vehicle they have given us has no driver and the people cannot afford to employ one.

**Mr. Konchella:** Mr. Speaker, Sir, I can only ask the hon. Member and his people to bear with the Ministry. They can use Kivoko Mortuary, which is run by a mission, until we construct the one that we have promised.

**Mrs. Kihara:** Mr. Speaker, Sir, that is a serious problem. You know that in any in-patient hospital, there are bound to be deaths. It is always a problem when people die and are taken for long distances for burial.

Could the Assistant Minister tell us what plans he has to put up mortuaries in sub-district hospitals in the entire country? That is a national problem.

**Mr. Konchella:** Mr. Speaker, Sir, we can only prioritise, based on the financial position of the Ministry. If there are particular needs in a place that require priority, let us know through the Medical Officers of Health, so that we can allocate them money.

**Mr. Ndambuki:** Mr. Speaker, Sir, since the mortuary will take three years to construct, could the Assistant Minister provide us with a driver to drive the vehicle which is there? That can help ferry some bodies to areas like Makueni and Machakos, instead of leaving the people to use traditional methods of preserving bodies.

**Mr. Konchella:** Mr. Speaker, Sir, if the hospital does not have a driver, we can provide one. I was not aware that you do not have a driver.

**Mr. Speaker:** Sorry! I must now go to the next Question.

The hon. Member for Konoin Constituency!

*(Mr. Salat stood up  
in his place)*

Why are you standing?

**Mr. Salat:** Mr. Speaker, Sir, the hon. Member for Konoin is on an official trip with the Constituencies Development Fund (CDF).

**Mr. Speaker:** Which official trip?

**Mr. Salat:** Mr. Speaker, Sir, they are visiting various projects in the country.

**Mr. Speaker:** So, what do you want?

**Mr. Salat:** Could I be in order to request you to defer the Question?

**Mr. Speaker:** Alright. I will defer it generally.

*(Question deferred)*

Next Question by KANU Nominated Member, Prof. Oniang'o!

*Question No.001*

NUMBER OF UoN MEDICAL STUDENTS  
IN REGULAR AND PARALLEL PROGRAMMES

**Dr. Rutto**, on behalf of **Prof. Oniang'o**, asked the Minister for Education, Science and Technology:-

- (a) what the total number of University of Nairobi (UoN) students undertaking medical training is in both regular and parallel programmes;
- (b) what the percentages of failure in both programmes were for the year 2004 1st year class; and,
- (c) what the reasons are for the above failures.

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

(a) The total number of UoN students undertaking medical training in the regular degree programme is 1,111, or 51.5 per cent of the total number of medical students. The total number of those in the parallel programme is 1,045, which is 48.5 per cent. The grand total of students undertaking medical training is 2,156.

(b) The percentage failures in both programmes for the year 2003/2004 1st year group is as follows:-

Out of the regular programme, out of 262 students, 10 students, representing 4 per cent, failed. Out of the parallel programme, out of 261 students, 82 students, representing 31 per cent, failed.

(c) The reasons for the failures are varied and are as follows:-

(i) Absenteeism by students to attend lectures and sitting for the exams as many of them are working to pay for their education.

(ii) Some parents encourage students to undertake medical degree courses because they are more marketable and prestigious, although the students may not be psychologically prepared. Most of those who failed were, on average, weaker than the regular degree students.

(iii) There are problems of accommodation and transportation, especially, for those who are day scholars.

(iv) Lack of motivation by some of the students because it is their parents who basically force them to enrol in those courses. It is as if some parents who failed to do medical degree programmes are forcing their children to do them. As they say: "If you cannot shine, let your shoe shine!"

(v) Some of the students want to go overseas and if they fail, they are not motivated.

(vi) Drop outs and absenteeism.

**Mr. Speaker:** Whose Question was it? Dr. Rutto!

**Dr. Rutto:** Mr. Speaker, Sir, as you realise, the percentage of failure, particularly in the parallel degree programme, is alarming. Even in the regular programme, the 4 per cent that we lose is still alarming. What is the university doing to reduce the number of those who fail?

**Dr. Mwiria:** Mr. Speaker, Sir, the best the university can do is to encourage the students to do their best, so that they can pass their exams. Otherwise, what can you do? We have already said that they should provide them with relevant facilities.

If only 4 per cent failed in the regular programme, it means 96 per cent are doing fine. The problem is actually with the parallel degree programme.

**Mr. Karaba:** Mr. Speaker, Sir, the Assistant Minister has not addressed the main problem. He should tell us that the number of students in regular and parallel degree programmes is over-stretching the facilities at the university. It is not true that some are doing medical courses because they were forced by their parents. What is the Government doing to expand the facilities that were built in the 60s and 70s to accommodate the increasing number of students?

**Dr. Mwiria:** Mr. Speaker, Sir, the problem of over-stretching of facilities is common across all the faculties. Let me also say that it affects both regular and parallel degree programmes.

It is not clear why over-stretched facilities should be more of a problem to parallel degree programme students than the regular degree programme students. The issue is really about qualifications. But we do agree that, for all faculties, we need to provide more facilities. Some of the money that is collected from the parallel degree programme is being used to expand some of the facilities.

**Mr. Kagwe:** Mr. Speaker, Sir, I want a clarification from the Assistant Minister. He has given us 2,156 as the total number of students who are undertaking medical courses. Is that number adequate, given the fact that, we are losing many doctors to overseas countries, the population is increasing and many diseases like HIV/AIDS are coming up?

**Dr. Mwiria:** Mr. Speaker, Sir, that number is not adequate. The other faculties also do not have adequate numbers. We have limitations in terms of space and the resources that we allocate to universities. That is one of the reasons why Sessional Paper No.10, among other issues, explored various ways of expanding university opportunities not just in medicine, but in some of the other critical faculties like engineering, architecture and so on.

**Dr. Godana:** Mr. Speaker, Sir, this Assistant Minister is normally serious but today he is not serious. He has not been serious to the extent of telling us that the reason for mass failure in the parallel degree programme is that parents have forced their children to do degree programmes which they do not want. That reason is unacceptable. Could he accept that the real reason is that the dichotomy between parallel and regular students is most unfortunate and, obviously, the parallel degree programme is considered inferior and, therefore, receives less attention from staff, and the circumstances under which they study are actually below that of regular students?

**Dr. Mwiria:** Mr. Speaker, Sir, I gave the reason that some parents like their children to do medicine, engineering and other courses as one of the reasons amongst others. I gave several reasons, including the actual qualification of the different categories of students. For example, one needs a straight "A" to do medicine, but last year, with a "B", one would have pursued the same via the parallel degree programme. So, basically, we are looking at different kinds of students also in terms of qualifications.

Mr. Speaker, Sir, I will not agree that professors have any problem with parallel degree students because they are also paying money and they are contributing a great deal to support university education but there are other factors.

Mr. Speaker, Sir, all of us do not have the same ability. This is a fact. For those who cannot compete as well, you expect that the failure rate will be higher with that group as opposed to the one that has done much better. As you know yourself, you got a First Class degree in law but not every student who was doing law in your year also got a first class in law.

*(Applause)*

**POINT OF ORDER**

## REINSTATEMENT OF QUESTION NO.453

**Mr. Muiruri:** On a point of order, Mr. Speaker, Sir. I would like you to kindly reconsider Question No.453 since it is very important. If you look at it, somebody borrows Kshs300,000; he has repaid Kshs1.8 million, and yet ICDC is still demanding Kshs5,160,485.75.

Mr. Speaker, Sir, to me, this is a very important Question and although I have not been asked by hon. O.K. Mwangi to speak on his behalf, I think the House would like to know how this kind of thing could happen. It also happens to ordinary people. The auctioneers want to sell this man's property, yet he has paid more than three times of the amount of money borrowed. So, could you reconsider your earlier ruling and defer this Question on behalf of hon. O.K. Mwangi?

*(Applause)*

**Mr. Speaker:** First of all, the way you have framed it is very interesting. You know when you have a discretion, you do not use it everyday, otherwise it ceases to be a discretion. So, the discretion must remain just that; a discretion to be used judiciously, and I want to use it very sparingly.

In the circumstances, I will defer it to another day with a stern warning to the hon. Member to take the business of the House very seriously. So, it will be placed on the Order Paper some other day.

**Mr. Muiruri:** Thank you very much, Mr. Speaker, Sir.

*(Question deferred)*

*Question No.305*

NUMBER OF KWS RANGERS RECRUITED  
FROM SAMBURU EAST CONSTITUENCY

**Mr. Speaker:** Mr. Leshore is not here? Question dropped.

*(Question dropped)*

**COMMUNICATION FROM THE CHAIR**

DETAILS OF PRINTED ESTIMATES

**Mr. Speaker:** Hon. Members, you will recall that last week and the week before, an issue was raised by the Shadow Minister for Finance about the format and not the content of our Printed Estimates. He took exceptions with the way it is now rather than the way it has always been. The hon. Shadow Minister for Finance raised the issue that it did infringe on financial regulations.

You will recall that last Thursday, the Minister, like the day before, requested to seek further legal advice and then come to the House. I think the Minister is now here and he is ready to respond to the issue raised, and I would like hon. Members to be attentive to what the Minister has to say because this is the first time that we are having this form of Printed Estimates, and it is good for us to listen and judge whether or not there is good reason for departing from what has always been the case.

## MINISTERIAL STATEMENT

### DETAILS OF PRINTED ESTIMATES

**The Minister for Finance** (Mr. Mwiraria): Thank you, Mr. Speaker, Sir. In view of the request made specifically by the Shadow Minister for Finance, and the many queries raised by hon. Members, I wish to give the following clarification.

Mr. Speaker, Sir, the regulation guiding the presentation of the Budget Estimates is contained in Chapter 15 of the Government Financial Regulations and Procedures. Specifically, Regulation 15(10) provides that the Estimates for each Development Head will be presented in the following three parts: Part I - Ambit of the Vote: "This shows the net amount of grants required from the Exchequer, specifying service and purpose for which the Estimate is required". That was a quote.

The 2005/2006 Estimates have Part I and, therefore, specifically conform to this rule. Part II - Sub-Vote and Head, - and I quote: "This shows in itemised details appropriate Sub-Vote or Head details of expenditure and receipts by way of Appropriations-in-Aid (A-in-A), which make up the net amount of the grants required from the Exchequer. Each Sub-Vote or Head is prefixed by a distinguished code. A-in-A is separately identified". Part II is also specifically provided in the 2005/2006 Development Estimates and, therefore, conforms to this regulation.

Part III - Head, Sub-Head items: I quote: "This shows in itemised detail the expenditure, and A-in-A provided for in the Sub-Vote and Sub-Head". Here, again, this Part III is specifically provided for under a new item code and item details. This is the area where we changed the presentation of Estimates this year.

So, the Budget format has not changed. The only change which has been made is in the classification of the item code and the description of the expenditure. The rest of the layout remains unchanged. As can be observed from the Printed Estimates, divisions of Sub-Votes, Heads and Items are maintained.

Mr. Speaker, Sir, however, as explained earlier, the purpose for the change in Item coding and description is to conform with the international coding for Government budgets, known as the Government Finance Statistics (GFS). The advantages of the new coding system are as follows:-

- (a) The system highlights the purpose for which expenditure is undertaken, normally called Economic Classification. This explains the change in description of Items from specific Item names to principal Items which specify purpose of expenditure.
- (b) The system affords comparability across different economies, thus making it possible to compare performance of different countries.
- (c) The system harmonises the reporting, in effect making it easy for analysis.
- (d) It also eliminates non-standard Items, thus reducing misuse.

Expenditure which is classified using non-standard Items can neither be properly analyzed for purposes, nor can it be adequately audited for effect and output.

Mr. Speaker, Sir, I am aware that hon. Members would like to have the details of each Item fully identified, to encourage transparency and accountability.

*(Applause)*

I wish to confirm that this matter has been sufficiently addressed by my office through the

requirement that each Ministry provides district budgets with a detailed project list to this House by 30th July, every year, to accompany the Revenue and Expenditure Estimates. The same will identify locations, projects and their budgetary allocations.

Mr. Speaker, Sir, I confirm that every effort will be made to prepare district budgets as soon as possible to eliminate the fear of lack of transparency. Let me state that as a Government, we are determined to maintain transparency and accountability. We want to make sure that once funds have been voted for a specific project in a specific area of this nation, that money is spent for the same purpose.

Finally, I wish to confirm that the Attorney-General has provided his legal opinion over this matter. In his view, no law or statute has been violated in the presentation of the 2005/2006 Budget.

In conclusion, I hope that this now clarifies the concerns raised by the Shadow Minister for Finance regarding the Budget's format.

Mr. Speaker, Sir, I beg to lay on the Table, the Attorney-General's letter.

*(Mr. Mwiraria laid the document on the Table)*

*(Applause)*

**Mr. Speaker:** Mr. Billow, I would like you to address two issues raised by the Minister so that we can make progress.

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

Could you let me finish? I want to get to Mr. Billow, first. He is the one who raised this issue, in the first place and it falls within his docket in the Official Opposition. Therefore, he takes priority. I want him to respond to two issues raised by the Minister as follows:-

(i) whether he is satisfied with the explanation given by the Minister, particularly with regard to the making available to the House, the details of district budgets as each Ministry is being debated; and,

(ii) whether the change to conform to what the Minister called modern trends is justifiable.

So, maybe, these are the issues, among others, that he may wish to respond to.

**Mr. Billow:** Mr. Speaker, Sir, you heard the Minister put emphasis on the issue of transparency. Indeed, that is the context in which I raised this matter. One of our constitutional responsibilities is to go through the Printed Estimates and approve the expenditure contained therein. Every single project and programme for which we are voting over Kshs104 billion in the Development Expenditure has to be understood, approved and voted for by this House. That is the context in which we have raised this matter. I agree with him that the specifics is the issue that I am raising; that it is, really, the integrity and the dignity of this House which is at stake when we vote on a matter that we do not know.

Mr. Speaker, Sir, on the two issues, first and foremost, on the financial regulations that he quoted, I agree with him. For example, the general purposes of the Votes, the Sub-Votes and the Heads are indicated. The Financial Regulations are very clear. The Printed Estimates show, in itemised detail, the expenditure and the progression. I wish to illustrate that this has not been complied with, from a very simple point which all hon. Members will understand, if you allow me.

Mr. Speaker, Sir, let me take his own Ministry; the Ministry of Finance. Under



Headquarters, Administrative Services, there is an Item - Capital Grants to Government Agencies with a provision of Kshs7.2 billion. That is not itemised detail explaining to hon. Members, the purpose of that provision. That is very clear from the Financial Regulations. The Item must specify the service and the purpose for which the estimate is required. No one here can tell us, unless we ask the Minister, what these grants to Government Agencies of Kshs7.2 billion are. It is not explained. If we compare this Item with last year's, in the Printed Estimates, it specifically goes into detail and says "Constituency Development Fund, Kshs4.5 billion."

Mr. Speaker, Sir, secondly, if I take a very important Ministry, as an example, the Ministry of Roads and Public Works, again, the Item is very clear. It says "Construction of Roads". Everyone here knows that the Ministry of Roads is responsible for construction of roads. But unless you specify the purpose for which you have allocated Kshs3.1 billion for construction of roads, there is no hon. Member here who would know which projects have been earmarked and where they are located.

*(Applause)*

Mr. Speaker, Sir, that is the context in which all---

**Mr. Speaker:** If I may get this correctly, so that we can finish this matter without taking too long, the Minister said that when you come, for example, to discuss the Vote of the Ministry of Roads and Public Works, they will make available, as an appendix, a district by district budget of where that money will go. What would you respond to that?

**Mr. Billow:** Mr. Speaker, Sir, the documents that the Minister referred to are the ministerial allocations. They are the small booklets that are printed every year. They come every year. The Minister has mentioned that they will be ready by 31st July, 2005.

Indeed, the earliest they ever get to this House is around August. We normally get them, mainly, in October. For some Ministries, they never come. These are the ones that will be required for our debate. We shall not be able to get the ones he is talking about.

However, the most important thing, with regard to the GFS, is that, in the countries where that system has been in use, those changes are contentious. In a Report published in the past by the Economic and Social Affairs Department of the United Nations, it was very clear that in the countries where those systems have been in use, those changes are contentious. This is one of the things that this Department has quoted in this book, and it is yet to be fully proved in practice. It is really about the decentralization of resource management authority for countries where systems of governance are different from ours, and where resources are generally allocated.

But as you go down to the counties, district and regional levels, there are governments there that can get into the details, and those are the countries which apply this kind of system.

Mr. Speaker, Sir, in our context, where the system is centralized and where no one else apart from this House will look at the Printed Estimates, it is not applicable or practical for anyone to really approve general figures here without understanding what they are about.

*(Applause)*

I think that is not going to be fair to this House and those documents which he mentioned will not be available before August, 2005, but if we can wait and defer the discussions until August, 2005, then it is acceptable.

**Mr. Speaker:** If I may again ask you, Mr. Billow, because I really want to sort out this issue so that we can finish with it and make progress; supposing the Minister was to avail to the House

those details every time the Vote of a Ministry is being discussed---

**Hon. Members:** No! No! Before!

**Mr. Speaker:** Order! Order! Yes, it will be nice to have them before the debate, but you know this matter is coming late in the day and I am trying to---

*(Loud consultations)*

Order! Order! I am trying to get the best solution for this problem, and I want to help the House. Supposing the Minister was to table those documents before or during the moving of the Motion on the Votes, what would be your reaction, Mr. Billow?

**Mr. Billow:** Mr. Speaker, Sir, it will not be suitable for the simple reason that we would not have the time to go through them and be able to debate them. We have been accused as a House of not really taking issues here seriously. So, if we do not have the facts, we cannot come here and debate. If he can give us those details in advance, I have no problem and I think we can do it. But I am worried that we may not be able to get them on time and, in fact, that is normally the situation most of the time.

Mr. Speaker, Sir, let me give you one good example. If you take the Ministry of Roads and Public Works or any Ministry, they send bids to the Treasury when the Budget is being prepared and they list their projects. For example, the Ministry of Roads and Public Works would give a list of road projects worth Kshs40 billion, and then the Ministry of Finance would allocate Kshs20 billion in respect of those roads. So, the prioritization of roads which would be done for Kshs40 billion is usually done through those sector bids when the Budget is being prepared.

But now, when you ask the Ministry of Roads and Public Works or any other Ministry how the money that they have been allocated will be utilized and for which specific project, they have not got the faintest idea because when they submitted their bids, they submitted the whole thing. That is why I think it is important that we should get the details of the specific projects for which this money has been allocated. Otherwise, it is difficult to debate on this issue.

*(Mr. Mwiraria and Dr. Godana  
stood up in their places)*

**Mr. Speaker:** Just before I call all of you, I would like to finish with hon. Billow before I go to Mr. Mwiraria or Dr. Godana. Mr. Billow, we have a problem.

**Mr. Billow:** Yes.

**Mr. Speaker:** What, in your view is the way forward?

*(Loud consultations)*

**Mr. Billow:** Mr. Speaker, Sir, with all due respect to the Minister, we raised this issue from the day the Budget Speech was presented here, and there is no way the Minister could claim that he had no time. But now, if you asked me, my own opinion is that if he wants to bring the Ministerial allocations, he should do so at least a week before each of those Votes can be debated; otherwise, this House will be taken for a ride.

*(Applause)*

**Mr. Speaker:** I will finish with Dr. Godana before I come to the Minister.

**Dr. Godana:** Thank you, Mr. Speaker, Sir. First of all, I want to thank the Minister who I think has laboured to deal with a difficult situation he did not foresee, and I like his sincerity. We definitely have a problem and we would all want to help in finding a way out. The Minister said that he adopted the international system which has been discredited by Mr. Billow as used in other countries of late.

I want to remind him, and we wish to hear his comment, that his authority for the particular format of the Budget we have is not based on international practice but on our own regulations; the Government Financial Orders. If there is a better system being applied elsewhere, the first duty of the Government would have actually been for the Treasury to change those Articles which he quoted, and where in part III he admitted that he actually has not been in compliance. So, I want him to honour that he has an obligation, first, to seek a change in our own regulations.

Secondly, the Minister has not explained to us, in all circumstances, how the change will help Parliament to carry out its first duty better; that is to critically scrutinize the Budget more effectively than it has done in the past.

*(Applause)*

Mr. Speaker, Sir, thirdly, Mr. Speaker, Sir, I fully sympathize with the position that you have taken and I sincerely understand your effort to try and find a way forward, now that we have this problem. Definitely, it will be good if the Minister could give a categorical undertaking to the House on how to solve it because, in his statement, he said that he would require each Ministry to present the district allocations by 30th July, 2005. I think the answer to the question that you posed to my colleague is that, the best way forward for this year is for each Ministry to present to us those details, whether they call them district allocations or what have you, at least a week before the Vote is presented to the House. The Minister should also undertake that in future, he will go back to the old format or he will change the regulations so that they are in compliance with the law.

Finally, my last issue is---

**Mr. Speaker:** I have a question for you too, Dr. Godana. We want to get through this issue and get it right. Now, you are right; these are Government financial regulations and not Statutes of Parliament. They are a creature of the Minister for Finance; therefore, being his creature, he can change it. Supposing he has changed those financial regulations; is there any mistake?

*(Loud consultations)*

Order! Order! Order! I do not know why some hon. Members cannot be able to sustain an argument and they get tired very quickly. So, can we, please, let Dr. Godana explain what his position would be?

**Dr. Godana:** Thank you very much, Mr. Speaker, Sir. My position is this: Government financial regulations are part of our subsidiary legislation, where the Minister has powers under the law to make and change those regulations. But there is a procedure in our laws, in accordance with which he does that, including the gazette for public notification of those regulations. It cannot, therefore, qualify as a valid change when the Minister comes and says: "It is true, the rule that we had gazetted reads this, but, in fact, it is within our powers and that is why we have decided to change it". On this score, I really find the opinion signed by Mr. E.M. Ng'ang'a for the Attorney-General--- It is most unfortunate, because he said that these are administrative and can be changed at will. Yes, they can be changed at will, but they must be changed in accordance with the due

process as required by law; it should be gazetted so that Kenyans could know that the rule which governs the format of the Budget has now been changed. It cannot just be changed in the mind of the Minister.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** Well, the Minister has taken note of various questions raised by both hon. Billow and Dr. Godana. I would also like to question the Minister and to understand this issue. Question No.1: Have you changed the regulation and if so, have you gazetted it?

Question No.2: I would like to bring to your attention the provisions of Standing Order No.142(4):

"Notwithstanding that a Motion to reduce the amount of a Vote in relation to a particular sub-head thereof has been agreed or negatived, a further Motion for the reduction of the same Vote may be made in relation to subsequent sub-head thereof. Where a Motion to reduce the amount of a Vote in relation to a particular sub-head thereof has been agreed or negatived, no further Motion to reduce that Vote in relation to the same sub-head thereof shall be made".

How do we as a House handle that bit?

Mr. Minister, you have the Floor!

*(Applause)*

**The Minister for Finance** (Mr. Mwiraria): Mr. Speaker, Sir, let me start off by stating that what was done in the Budget this year did not necessitate a change in the regulations. This is because we have all the three parts of the Budget as provided. The only unfortunate bit, and I admitted it, is that by putting together the various codes to conform to the international code, we have lost some details. It is for this reason that I offer to get detailed budgets of the districts provided to this House as hon. Members debate the estimates of each Ministry.

Mr. Speaker, Sir, I want to correct the wrong impression created by Mr. Billow. Ministries do not provide my Ministry with detailed accounts of exactly what they are going to do. We are changing from the system where the Ministry could delete and add projects in its programme. This is because we feel that every Minister should carry his or her own cross. He or she should prepare his or her budget and implement it. I believe that if this House genuinely wants to help Kenyans, hon. Members should be supporting this and not the opposite. Hon. Members should support the position where, if we give money to the Minister for Roads and Public Works, for example, he itemizes the roads he is going to do. We have committees which are debating these issues. For instance, we have an infrastructure committee made up of Government officials who do this. If, on the other hand, hon. Members want us to go back to the old system, where we would Vote itemise and then do exactly the way the KANU Government, which is represented by some of the hon. Members on the Opposition side, used to do---

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

**Mr. Speaker:** Order, all of you! Order! I think this issue is very fundamental. Let us get the facts, and I will attempt in the best way I can---

**Mr. Okemo:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Will you, please, sit down? Have you ever heard of the Standing Order which provides that when Mr. Speaker is on his feet, every other hon. Member must be seated? Will you,

please, relax?

Let us just get the last of the Minister and then we will try to get the way out.

**Mr. Okemo:** On a point of order, Mr. Speaker, Sir. May I provide some solution to this?

**Mr. Speaker:** Let him finish first! I am ready to listen to all friends of the Chair. So, can I finish with him? You will speak after him. He, too, is my friend.

**The Minister for Finance** (Mr. Mwiraria): Mr. Speaker, Sir, I really want to appeal to the honourable House that we work together, and I do not want to hide the details. The Ministries have already got instructions to prepare itemised and detailed district programmes in their estimates, so that when they come to this House, they are discussed in that form. That is the one thing we did. The Treasury took a decision, which the shadow Minister may think was wrong. He will have his time. He can correct these things when his day comes.

Mr. Speaker, Sir, but, really, and genuinely, this year has, perhaps, been one of the most difficult years for us in the Treasury, because I wanted to make changes in the Budget which will help this country to move ahead and develop faster by making sure that we allocate money to the deserving sectors of the economy. We could only do that by changing the Budget strategy. It is possible that in the process, because we were in a rush, we may not have provided the details wanted by the House. But I have already promised that those details will be prepared. My Ministry, for instance, will give all the details that the hon. Members want. But I can only also say this: Under the old budgeting system, it was possible still to issue budgets without very detailed items. This used to happen.

Therefore, if I may repeat, we have changed our operations. Once this House has approved the Budget, I do not want any Minister to come round and say: "The Minister for Finance is denying me monies and that is why I cannot perform." Let me give you an example, and the Minister for Water and Irrigation is here. We gave her Kshs1.5 billion for water projects in the Arid and Semi-Arid Lands (ASALs).

Would the hon. Members want to hold me or her responsible for where the development of water takes place? I think, really, we have to specialise.

**An hon. Member:** Both of you!

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! This is not actually a matter we can score points on. It is procedural. It is not a principle or substance. So, if it is about procedure, it is supposed to facilitate and not hinder. I am looking for a way forward. The former Minister for Finance has volunteered to be a friend of the Chair. What is the way forward, Mr. Okemo?

**Mr. Okemo:** Mr. Speaker, Sir, I want to start off by mentioning that the Minister for Finance is trying to confuse facts. This is because nobody is questioning the structure or prioritisation of the Budget. Nobody is questioning whether money should go to water or some other sector. However, this House cannot approve Votes without sufficient details.

Mr. Speaker, Sir, my observation is this: We have already, as a House, approved the Vote on Account. That means that the Government has 60 per cent of the allocation of the Estimates that it can spend until such time when we complete the debate on the Estimates.

I would, therefore, like to suggest that this House be given the necessary details. That means that the Votes for the various Ministries can be prepared. If the Minister maintains, as he does, that all the Ministries are aware of all the projects that have been approved, then, really, to do a breakdown is a very simple exercise. Therefore, those Ministries that we are going to debate should

immediately go and do quick breakdowns of the detailed projects that are going to be implemented, and bring them here a week before we start debate on them. Really, we cannot be expected to approve a Budget of which we have no details.

### CONSIDERED RULLING

#### DETAILED BREAKDOWN OF DISTRICT BUDGETARY ALLOCATIONS MUST BE PROVIDED IN ADVANCE

**Mr. Speaker:** I think I have heard sufficiently enough to enable me to attempt to make what I would call a ruling from the Chair. First, it is clear that, it is the duty of this Parliament to authorise taxation and approve the utilisation of that taxation.

*(Applause)*

That is the basic reason why Parliaments are there, and were there in the first place. Secondly, for Parliament to be able to discharge that responsibility, it ought and must have sufficient details to enable it to make an informed judgment on the allocation of those resources.

*(Applause)*

I have heard what the hon. Minister for Finance has had to say. In this case, I believe the way forward is for every Ministry to provide to this House, a detailed breakdown of their budgets from every district allocation. That way, this House, which votes and accounts for every Ministry, is in charge of all the relevant information. I also believe and order that, that information must be made available to the House before - and not after - the Vote or, at the very least, on the day of the presentation of the Vote.

**Hon. Members:** No! No!

**Mr. Speaker:** Order! On the very least, on the last day of the presentation of the Vote. For that reason, therefore, I will now order that the first Vote, which was the Office of the President, shall be debated by Tuesday next week, if they have all the information. Every other Ministry will follow accordingly.

I believe that, because this is a new thing, the Ministers must support it and bring all the district budgets to this House as soon as possible! I think that is all.

Thank you.

*(Applause)*

**Mr. Sungu:** On a point of order, Mr. Speaker, Sir. I just want a clarification from your ruling. You have refereed to district allocations. If I understand the matter well, we have various projects which transcend many districts. There are national projects. We must be given the details of such expenditure.

Mr. Speaker, Sir, this Parliament has been accused of complacency. The Goldenberg Scam passed through this Parliament because hon. Members did not look at the items which they were passing. As a result, we had the mess that is affecting the economy even now. I would like to appeal to the good Minister to re-print the entire allocation.

**Mr. Speaker:** Order, Mr. Sungu! I think that is what I have said. That is exactly what I have said. There is no project that is implemented outside the districts. There may be one, two or three districts combined. That Vote must show it!

*(Loud consultations)*

Order, hon. Members! Could you listen to me? If it is a matter of a national issue, it will be shown on that account. It will be an extract---

*(Mr. Akaranga consulted  
with Mr. Mwiraria)*

Order, Mr. Akaranga! If you could allow the Minister to listen, I will be very happy! It should look like our old Printed Estimates, but in a miniature form, concentrating on the Ministry in question. I think that is absolutely clear. I order that, that is how we shall proceed!

Next Order!

*(Mr. Kagwe stood up  
in his place)*

Mr. Kagwe, do not take us back! Is it a different issue?

**Mr. Kagwe:** Mr. Speaker, Sir, it is slightly connected to what you have said.

*(Laughter)*

**Mr. Speaker:** How slightly?

**Mr. Kagwe:** Mr. Speaker, Sir, the reason why I rose at this juncture is to seek your support and help in terms of building the capacities of committees to address the issue of invigorating and looking at the Budget very closely. If, for example, we get the documents at the time when the debate is going on, and considering that we have one Clerk in the Committee on Finance, Planning and Trade to assist us, we will simply not be able to do it properly. Therefore, as we make these changes, could we also make changes in terms of capacity building for the committees?

**Mr. Speaker:** Shall I say the following:- First, it would have made our work a lot easier, if the Ministry or the Government had indicated to the House that there would be a change. We would have organised an orientation for hon. Members to understand where we are going to. That should have been done. I hope there will be time for hon. Members to understand these things properly. But much more crucially, is what the hon. Member has raised with regard to the committees. I think he is right! This is a new and unexpected change. I think it must have caught them off-guard. I do order the Clerk of the National Assembly to provide such necessary human and material resources to the committees to cope with the new developments.

*(Applause)*

That action should go to all committees across the board. So, let us finish this now! Ministries must make that information available soonest, but not after the budget of the Ministry has been discussed.

*(Mr. Billow stood up in his place)*

Mr. Billow, I think we have finished this issue!

**Mr. Billow:** Mr. Speaker, Sir, I thank you for---

**Mr. Speaker:** Why do I make a ruling if you have to come back?

**Mr. Billow:** Mr. Speaker, Sir, I thank you for the ruling. But I just wanted to satisfy my brother here that this is a bi-partisan issue.

I did not raise a partisan issue. The important thing is: This House deserves to know how the Ministries will spend the money. That is why we asked for that information and I am glad that Mr. Speaker has given a ruling. We are only concerned about transparency. That was the context and I appreciate your ruling, Mr. Speaker, Sir.

*(Applause)*

**Mr. Speaker:** Thank you. We have finished the issue now!

Next Order!

*(Mr. Ndambuki stood up in his place)*

Sorry! Mr. Ndambuki, what is it?

## **POINT OF ORDER**

### **MAU FOREST EVICTIONS**

**Mr. Ndambuki:** Mr. Speaker, Sir, the Chair ordered the Minister in charge of Internal Security to bring a Ministerial Statement on the eviction that is going on in Mau Forest. He ordered that, that should be done today.

*(Mr. Awori was applauded as  
he entered the Chamber)*

**Mr. Speaker:** Well, I think that, that issue may have been overtaken by events. I believe Maj. Madoka has had some consultations with the Chair in respect of a Motion for tomorrow. Is that so?

**Maj. Madoka:** Mr. Speaker, Sir, that is correct.

**Mr. Speaker:** Very well! We will look at that tomorrow.

Next Order!

*(Loud consultations)*

Order, hon. Members! The Business of the House is not over yet!

## **BILLS**

### *First Readings*



## THE FORESTS BILL

## THE PRIVATISATION BILL

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

*Second Reading*THE PUBLIC PROCUREMENT  
AND DISPOSAL BILL

*(The Minister for Finance  
on 30.6.2005)*

*(Resumption of Debate  
interrupted on 30.6.2005)*

**Mr. Speaker:** Was there anybody on the Floor? Oh, the Mover was to continue.

**The Minister for Finance** (Mr. Mwiraria): Mr. Speaker, Sir, before the closure of debate last week, I had introduced the Bill and gone through it, section by section, and I was just about to summarise when the House adjourned. I now wish to make a few remarks in summary.

Mr. Speaker, Sir, I stated clearly that the purpose of bringing this Bill to Parliament is to get procurement procedures which will help the Government get goods and services at the right prices, which will help the Government give to the Kenyan people value for money for the services they pay. I want to repeat and emphasise the fact that after this Bill is passed with necessary amendments, the days when officials used to split orders in order to avoid the proper procedures will be over. The days of varying contracts will also be over. We want to appoint the judicial bodies to do the work and I want to appeal to hon. Members to support the Bill. I have stated here before that we would like to support Kenyan businesses through the tendering procedures by amending Article 39 in this Bill. We also wish to make provision for participation in the tendering system for the small and medium enterprises in the procurement procedures, so that they can help develop smaller organisations to become bigger companies.

Mr. Speaker, Sir, I want to conclude by saying that we spent a full day in Mombasa going through this Bill, clause by clause, and we reached a measure of understanding, and I am sure that the Chairman of the Departmental Committee on Finance, Planning and Trade will be making amendments which are agreed between the Committee and the Ministry of Finance. I, therefore, hope that hon. Members will give us their full support.

With these few remarks, I beg to move.

**The Vice-President and Minister for Home Affairs** (Mr. Awori): Mr. Speaker, Sir, very briefly, I wish to second this Motion. There is a lot of work that needs to be done by this Government. Money has been allocated to various projects, but there are always delays because of the archaic procurement procedures. Our infrastructure, as we all know, has really deteriorated to the extent that the cost of production in all our industries is extremely high. If we need to compete with other suppliers, we have got to know that in those areas within the regional bodies, there are countries where the cost of production is low and, therefore, their goods are much more competitive.

Mr. Speaker, Sir, roads play a very major role in the advancement of our economy. We need, for instance, to rehabilitate all the roads, particularly the major ones in this country. We have stated many times that we would like to have the road from Mombasa to the border of Uganda as a dual carriageway.

I know that the Government has sourced funds from various places, but the question of procurement delays the implementation. It does not seem conceivable that when a contract has been given to one of say, five tenderers, a tenderer who does not have even the ability at all to mobilise his resources to start undertaking that contract, has got a right to put in an objection. When he does that, the matter goes to the High Court and then it gets into the queue of other cases. It can take years before a decision has been arrived at, and the person who put in that objection can just be of a nuisance value.

Mr. Speaker, Sir, we need to pass this Bill, so that there can be an independent tribunal that can listen to such complaints immediately, in order to release funds. Travelling from Naivasha to Kisumu is a nightmare. Roads are killers not just of people, but also of vehicles. This means that transporters have to pay a lot of money to maintain their vehicles. As a result, they off-load their extra expenses to the people who are hiring the vehicles.

Organisations like Unilever Kenya Limited, which produce popular goods that have to be taken to the people and which should compete with goods from outside, transport their goods on these roads. The transporters pass the extra cost to the companies and the companies pass the cost to the consumers. We are fighting poverty and we want to empower our people. We will not do this as long as the price of the goods that they are buying is high. The prices are high because of the cost of transportation. When we are awarding tenders in various places, we want to empower the local people in areas where development is taking place.

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

Mr. Deputy Speaker, Sir, we want our local contractors to compete with international organisations. The current procurement procedures are favouring international organisations and thereby making the local contractors unable to compete with them.

Mr. Deputy Speaker, Sir, it is, therefore, necessary that we change the regulations. In various countries like Malaysia and Tanzania, they have now adopted the system where a tenderer has to be prepared to take over construction immediately. I know that the procedures were made cumbersome in order to guard against corruption, but while thinking that they are guarding against corruption, they have simply increased it.

With those few remarks, I support this Motion. I am asking the whole House to pass it as quickly as possible because it is impacting on the economy of this country and on those who are likely to give us money for development.

*(Question proposed)*

**Mr. Billow:** Mr. Deputy Speaker, Sir, I agree with the Vice-President and Minister for Home Affairs that procurement is a very important activity of the Government. Indeed, a significant amount of our Budget, upwards of over Kshs100 billion is spent annually in procurement of goods and services by the Government. Procurement is also important because it is the single largest route through which misappropriation of public resources also occurs. It is the route through which

a lot of funds are siphoned out of the Government and the Government is always short-changed. Indeed, the people of Kenya have lost billions of shillings through irregular procurement of goods and services.

It is also important that we pass this Bill because of the delays that the Vice-President and Minister for Home Affairs has mentioned in terms of executing development projects. However, I want to argue that even the current procurement regulations are not archaic as the Vice-President and Minister for Home Affairs has said. Indeed, they may be inadequate, but they are not archaic. If those regulations had been complied with, they would have been sufficient to ensure that the Government procures goods and services competitively and without all the irregularities, fraud and misappropriations that we have seen.

Mr. Deputy Speaker, Sir, we are concerned because procurement has been a major issue. Any one who wants to know whether there is, indeed, transparency in our procurement process and compliance with the current regulations, needs just to look at the number of appeals that have been made to the Public Procurement, Complaints and Appeals Board. In 2004 alone, 40 to 50 appeals against tenders that had been awarded in Ministries were lodged, and more than half of them succeeded. In other words, more than half of the tenders which had been awarded by the Government were annulled for one reason or another. When you do an analysis of the reasons, you will find that they were not annulled because our regulations are inadequate, but largely because the public officers who were involved tended to make money on those bills.

Before we do any procurement, it is incumbent upon the Government to identify the priorities. Where are our priorities as a nation? Where should we spend money? This is laid out in the Economic Recovery Strategy. It is also included in the allocation of resources in the Budget. That is where we determine that we need to spend money for this and that project. This is where we determine our priorities. You will find that even today as we speak, those priorities are not, indeed, being followed. The priorities that have been identified in the Poverty Reduction Strategy and the Economic Recovery Strategy Papers are, indeed, not followed. You will find that goods and services which have not been budgeted for, passed or authorised by this House are procured contrary to the law. A good example is what we are reading today in the newspapers. You have heard about the "Navy" boat. You will not find an expenditure that has been approved by this Budget of a similar type.

Mr. Deputy Speaker, Sir, last year, you heard about the famous Anglo-Leasing and the Forensic Laboratory projects. None of those projects was, indeed, provided for in the Budget and none of them was approved by this House, and yet the Government went ahead to procure those goods and services. So, across the country, you will find many white elephant projects. You will find many procurements being done by the Government which have not only failed to be identified as a priority, but which have not been voted for or approved by this House. That is where we should start from. The Government must show its commitment to transparency and accountability as a first step.

The simple fact that we are going to have a Public Procurement and Disposal Bill is not going to help us if the Government is going to procure goods and services which this House has not voted for and which we do not consider essential as a country, or we have not included in our priorities. This Bill, however, attempts to seal some of the loopholes through which this country has lost money. It seals those loopholes through which public officers have fleeced this country. It seals the loopholes through which multinationals and other companies have fleeced the nation. However, there are concerns on a number of issues that we have raised.

Mr. Deputy Speaker, Sir, I agree with the Minister that some of those amendments have been identified and will be raised when we come to the Committee stage.

Mr. Deputy Speaker, Sir, one of the issues that I wanted to raise is the one the Minister referred to in Section 39, which states as follows:-

"A procurement entity shall permit persons to participate in the procurement process without regard to a person's citizenship or nationality".

In other words, for any procurement of goods and services in the country, any company from outside the country can bid for those contracts, services and so forth. I find that unacceptable, because this is a country where we are struggling to reduce poverty. There is no way we can reduce poverty unless we give priority to our people and allow them to develop their skills. We must have confidence in ourselves as a nation. We should start with our capacities and abilities.

Mr. Deputy Speaker, Sir, I believe that there are many people in this country who can provide goods and services. The kind that the Government normally requires. We know that sometimes Government officers go for procurement of goods and services outside the country, for reasons other than the interest of the nation. This is because, it is sometimes easy to make money when you are procuring goods from outside. But there are goods that can be supplied and delivered locally. For example, we used to import electric posts from South Africa and yet this country produces timber. We can actually make electric posts in this country and supply them to the Kenya Power and Lighting Company, if there is a proper procuring process and that company is transparent.

My argument and that of many hon. Members, is that, we must give preference to local companies in the procurement of goods and services.

Mr. Deputy Speaker, Sir, when we deal with small and macro-enterprises, the Sessional Paper that we passed in this House was very clear that the Government will set aside up to 25 per cent of all Government procurement for small and micro-enterprises in this country. Twenty-five percent of all procurement should, by law, be for companies that are incorporated and owned by Kenyans.

Mr. Deputy Speaker, Sir, we have even gone further and said that for those other contracts, there has to be a requirement that those companies which are applying or contracting with the Government for supply of goods and services, should have local ownership and directors, so that we do not end up with an Anglo-Leasing kind of situation.

Mr. Deputy Speaker, Sir, a company called Anglo-Leasing was reportedly registered somewhere abroad, yet it did not have a director or shareholding locally. Nobody had ever seen the owners or directors of the company and yet the Government entered into a multi-billion shilling contract with it. When the owners of the company took off, up to today, we cannot identify the people involved in it. We do not want to go for faceless companies. We want companies with local ownership. That is a requirement that can be strengthened by law. Many countries are doing it. In Zambia, for example, there is a requirement that a minimum of 20 per cent, must go to the locals when the Government is sourcing for consultants.

Mr. Deputy Speaker, Sir, the Government must also show commitment to these issues. There is no point bringing a Sessional Paper here, that we want to promote our micro-enterprises, yet we do not show that by action. I want to illustrate that with the problem which is now in Mombasa, in the Customs Department. This is a case where the Government decided to go for computerisation when an individual is lodging a transaction with the Customs Department. The consequence is that, today, thousands of small indigenous Kenyans are not able to transact clearing and forwarding business in Mombasa.

We are aware of the strike in the last three days. It was well-meaning when the Government said that we have to computerise our systems so that we minimise delays and corruption. I think we have to provide capacity to our people to compete with the multinationals. There is no point

introducing a system that will favour multinationals and give large enterprises an advantage over the local ones. This is what happened in the case of the Mombasa Customs Department issue. We find it unacceptable. The Government must be committed. It must walk the talk in terms of implementing the things they have set out in their policy papers.

Mr. Deputy Speaker, Sir, if you analyze all the appeals that have succeeded in the Appeals Board, you will find that the major reason for annulling those tenders lies in the area of specifications. This is where public officers become mischievous in the technical specifications for the tenders. When you are buying something, you have to state what type of thing you are buying. You have to indicate the specifications. For example, that this particular thing must be of this size, colour, weight and so forth. This will ensure that when somebody is sending his tender, he has to actually tender for that type of product.

What is happening is that, if those specifications are not made properly, a supplier will quote a product of a different size, weight and colour. The next supplier will also give a different quotation. This is where most of the anomalies in the procurement process take place. This is what has been identified by the Appeals Board. This falls in the ambit of the Ministry of Roads and Public Works. This Ministry has been vilified for a long time in the Public Accounts Committee and the Public Investments Committee, for failing to provide professional services to various Government Ministries. This is the Ministry which is responsible for the pending bills that run into almost Kshs30 billion in this country. The reason for this, is that, you give a design for a project, design a building and halfway down the construction, you change your mind and say that the specifications were not adequate and that you need to vary the contract. As a result, a contract of Kshs126 million of Kitale Sewerage Project which was a pending bill that was paid last month, ended up being over Kshs600 million. The Government paid that money on the advice of professionals in the Ministry of Roads and Public Works.

Mr. Deputy Speaker, Sir, the same thing happened here in Parliament. When you look at the problems we have had in Continental House, where the Ministry of Roads and Public Works continued to vary the original figure until we ended up with a huge bill; it is important that this Bill addresses that problem. We will raise the specific amendments that we want to make in the Committee Stage, but it is important that the issue of technical specifications is addressed in this Bill, because that is where everything is done, in terms of those who want to create fraud.

Mr. Deputy Speaker, Sir, the Bill also provides a very strange clause. With regard to the donor-funded projects, this Bill will be subordinate to the terms of agreement of the donor. The Bill proposes that if a project is funded by donors, the terms and conditions provided by the donors will be superior to this and, those will be the ones that will be followed and not our procurement regulations. I actually find that unacceptable, because when you are borrowing money as a nation from development partners, it is a loan that you will pay tomorrow. It is up to you to determine how to utilise that money. You have to respect the law of this country, because this is a sovereign nation. There is no way we can say we are independent and we have procurement regulations, yet tomorrow when an organisation or a donor gives us Kshs10 million, he tells us not to go by our law, but by their rules. He could say, for example, that he wants the goods to be supplied by Mr. "X" and they must come from his country. They must be this specification and so forth. I do not think that is acceptable.

Mr. Deputy Speaker, Sir, we do know that the Government is under excessive pressure with regard to the passing of this Bill. There is no way we can accept as a nation, to create laws to favour or comply with the demands of a donor. I think that will be unacceptable. We must amend that. We will propose that, and hopefully the House will accept, that those relevant clauses which give the donors' terms and conditions more powers than our laws, be deleted from the Act.

Mr. Deputy Speaker, Sir, there is also the issue of appeals. The Bill provides very clearly for the appeals structure that exists even now through the Administrative Review Board. I think this is very important and it must be retained in the Bill. Undoubtedly, there will be breaches of this Act by our public servants or the procuring entities.

The only avenue you have for redress is through the Administrative Review Board. There are people who have called for limitation of these appeals because they are going to cause a delay in the procurement process. We have to have a balance between the time when we require to execute procurement of goods and service and the need for transparency, accountability and the need to ensure that expenditure is properly incurred. We cannot rush the system simply because we want to build our roads, or we want to buy things. If we are going to rush processes we will end up with a lot of irregularities. That is why I am insisting that this appeals system is very important, and that the review boards should be retained, so that we can address all those issues.

Mr. Deputy Speaker, Sir, one other problem is the public servants who exceed their authority. They engage in unauthorised expenditures. Last year, I raised a similar concern when either the Ministry of Finance or the Office of the President issued a circular to all the Government Ministries, and state corporations, that authorised them to extend or renew insurance contracts. The consequence of that was that there was no procurement of insurance services by many Government institutions. So, what happened was that the process was not competitive. The Government was short-changed in many instances, and there was no transparency. Undeserving people got contracts. The reason why they did that was to allow the Government institutions to carry out evaluation of assets. We should not do that kind of thing.

If we want to extend or renew a contract without going through the procurement system, we are, indeed, engaged in direct sourcing. I want to give a recent example by the same Ministry of Finance. The extension of the contract of M/s De La Rue for printing of currency last week by one year was a breach of Government procurement regulations. It was a fraudulent exercise by the Central Bank of Kenya, because the contract was cancelled more than two years ago. There is, indeed, no contract existing between the Central Bank of Kenya and De La Rue. So, when the Government purports to extend the contract by one year, or to give De La Rue one year's contract, that is direct sourcing. I think they did that because they interfered with the process of procurement during the tendering process. This was the Executive's interference.

The Government's interference with the procurement process should stop. We saw it last year in the procurement of cranes by the Kenya Ports Authority. We have seen it in the Ministry of Information and Communications by the Minister in charge in the procurement of a third mobile phone provider, when the contract of Econet was cancelled. Indeed, when Econet appealed, the Public Procurements Appeals Board censured the Minister.

So, there is interference by the Executive up to today. It is not about the past Government. Today, this Government has formed a habit of getting involved in every procurement. Nothing happens in a Ministry without a Minister getting involved. With the increased nepotism and favouritism that we have seen in the Government, I do not think this law will be serving any purpose, unless we can actually take some action to curb this practice. Indeed, it is in the area of action against public servants, including Ministers, where this Bill is deficient. The Bill does not provide for stiff penalties against those public servants, who interfere with the procurement regulations. I think this is a failure in our system.

In fact, when we passed the Financial Management Act last year, we also did not provide specific penalties against those public officers who flout the regulations. There is the feeling in the Government that if you are a public servant, you cannot be held responsible if you make a wrong judgement. If you go through the Reports of the Public Accounts Committee and the Public

Investments Committee, you will find what appears to be judgemental mistakes, which have cost this country billions and billions of shillings. Indeed, they are not judgemental mistakes! These are discretionary judgements made by those public officers so that they can make money and yet there are no penalties provided.

Mr. Deputy Speaker, Sir, even as we speak today, the Anti-Corruption and Economic Crimes Prevention Act provides very clearly that a breach of procurement regulations; wilfully or inadvertently, is an offence. From the day that Bill became an Act there has been breach of procurement regulations severally and yet we have not seen even a single person being arrested. In fact, if you look at the rulings made by the Public Complaints and Appeals Board, they actually indicate all the cases of breach of procurement regulations made by procurement entities, including cases where some Ministers are involved. I am surprised that so far no action has been taken. We have been informed that it is because the Kenya Anti-Corruption Authority (KACA) had not been set up at the time the procurement regulations were violated. We have also been promised that, in future, reports by the Public Complaints and Appeals Board will be sent to KACA. That is exactly what should happen.

Mr. Deputy Speaker, Sir, whenever the Board annuls a tender for reasons of breach of procurement regulations, they should send a copy of their report to KACA so that those public officers involved can be investigated. Unless we investigate the public officers who are involved and hold them accountable for their wrong judgement and actions that lead to annulment or make the Government lose billions of shillings, we will never succeed. This is an area that we really need to address in this Bill. We intend to bring some amendments to this House at a later stage. Penalties have to be levelled against officers who breach the procurement regulations.

Concerning security contracts, the provisions are detailed, but we need to go further than what is provided for here. There is no point in discussing matters to do with procurement worth Kshs2 billion or more by the Department of Defence and yet we hon. Members of Parliament cannot determine whether that amount of money has been voted for by this House. There has to be a requirement that the Votes for the Department of Defence, the National Security Intelligence Service (NSIS) and other security establishments must be vetted by the Departmental Committee on Finance, Planning and Trade Committee. The powers of vetting must be left to this Committee and all details must be submitted to it. The Committee will then establish which equipment are to be bought, the goods and services that are to be procured and so on. By doing so, we will be able to ensure that there is transparency in any procurement deal that the Government enters into. In the case of the navy ship that was procured by the Department of Defence, we are told that it cost Kshs4.3 billion.

Mr. Deputy Speaker, Sir, there is no one in this House, including the Minister for Finance, who knows how much money has actually been voted by the Government for the procurement of the navy ship and yet it is in this House that we determine the Government's expenditure. We allocated Kshs20 billion or Kshs30 billion for the Department of Defence and nobody is allowed to scrutinise it and so they can do anything they want with that money.

Mr. Deputy Speaker, Sir, the requirement in most countries, including Commonwealth countries, is that the Vote for the Department of Defence has to be scrutinised by the Departmental Committee on Finance, Planning and Trade of the House.

In strict confidence, the Members of that Departmental Committee can be sworn, but they are the ones who are authorised to scrutinise all procurement made by the Department of Defence so that transparency in expenditure can prevail. If that is not done, we shall be procuring things without caring whether we have money for that purpose.

Mr. Deputy Speaker, Sir, in fact, both cases of the procurement of the navy ship by the

Department of Defence and the Anglo Leasing and Finance Company saga were as a result of off-Budget finances. None of them had actually been provided for. They are services that were procured outside the Budget. You just go to a company and ask them whether they can finance and supply a particular service, building or construction equipment! That habit must come to a stop. The Minister for Finance has promised us that off-Budget financing will be stopped. Hopefully, it will stop because it is as a result of it that our Government has lost billions of shillings.

The Bill provides that with regard to security contracts, annual reports be submitted to the House for ratification. However, I think that annual reports are not adequate. When the reports come a year afterwards and then we are told, "One year ago, the Department of Defence bought "X" ships and "X" aircrafts at this cost," that will be history. When we scrutinise that, we shall be engaging in a postmortem that will not be of any significant help. The reports should be submitted on quarterly basis in line with all other reports that have been provided for in this Bill, which must be submitted by the procurement authority.

Lastly, privatisation also falls under procurement. When you sell a Government institution--  
- The process by which we dispose of our assets and institutions has not been transparent. It is the lack of transparency that made us fail to approve the Privatisation Bill last year. The Government has always tended to do things in a very obscure manner when it comes to selling of Government assets. Until 10 years ago, this Government owned shares in more than 250 companies including some of the blue chips in this country. Some of those companies are East African Breweries Limited, CMC Motors, D.T. Dobie and so on. However, most people in this country have no idea how the Government disposed of those shares. When the shares of a company being disposed of are lucrative, the Government officers who are involved tend to engage in deals which are not transparent. Kenyans are not involved and the companies quietly pass ownership to somebody else. We want all those activities to be done transparently.

Mr. Deputy Speaker, Sir, I will give you an example. We read reports that Vodafone Company owns 49 per cent shares in Safaricom mobile phone service provider. The Government owns 51 per cent shares in the same company. That company has offered US\$100 million for an additional 10 per cent shares in Safaricom. Clearly, Vodafone has pre-emptive rights in the shareholders agreement that they entered into with the Government. That is where the trouble is. When you allow Government officers who are not businessmen to sit down and come up with an agreement with a commercial enterprise, what happens always is that they end up with an agreement that is detrimental to the nation. The agreement could favour them, but work against the interests of the country. So, if the Government wants to sell any of its 51 per cent shares in Safaricom, it must offer them to Vodafone Company first. That is in accordance with the shareholders agreement. The Government now has to talk nicely to them. It has to tell them, " We shall give you 10 per cent, but allow us to sell the rest of the shares to Kenyans." That is why we said that we must be very transparent. When dealing with privatisation issues, our systems of procurement must be transparent. There is no way we can sell Telkom Kenya; a company owned by Kenyans, in which they have invested their time, efforts and resources for 40 years. Someone cannot just come from abroad and buy it at a throw-away price. Kenyans want to invest and they have money. Every time there is an Initial Public Offer (IPO) at the Nairobi Stock Exchange (NSE), the issue of floatation of shares is over-subscribed. We have seen this with the sale of the Kenya Airways, Kenya Commercial Bank, Mumias Sugar Company and shares of other companies. There is no way that a country like this, where people have resources can allow a strategic partner or foreign investor to come in and take over all our companies' shares, and realise later that we do not have control over our enterprises. Foreign investors end up pulling out of the rural areas on grounds that these areas are not profitable. We must address the issue of preference to Kenyans when



Government enterprises are being sold.

There is the issue of the methods used in selling Government or State Corporations. This Bill gives blanket authority to the Government. It simply talks about concessioning of all specially permitted procedures of these enterprises. This gives the Government a lot of discretion in determining how to sell critical institutions like the Kenya Railways Corporation. I think the most important thing with regard to that, and which must be documented here for the sake of the subsequent Bills on Privatisation, is that this House, which represents the people of Kenya, must give approval of such transactions.

There is no way that institutions like the Kenya Railways Corporation, the Kenya Ports Authority and KenGen can be sold, yet we are in a democratic country where there is representational democracy. Hon. Members who are seated here represent the people of Kenya. It is only through this representation that the people of Kenya can say that they approve the sale of a company like the Kenya Ports Authority or KenGen to another company. But when we read in the local dailies that KenGen or any other company is being sold, we wonder what we are doing because those are the resources of this country. They are our assets and the Government has to be transparent about privatisation.

The reason why we are having problems is because people do not want to be transparent. It would not cost us more than one hour's presentation of a Sessional Paper to explain to hon. Members and debate on the sale of a particular company. Hon. Members would then debate and agree on how to sell a company. That is how the procedures should be carried out.

The Public Procurement and Disposal Bill touches on the word "concessioning" and gives a lot of authority to the Government in determining how to sell many of its institutions.

Those are the remarks I had. I will be raising some amendments when we come to the Committee Stage.

With those few remarks, I second.

**The Assistant Minister for Planning and National Development** (Mr. Lesrima): Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I wish to congratulate the shadow Minister for Finance for his eloquent presentation on this subject. I believe that the reason we are discussing this Bill is to improve the way the Government conducts its business. I think it is time that the Government conducted its business in a way that it gets a good deal. It is time we accepted that, although the previous procurement regulations have served the purpose, the biggest problem has been the human factor. This is the human factor with regard to the will to follow regulations, to be efficient and transparent. We may pass this Bill but if the human factor is not dealt with, we will not go very far.

One of the ways to improve the implementation of this Act when it is effected is to insist on procurement plans based on the Budget. We already have a Budget which is intended to meet the economic development of the country and we should link it with the procurement plans. We should table the procurement plans on regular basis. Once we have transparent procurement plans, then we should reduce the extra allocations on the Budget, which have dodged our bureaucracy over the past several years. I think this will not be a new thing for us to talk about here. We have talked about implementation of procurement procedures in a businesslike manner.

Mr. Deputy Speaker, Sir, in other countries, for instance, the USA, when an earthquake is experienced in a place like California, we know what is done. They call for tenders and give incentives to those people who can deliver very fast in terms of repairing the damaged roads. A good amount of money is paid to those who are among the first to finish repairs within the time prescribed. This is carrying out business in the right manner. We should not also get so much pre-occupied with bureaucracy to the extent that we become hostages to our own regulations. Our

procurement regulations could hold us back. We must have some flexibility in the procurement procedures. I support the idea of favouring local people in awarding tenders. When I talk about the local people, I am not only talking about Kenyans in general, but about people in the grassroots level. We are in a situation where we have resources which have been decentralised like the Constituency Development Fund (CDF). If there are programmes to be implemented at the grassroots level, then we should give people at this level preference. For instance, in my constituency, there is a water project which has taken a whole year to be implemented. The reason for the delay is that the contractor awarded to install a transformer by the Kenya Power and Lighting Company (KPLC) is located several kilometres away from my constituency. The contract was awarded and funds were provided in June last year. The contract was awarded in March, but up to now, work has not started because the contractor is still debating on what kind of profit margin he will make by installing the transformer.

Maybe, the contractor is having procurement problems. But I believe that a contract of that nature can be given to local people to implement. We know that transformers are not bought off the shelves and the poles and cables are supplied by KPLC. Surely, there must have been a local expert in my constituency who could have installed the transformer.

The other point I want to talk about is the setting up of limits which foreign contractors can participate in our procurement processes. We must be careful so that we do not have the World Trade Organisation (WTO) issues that took place in Singapore being introduced through the back door. I know that donors have a lot of interest in this Bill. I believe the major reason why donors are interested in this Bill is so that they can access Government contracts. If, for example, there is a tender for the supply of uniforms to Kitale Prisons, then a company in Luxembourg will be in a position to tender for the same in accordance with World Trade Organization (WTO) regulations. We should set limits as to the level of participation that foreign companies should get involved in when it comes to Government contracts.

Mr. Deputy Speaker, Sir, the other issue is on the question of limiting the number of jobs local contractors take up. We know there are, for example, road contractors who would tender literally for up to six jobs yet they may not have the capacity to implement those programmes within a stated duration. There should be provision of sharing jobs, especially in the area of road construction. If a road is being constructed, for example, from Isiolo to Moyale, the Ministry of Roads and Public Works should award this tender to at least three to four contractors to participate in that job.

Mr. Deputy Speaker, Sir, another problem we have is litigation. Kenyans are becoming a litigious society. When I lose a tender, for example, I rush to court. We need to look into that because this causes a lot of delays.

The other point I would like to mention is on the question disposal of Government assets. When you travel around the country you will see a number of ex GK vehicles in use and you wonder why they were not being serviced when they were in the hands of the Government. In fact, most of them are just neglected and left to rust away. However, as soon as they are disposed of, you see them driven all over.

*[Mr. Deputy Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, the final point I would like to make is on the question

of conflict of interest. This brings me back to the issue I raised about the human factor. We can have excellent laws, but if we do not deal with the human factor in the area of conflict of interest, corruption will persist. I would like to say that there are problems particularly in local authorities because you could have a local authority in control of LATF funds and you find that if they issue some funds, for example, for development and construction of facilities in a school, the clerk of that county council, the chairman of the committee, the board members and headmaster of that school will all want to participate in one way or another. Some will want to supply books, others beds, desks and so on. That is what I term as conflict of interest. The regulations must be very clear that when Government funds, especially LATF and CDF are allocated to fund a certain project, for example, construction of a school or another public facility, it must be appreciated that these are taxpayers' monies, which must be accounted for properly. When these funds are in the hands of boards, they must not appear as if they are resources belonging to those particular individuals, whether they are local authorities or school boards. Therefore, I tend to agree with the previous hon. Member who said that we must provide for severe penalties when people are caught up in situations of conflict of interest.

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

**Mr. Kipchumba:** Thank you, Mr. Temporary Deputy Speaker, Sir, for according me this opportunity to contribute to the Public Procurement and Disposal Bill. From the outset I would like to say that this Bill is actually long overdue. You realise that most corruption cases in this country, and I would say probably more than half of the cases, arise out of procurement related issues.

If you go through reports of the Controller and Auditor-General and the Public Investments Committee (PIC) you realise that there are many problems that are of our own making. The beauty of this Bill is that it even defines what entities will be governed. I am particularly impressed that some of the bodies that will be governed by this Bill are mentioned.

Mr. Temporary Deputy Speaker, there are certain procurement regulations, which this country must do away with if, indeed, we are sincere in fighting corruption in this country. One of this is the issue of repeat orders. You will realise that most corruption cases, and especially in the Ministry of Roads and Public Works arise because most of the time contractors are given repeat orders. This is where a contractor has won a tender to construct a certain road and the Ministry insists that they found it better to award the contract to the same contractor because it would cost more money to move equipment by another company to a certain locality. This is in spite of the fact that no serious evaluation has been done. All they want to do is justify that, indeed, it is better to give the contract to one contractor so that they save in terms of time and movement of equipment. This Bill must be very categorical that, indeed, there will never be any repeat orders in this country. This is a source and avenue of corruption. It has been used before and it will continue to be used.

Mr. Temporary Deputy Speaker, Sir, another avenue in which many of Government departments have engaged in corruption is that of variations. If you go through many reports of the Controller and Auditor-General, you will realise that most of the variations have even "skyrocketed" to up to 1,000 per cent, while the allowable limits are within about 25 per cent. However, for a supplier to quote for a tender and in the process vary it to over 1,000 per cent, and the Government gladly pays is a shame and quite embarrassing. We must stipulate very clearly in our regulations that variations must not be more than 10 per cent.

Mr. Temporary Deputy Speaker, Sir, while we appreciate that variations are part and parcel of provision of services, they must never be more than 10 per cent. There must be justification as to why variations must be done.

Mr. Temporary Deputy Speaker, Sir, the other issue I would like to talk about is on single sourcing. In all fairness, the issue of single sourcing must be done away with. If, indeed, there is

only one company that can provide that service, it will be quite obvious to everybody that there was no other company that a department was to get services from other than that particular institution. Therefore, to allow for single sourcing, which has in the past been a big source of corruption, is to legitimise corruption in this country. Therefore, I would like to request that single sourcing be done away with completely. In its place, we should have restricted tendering. This form of tendering gives you an avenue that if you know that the following companies provide specified services, and even in cases where it involves security services, you can directly write to them and allow them to tender. If it is only one company, then you have no choice, it is part of restricted tendering. Once you introduce the issue of single sourcing, you are opening a Pandora's box. This means that we are allowing companies and institutions to justify single sourcing which has never been justified in any of the issues that I have looked at.

Mr. Temporary Deputy Speaker, Sir, we must also look at the issue of validity. If a tender is floated, it must be valid for a certain period of time. This will ensure that you cannot vary the prices within the validity period. We know situations where people have given quotations and within a very short time, they vary the tender price citing various reasons. For instance, they would say that the prevailing rate of inflation has affected them adversely and hence, there is need to revise the prices of various items. Therefore, any company that participates in a tender must be able to sustain the terms of the tender within the validity period. I have seen tenders which have no validity period. They are perpetual; they have no validity period.

Mr. Temporary Deputy Speaker, Sir, on the issue of contracts, I would like to suggest that all contracts should be scrutinised by the Attorney-General's Office. Although we have had historical problems with the Attorney-General's Office, they can still be addressed. However, if all contracts were to be scrutinised properly - I have looked at some of the contracts that have been written for contractors, especially in the Ministry of Roads and Public Works. They are all against the Government. When the Government is unable to realise Exchequer releases, it is penalised. This is a normal phenomenon, that it is not all the time that the Government can realise the amount of money it expects to collect. The contract does not envisage a situation where the Government will at some stage be unable to raise its counterpart funds. The contractor will be very happy to penalise the Government that has gladly given out tenders and ask for punitive penalties where finally the cost of the tender will be double the original contract cost. If the contract was looked at by the Attorney-General's Office and other professionals, he should advise the parties involved on what happens when the Government cannot raise adequate funds within the period. This has had its own problems. A contractor will charge you for idle equipment. I have seen, in the Public Accounts Committee, cases where the Government has paid over Kshs200 million for idle equipment. A contractor will leave two or three equipment on site and go to work elsewhere. After three months, he will come back and issue a fee note of Kshs200 million. Thereafter, he will go to court and you will be charged and penalised. That is quite unfair in business! That provision must be included when those contracts are entered into so that some due diligence will have been done on all the contracts. That will also give the Government an option to terminate a contract when it is unable to proceed due to unforeseen circumstances. We assume in these contracts that the Government is a perfect entity and that it will always provide the necessary funds. However, we must always provide for an exit option that when the Government is unable to perform, it should be given an option to terminate the contract.

Mr. Temporary Deputy Speaker, Sir, all our tenders must provide for standards. We have had situations where companies which have been awarded tenders supply sub-standard material to this country. They are paid without being penalised at all. Last year, the Kenya Power and Lighting Company (KPLC) floated a tender to import poles that could easily have been bought in this

country. The South African company supplied sub-standard poles yet the KPLC accepted them and paid for them. These are clear issues of corruption! If items do not meet the requisite standards, the supplier must be penalised for supplying sub-standard materials. They must also be penalised in terms of loss of time and even blacklist them. We would, therefore, like all Government agencies and parastatals to be vigilant. This will ensure that we source some of these things from within because they are readily available locally.

Mr. Temporary Deputy Speaker, Sir, all contractors must be able to give bank guarantees or performance bonds. We have had companies that assure us that they will perform and supply the required items. After they win the tender, they run away. That way, we would have lost a lot in terms of time, advertising and floating the tender in the newspapers. If that contractor would have given a performance bond and he either undertakes a sub-standard job or supplies sub-standard materials, the Government or its department will have a recourse to go to the bank. It must be a bank guarantee! It should never be an insurance guarantee because these have given us a lot of problems in the past. They can never be executed. That is why there must be a requisite condition that if one wants to supply goods to the Government, they must give the Government a performance bond or a bank guarantee that will last for a reasonable period of time. This will save us the aspect of retention funds; where 10 per cent or part of the contract money is retained by the Government.

While the retention funds are good, at times, with collusion from our own officers in the past, these monies were paid even when final certificates had not been issued. However, nobody can give out a bank guarantee because this is a legal document. It is a document between the Government and the bank. Therefore, there is no room for manipulation.

Mr. Temporary Deputy Speaker, Sir, I also want to request the Government to provide for project funds in terms of grants. This will save this country because at the end of the financial year, the money will not be returned to Treasury. We have witnessed cases, I cannot remember whether it was last year or the previous year, where a large amount of project funds were returned to the Treasury because procurement regulations in our districts were very lengthy. The money could also not be used when the procurement officers were suspended. Most of the funds from our districts treasuries were returned to the Treasury at the end of the financial year. I, therefore, want to request the Minister to provide development funds in terms of grants. This will ensure that any funds that has been disbursed to the districts and provinces will finally be released even if there are delays in procurement.

Mr. Temporary Deputy Speaker, Sir, I have witnessed situations where Ministries rush to beat the 30th June deadline. Officers in the field apply all manner of short-cuts in floating and awarding tenders. They give excuses like: "It was the end of the year and we did not want to return the money!" That makes a lot of sense because, when money is returned to Treasury, it is not easy to get it back. You might never get it or if you do, you might get it in bits and pieces. Therefore, you sympathise with officers who provide services in the field. I hope the Minister will look at that issue. Returning money to the Treasury is not good for this country.

Mr. Temporary Deputy Speaker, Sir, when I looked at the list of agencies that have been listed, I was particularly impressed by the Central Bank of Kenya (CBK). It has been listed as one of the institutions that will follow the guidelines. We have had situations in the recent past where, for example, the Industrial Development Bank (IDB) was acquired by Equity Bank. If I recall, there was no tender that was floated for the bank and yet, the Government has invested over Kshs200 million in the bank. I hope that the CBK, which we respect so much, will adhere to those regulations just like other financial institutions.

Mr. Temporary Deputy Speaker, Sir, I want to look at some of the issues that have been listed here briefly. Clause 3 gives the meaning of an accounting officer. For a local authority, it is

the town clerk. Why has the municipality been left out? I thought that a county council and a municipality are two different institutions. Instead of mentioning all those details, we should say: "The clerk of county council or a municipality"

Mr. Temporary Deputy Speaker, Sir, I was a bit worried because schools have been listed as part of the institutions that will be covered by this Act. I am worried because many of our schools do not have the personnel to execute the provisions that we are making here. Many schools do not have accountants, unless we are going to provide them. I do not know whether schools can really meet those regulations.

Mr. Temporary Deputy Speaker, Sir, this Bill is going to be exceptional. It stipulates that, if there will be conflict between this Act and the regulations or any direction of the authority, there will be an agreement between the Government and one or more of the multilateral institutions. If we give exceptions to regulations, they are bound to be abused. We should re-look at that issue properly. We cannot accept to have exceptions when money is being given by the donors. It stipulates very well that this section does not apply if the donor of the funds is a public entity. In my own understanding, any money that is received by the Government is for public institutions. It is not meant to fund one person. Therefore, we should re-look at that issue because the moment you provide exceptions, everybody will tell you: "This money came from Germany and, therefore, there is an exception to that rule. I had to do this and that!" We must word that particular section properly.

Mr. Temporary Deputy Speaker, Sir, regarding the professional qualifications of the Director-General of that Authority, while all the other factors have been listed, Clause 10 reads:-

"He must have experience in management!"

That is not sufficient! We must state very clearly that he should have experience of how many years. The mere fact that you are a manager somewhere does not give you qualifications to be a Director-General. Therefore, we must state, for example, that somebody must have 10-years experience. If you have to rise to be a Director-General, you must have worked in various organisations and have a lot of experience. I propose to amend that to include a number of years that a particular manager must have.

Mr. Temporary Deputy Speaker, Sir, regarding Clause 11, the term of office of the Director-General is five years. Five years is a very long time! We must reduce that to three years. We cannot accept a situation where the Director-General would work for five years. It should be consistent with the other appointments.

**Mr. Wamunyinyi:** Malizia hapo!

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Proceed!

**Mr. Kipchumba:** Mr. Temporary Deputy Speaker, Sir, thank you for your protection. I want to move to Clause 15 which reads:-

"The appointment of the Director-General may be terminated only in accordance with this Section."

We must also include the fact that, if the Director-General has interests in certain institutions---

**Mr. Wamunyinyi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is Mr. Kipchumba in order to keep on repeating points that he had mentioned earlier? Is he in order? If he has exhausted his points, then he should conclude his speech.

**An hon. Member:** Yes! He is right! What has he repeated?

**The Temporary Deputy Speaker** (Mr. Poghisio): That is a very good case of a frivolous point of order!

**Mr. Kipchumba:** Mr. Temporary Deputy Speaker, Sir, I would like to abide by your ruling, but that confirms the description that we were given by the Speaker the other day.

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

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! You just stood on a point of order! There is no way you can rise on a point of order on another one! What is happening? What is the issue?

### QUORUM

**Mr. Wamunyinyi:** Mr. Temporary Deputy Speaker, Sir, this is a different point of order. You can see that we do not even have a quorum in the House and yet, this is such an important Bill. There is no quorum. We cannot allow this to go on. We are flouting the rules.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! It is true that there is no quorum in the House. Ring the Division Bell!

*(The Division Bell was rung)*

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, hon. Members! We now have a quorum. Proceed, Mr. Kipchumba!

**Mr. Kipchumba:** Thank you, Mr. Temporary Deputy Speaker, Sir. I was talking about Clause 15 and I was saying that in the termination of the Director-General, we must be very careful that we do not unnecessarily remove him or her just by a mere allegation. If you look at Clause 15(2)(d) it states:

"The Advisory Board may terminate a person's appointment as the Director-General if the person was involved in a corrupt transaction".

That must be defined very clearly because when you merely say a "corrupt transaction" then---

Mr. Temporary Deputy Speaker, Sir, although I know there is a definition of a "corrupt transaction", I would want to suggest that it must be investigated. The officer can step aside so that KACC can thereafter investigate that corruption and if it is proven that the officer was indeed involved, then he or she can step aside.

Mr. Temporary Deputy Speaker, Sir, I want to go to Clause 20(4) which states that:-

"In addition to what is required under Sub-section 3, each annual report shall include financial statements of the Authority for the year to which the report relates".

I want to say that we do not require just a financial statement but that statement must indeed be audited. It must be a statement that has been audited either by the Controller and Auditor-General, a body that has been approved by the Government or any other agency of the Government.

Mr. Temporary Deputy Speaker, Sir, I do not agree with Clause 20(5) which states:-

"The Minister, shall within 30 days after receiving a report, transmit it to the National Assembly".

I do not know why the Minister would want to stay with a report for 30 days. I think within seven days of receipt of that report, the Minister in charge should table it in Parliament because he will not add any value to it. He is not going to amend it or do anything about it. All he will do is to receive it and hand it over to the National Assembly. Therefore, once the Minister receives the report, he should pass it on to Parliament within seven days.

I would also want to suggest that the Director-General must be secretary to the Public Procurement Oversight Board just as in other agencies.

Mr. Temporary Deputy Speaker, Sir, I want to go to Clause 23 that deals with the functions of the Advisory Board. In addition, it must be able to authorise the staffing levels of that institution.

The Board must also be able to approve audited accounts because part of the work of the Board includes authorising of staffing levels and approval of audited accounts because the accounts are provided and given to the Board and, therefore, they must be audited.

**Mr. Sungu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. May I appeal to the hon. Member on the Floor to face the microphone because some of his words are being blotted out because he is not facing it properly and the HANSARD might not record everything.

**Mr. Kipchumba:** Thank you, hon. Sungu.

Mr. Temporary Deputy Speaker, Sir, I want to say that the decision of the Public Procurement Administrative Review Board must never be challenged by a court of law because if we allow its decision to be challenged in these normal courts, then there will be no purchases and procurements. Therefore, we must equate the decision of the Procurement Board to the regular court of law so that you can only appeal in the Court of Appeal because if we subject everything to courts like it happened last year, then all institutions will come to a halt.

*(Mr. Kipchumba talked without facing the microphone)*

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! You actually need to be talking into the microphone!

**Mr. Kipchumba:** Sorry, Mr. Temporary Deputy Speaker, Sir. You know I am a very "tall" person, so I have to lift the microphone!

*(Laughter)*

Mr. Temporary Deputy Speaker, Sir, I want to say that the problem that we have faced in this country is that procuring entities have always proceeded to flout tenders even when they do not have a budget. Therefore, while we have made a provision that all procurement shall be within the approved budget, what action will be taken if an Accounting Officer continues to flout a tender without a budgetary provision within his Ministry? I think there must be recourse to what happens if that is done.

Mr. Temporary Deputy Speaker, Sir, I want to end by saying that we must always remove the idea of professional bodies assisting agencies in giving tenders. We must employ qualified personnel so that---

**The Temporary Deputy Speaker** (Mr. Poghisio): Order! Your time is up!

**Mr. Kipchumba:** With those few remarks, I beg to support.

**Mr. Kagwima:** Mr. Temporary Deputy Speaker, Sir, thank you for this opportunity. I want to join my colleagues in supporting this very important Bill. From the outset, I congratulate the Minister for bringing this Bill at this time.

This country has lagged behind because of delay in implementation of projects. I am happy the Minister admitted that it takes a long time between tendering and implementation of a project. For example, construction of a new road can probably take a full term of Parliament, thus if a sitting hon. Member of Parliament initiated a project and is ousted, he or she might not benefit from it since it will continue into the term of the other new hon. Member. I hope that, once this Bill is enacted, it will take a maximum of six months between tendering and commencement of a project. I would like to plead with the Minister to ensure that all the procurement agents, including the Director-General of the Authority, are properly trained and sensitised on the fact that they are supposed to save in terms of time and money. For example, instead of the so-called District



Development Officers playing a facilitative role, they hinder the implementation of projects. When you pursue the implementation of a project, they make life so difficult, that you might find yourself giving up.

Mr. Temporary Deputy Speaker, Sir, I would like to agree with the hon. Member who suggested that, after the Advisory Board, and the Director-General himself, and the other review boards have handled all the complaints, it would be a waste of time for the aggrieved person, to again, go to court. By the time the process goes through the first and second stages, as well as through the Review Board, six months will have elapsed from the date of its advertisement and tendering. So, if we remove this clause, so that people do not just go to court for the sake of it, it will save valuable time.

Mr. Temporary Deputy Speaker, Sir, the period to be allowed from the day an appeal is filed, heard and dispensed with should not be more than three weeks, because the cost of time in terms of implementation of the project and for those participating in the tendering process will be enormous. So, that aspect should be taken into account. While in Mombasa, we asked the Minister to ensure that he brings some amendments to this Bill. I do not know whether the Minister has included in this Bill the amendments we had proposed.

I hope that somebody is taking notes for the Minister, so that he can include those amendments before we pass this Bill, so that the period between the date of appeal, and the day the matter is dispensed with, does not exceed 21 days.

Mr. Temporary Deputy Speaker, Sir, with regard to the term of the Director-General, five years is good enough. Three years would be a very short time for anybody to take any action that would be productive. So, as set out in the Bill, five years is good time. Of course, when somebody performs well, he ought to get another term of five years. So, in ten years' time, a good person will have served Kenyans adequately and we would have reaped positive changes, for the well-being of this country.

Mr. Temporary Deputy Speaker, Sir, I am also happy with the issue of qualifications, although I have not seen the amended Bill. We proposed and agreed that the Director-General does not just have to be a holder of a Bachelors Degree in Commerce and Business Administration. We agreed to leave that qualification open to any degree holder. We should not necessarily confine it to a holder of Bachelor of Commerce Degree, marketing option. If we do that, we will be narrowing ourselves. So, I hope the Minister will bring these amendments, so that we can provide a wide range of candidates from whom we can consider for this office.

Mr. Temporary Deputy Speaker, Sir, the other issue I would like to talk about, which the Minister mentioned while moving this debate, is that we should leave a little room for the Minister to make appointments in order to correct imbalances in the constitution of the Board. The professional bodies may come up with a list of names selected only from a certain sector. The Minister should, therefore, be allowed to appoint two or three qualified Kenyans from the wider society, to correct such imbalances which may arise from the proposals that may come from the professional bodies.

Mr. Temporary Deputy Speaker, Sir, I would also like to say that the tender committees have been a major problem, where the members would collude and bring their friends to win tenders year in, year out, thus making it impossible for any new participant in the tendering process to win any tenders. We should have the public represented during the tender opening, and there should be room for input, especially from the elected leaders, for example, the councillors and Members of Parliament, so that fairness is seen to be done. I am not saying that elected people are angels, but they need to have a voice. Otherwise, tender committees are only composed of civil servants and if, by coincidence, they happen to collude as I have said earlier, it can be very bad. I know of a few

incidents where the district commissioner has gone round asking for people who also come from their areas or who are their friends to sit and agree on how to do their tendering. When that is done, and, for example you have the district commissioner, the district roads engineer and the district development officer at times by bad luck coming from one area, that district will suffer immensely. That is why I am requesting that elected leaders be given a chance of attending those meetings. I am happy because I noted that, at this high level of the national tendering board, people can be allowed to attend meetings, except that they would not vote. That should also happen to the committees all the way down to the districts, so that people are able to sit there and witness that the tendering has been done openly and in a transparent way, so that people do not make cartels like what has happened in the past. We need to break those cartels.

Mr. Temporary Deputy Speaker, Sir, I am hoping that the performance contracts which civil servants are being subjected to will go all the way to include all those people involved in tendering so that they can perform, not only in the projects they are implementing but also in the way they implement them, so that we are sure that they have done it in a transparent and economical manner and in the shortest time possible. This will ensure that the performance is not based on the number of projects undertaken but also on so many other parameters, so that their efficiency can be judged to be effective.

Mr. Temporary Deputy Speaker, Sir, I would like to ask my colleagues to support this Bill and pass it in good time so that in the course of this financial year, we can start benefitting from some of the good clauses that are in this Bill. I hope that the other process of taking it for Presidential assent will also go quickly so that-- As I speak, I am very, very anxious to see this Bill in operation, because some of us are frustrated.

I want to cite the issue of the Constituency Development Fund (CDF). The first circular said: "Yes, implement the CDF and use the laid down Government regulations and the people who exist", not knowing that the laid down regulations are to ensure that you do not implement the project unless they are in the interest of the people.

At the time we were being allocated Kshs6 million, life was becoming almost impossible. I even thought it would affect my health and other things. When it came to the last financial year, I had to go for private consultancy to ensure that projects were implemented. This was because it became impossible to use the District Development Officer (DDO) and his group. Whenever I told them to implement projects, they would look for all the loopholes that have existed for years, hence making it impossible for me to operate. So, I would leave the projects to them. They would, therefore, collude with the suppliers, so that they received half of the materials and signed for full delivery, and made the payment. So, whenever I visited the projects, the *wananchi* would tell me: "*Mheshimiwa*, we think you and other people misappropriated half of the Constituency Development Fund (CDF) money". I would later find out that the fellows had signed for full delivery when, really, only a half of the materials had actually been delivered. As I speak, there are one or two cases of misappropriation with the police. We decided to hand over the matter to them because we have used the regulations but still goods and money have disappeared.

So, it is important that we enact this Bill and ensure that it is implemented in good time. We hope that those old methods, where people used to think that when you are in office, it is for for use to your personal benefit as well as that of your relatives and friends, will disappear. That is why I am keen to support the Bill.

Mr. Temporary Deputy Speaker, Sir, I can see that the Assistant Minister for Finance is here. I would like to urge him to put in place those amendments that we agreed on in Mombasa recently, so that we do not forget them. They were vital, especially the amendments relating to the time of appeal, procurement, consultancy and other issues. We should shorten the time between

when tendering is done and the implementation of a project. In fact, three months should be enough for advertising, receiving the tenders, analyzing them and awarding a tender.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support the Bill and urge the other hon. Members to also do so.

**Mr. Angwenyi:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me a chance to contribute to the debate on this important Bill. Fraudulent procurement is what has destroyed this country because of various factors.

First, it is through procurement that mega corruption in this country has been committed. I will cite a few historical examples. The Goldenberg scandal occurred as a result of this country procuring services and goods which were never delivered. We purchased gold which did not exist. Through that process, this country lost, according to a Public Investments Committee Report, money to the tune of Kshs138 billion. That amount, which this country lost 14 years ago, has had great impact on this country. Many lives and jobs have been lost because of that procurement fraud.

Mr. Temporary Deputy Speaker, Sir, it is through procurement procedures that the National Social Security Fund (NSSF) lost money in excess of Kshs7 billion! That was at the housing estate near the airport. A total of 3,668 units were to be constructed at a cost of Kshs1.2 billion. But because of the flaws in that procurement, that company only constructed 360 houses. They were paid Kshs5.2 billion. That is the same amount of money that we received during the first year for the Constituencies Development Fund (CDF) and you can see what it has done in this country. Suppose we had the Kshs5.2 billion ten years ago? This country would be in the skies in terms of development!

Mr. Temporary Deputy Speaker, Sir, those who have gone through the reports of Public Accounts Committee (PAC) and Public Investments Committee (PIC) know the many instances that this country has lost billions and billions of shillings. We lose those billions of shillings and go ahead to tax poor Kenyans, so that we can fill up the basket from where fraud and corruption is conducted.

Mr. Temporary Deputy Speaker, Sir, it is not only through such contracts that we have lost funds. When this country embarked on the process of privatisation and liberalisation, the Government went ahead to dispose of public land. You know how many forests have been destroyed in this country.

Mr. Temporary Deputy Speaker, Sir, about 15 years ago, we had forests and thickets in our hilltops and riverbanks. We were able to conserve and protect our water resources. But because the Government went on a spree of disposing of public and forest land, this country has lost what it will never regain in its history.

Mr. Temporary Deputy Speaker, Sir, you know how many Government properties and houses have been disposed of. Take, for example, Kenya Railways. About ten years ago, Kenya Railways was the biggest land owner in this country. It disposed of its properties in Juja Road, Parklands, Upper Hill, Muthaiga, Westlands and other major towns. How much was realised from that fraudulent disposal? We did not even raise enough money to pay the terminal benefits of employees who were retrenched. Today, the same employees are seeking Kshs17 billion from Kenya Railways. That is a result of fraudulent disposal of public property.

Mr. Temporary Deputy Speaker, Sir, you know the farms that we had for research under the Agricultural Development Corporation (ADC). They were meant to enhance our agricultural production. They have all been disposed of fraudulently and corruptly. A person got more free land than what he and his grandfather had. There is one case at the Kisii Research Station where a leader was given more land than what his grandfather has. That public land was given for free.

Mr. Temporary Deputy Speaker, Sir, you have seen the Minister for Roads and Public

Works trying to reclaim some of the road reserves that were dished out to some people. People do not think about the future of this country, the future of our road network, the future of our schools and the future of our health facilities. I have a case in point. I happened to have done some consultancy for rationalising the Ministry of Lands and Housing. That is why I am talking about land. We went to Kilifi District and found out that the District Commissioner's house had been condemned to be inhabitable. The property was then given to the DC's wife. The Government went to rent that same property which had been condemned and paid rent to the DC's wife. The DC and his wife were staying in the same house.

**Mr. Kajwang:** That is classic!

**The Temporary Deputy Speaker** (Mr. Poghio): Mr. Angwenyi, are you still on procurement? I am wondering!

**Mr. Angwenyi:** Mr. Temporary Deputy Speaker, Sir, disposal of public property is in this Bill. That public property was condemned and then it was given to the person who is supposed to protect and conserve it. But that public person used that property to get more money from the Government. That is disposal of public property.

Mr. Temporary Deputy Speaker, Sir, there was another case, here in Kileleshwa, where a High Court judge was given six houses which have been condemned. He stayed in one and rented out the other five. That is what we are talking about. This Bill must address some of those issues. If you go to police stations or GSU headquarters, you will see heaps and heaps of the Mahindra vehicles which are lying there. They have never been boarded for proper disposal.

When the two mobile operators were entering the market, it was fraudulently done. We estimated that in five years time, Safaricom and Celtel could only have a maximum of 35,000 subscribers. On that basis, they paid about Kshs5 billion each. But today, Safaricom, within five years, has got a subscription of over 2 million people. The same applies to Celtel. So, if we had done the proper valuation of what they were going to sell out, we could have received in excess of Kshs50 billion, which was being paid at the same time by mobile operators in Morocco, Ghana and Egypt. But because we have a fraudulent procurement system, this country lost Kshs50 billion. So, as we procure and dispose of public investments, we must make the law strict so that the Republic of Kenya gets value for money.

These days, to finalise to a contract, it takes 23 months on the average. This impedes on our implementation rate. I know of the the Mai Mahiu-Narok Road contract which was supposed to have been awarded two years ago. Todate, it has not been done. Do you know why? Because of our fraudulent procurement system. We must take responsibility, as a Government, to implement all the projects that we have budgeted for in the estimated time. We may have to do away with some of the litigation processes because our courts are not that efficient. There is a case involving a company which was picking money from the defunct Kenya Grain Growers Co-operative Union (KGGCU). They went to court to seek payment of a debt in 1991. Todate, that case has not been resolved. If we subject our procurement to the current court system, we will never implement our projects.

Mr. Temporary Deputy Speaker, Sir, we have seen what has happened at the National Hospital Insurance Fund (NHIF), National Social Security Fund (NSSF), Kenya Power and Lighting Company (KPLC) and National Cereals and Produce Board (NCPB), where variations have been made at the whims of one or two people, and the country has lost colossal amounts of money.

Mr. Temporary Deputy Speaker, Sir, as we enact the provisions of this Bill, we must take very keen care of Kenyans. We should not expose Kenyans to international competition. In most developed countries, they have extension in competition in favour of the local businessmen.

Mr. Temporary Deputy Speaker, Sir, I was surprised to hear one of my colleagues say that

in procurement, guarantees must be given in bankers cheque. That is how we destroy our local businessmen. Reputable insurance firms should be allowed to offer performance guarantees, so that our local investors can access business opportunities. In fact, procurement of goods and services for less than Kshs100 million should be restricted to Kenyans only and beyond Ksh1 billion, we should require a foreign investor to have a local partner in order to invest in Kenya. This is what is happening in Dubai. In Dubai, you cannot even buy a rental house unless you have a local partner. You cannot do business in Dubai without having a local partner, who literally determines what business you can do in that country.

Mr. Temporary Deputy Speaker, Sir, we liberalised our foreign exchange regime and people are using this fraudulent procurement system to repatriate money out of this country. We are losing colossal amounts of foreign exchange. As we enact this Bill, we must guard against fraud in this country.

Mr. Temporary Deputy Speaker, Sir, two Boards have been proposed in this Bill. We have the Oversight Advisory Board and the Administrative Board. I commend the Minister for bringing up this clause, but we must make sure that the representation in those boards reflects the face of this country. We should not have two people from the same region in any board. We should have somebody from the North Rift, North Eastern, the Kisii Highlands, Maasailand, Mount Kenya, Ukambani and even from Pokotland, so that the Pokots can stop possessing guns. They should be occupied in these boards. It must be a reflection of this nation if we want to move ahead. That is the only way we can create confidence and trust in our processes. Both boards must reflect this nation.

Mr. Temporary Deputy Speaker, Sir, we must have a tribunal that decides and disposes of these things, so that, we do not have to carry out long-drawn out litigations. In cases where somebody is not satisfied with the decision of a tribunal, then he may be required to deposit a certain percentage of the contract price before he can go ahead with his litigation. There are people here who cannot even perform a contract, but they just bid for the sake of bidding, so that if they get it, they can then sell it. We must have some form of system in managing that process, so that we can undertake our projects and procure the goods and services we want.

Mr. Temporary Deputy Speaker, Sir, there is the oversight role of Parliament, which is performed by the Public Accounts Committee (PAC) and the Public Investments Committee (PIC). Are they really executing that function? How can they do it if, today, the PIC is discussing the Report of the Controller and Auditor-General of 1996 which is ten years ago? Some of the people who committed offences are dead, while others have gone abroad.

We must recommend that this Parliament demands that the PIC and PAC reports are up to date. They should follow the Standing Orders and the Constitution. For example, at the moment, the PIC and PAC should have made their reports for the year ending June, 2003. That is when you can catch up with some of these malpractices. That is when Parliament will play its role as an oversight institution. We are discussing, for example, the Telkom reports of 1991 and yet we do not even know who was the Managing Director at that time. Even the Controller and Auditor-General who did the audit then, is no longer in office now. We must demand that Parliament itself becomes a role model institution by being up to date and presenting current reports.

Mr. Temporary Deputy Speaker, Sir, I know that we will have a Bill on privatisation, but as we enact this law, it must anticipate the premise of that law that we will enact soon. I am not trying to anticipate debate, but we must enact our laws which are complementary to each other. Privatisation will be one of the major areas of disposing of public investments. There is still the new concept of concessions which has been mentioned by the Minister for Transport and the Minister for Roads and Public Works. We have no law in this country that covers concessions. I do not know how Parliament will carry out its oversight role over an activity for which it has no law.

Mr. Temporary Deputy Speaker, Sir, I know it has been covered perfunctorily in this Bill. I would request the Minister to bring a substantive law on concessions, because that is the in-thing now. Recently, the Departmental Committee on Energy, Communications and Public Works went to Spain and we found that most of their roads are being done on the basis of concessions. Previously, we had gone to Germany and we found out that most of their roads are being done on through concessions. Their ports and airports are also being done through concessions. So, we must have a substantive law on concessions. We have gone through very rough times. This country has lost colossal amounts of money and resources. In fact, many Kenyans have lost their lives because of our flawed procurement system. I hope that, when this Bill becomes law, we shall strictly implement it so that this country can gain from its own investments and taxpayers get value for the tax they pay.

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

**Mr. Kimathi:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to contribute to this important Public Procurement and Disposal Bill.

It is very disturbing to realise that after doing away with foreign exchange controls a few years ago, things have gone out of hand. Every country, including the USA which had problems with Japan and Europe after it banned the importation of steel from the two places--- Some foreign powers are taking advantage of developing countries because we do not have laws that prohibit them from entering into our corporate market. When we removed the regulations that govern foreign exchange in this country, first of all there was panic and flight of capital. Of course, it is the foreign exchange control limitations that saved this nation. However, we cannot open out without putting limits in place. We should not allow refugees to come to our country and own property such as *matatus*, buses, and so on. They use money that they have stolen from their countries to invest in our country when my father and mother who are upcountry cannot invest using their little money because of competition. In countries like the USA, refugees are put in camps. They are not allowed to roam in towns doing huge businesses and competing with nationals of that country. Therefore, we would like firm measures to be put in place.

Mr. Temporary Deputy Speaker, Sir, now that our market has been liberalised, we cannot open out everything. In the event that we pass this Bill, I would like to ask the Minister for Finance to amend three areas of essential service. The Kenya Power and Lighting Company (KPLC) has to attend to emergencies and if the company is subjected to these hassles, it might not be able to provide us with good service. Other areas that are of critical concern are security and the Kenya Medical Supplies Agency (KEMSA). I suggest

that the Minister brings amendments that will exempt the security apparatus of this country, KPLC, the Fire Fighting Department, and any organisation that deals with food relief and disaster prevention from strict procurement regulations.

We are all interested in rural electrification, but I can assure this House that sometimes there is a shortage of equipment because of the existing red tape in the procurement system. The KPLC should be exempted from such red tape so that it can order for equipment easily.

With regard to road construction, we should not favour "Kamau Company Limited" or "Kimathi Company Limited" simply because they are local companies. We have seen frauds of the highest order being practised by local companies. If you drive to Mombasa you will come along a section of the road that was done by a company called China Bridge and you will surely be impressed. That section of the road has been done so well that even heavy vehicles like trucks

cannot destroy its compaction. Kenyans are not interested in Kamau or Patel making money. We are interested in value for the tax we pay. We are interested in good roads.

**The Temporary Deputy Speaker** (Mr. Poghisio): Order, Mr. Kimathi! You have a balance of 25 minutes for tomorrow.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Poghisio): Hon. Members, it is now time for the interruption of Business. The House is, therefore, adjourned until tomorrow, Wednesday, 6th July, 2005 at 9.00 a.m.

The House rose at 6.30 p.m.