

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 28th April, 2004

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### ADMINISTRATION OF OATH

The oath of Allegiance was administered to the following Member:-  
Kenneth Odhiambo Nyagudi

### ORAL ANSWERS TO QUESTIONS

**Mr. Ndile:** Bw. Spika, ninaomba kuuliza Swali No.143.

**Mr. Speaker:** Order, Mr. Ndile! You must ask your Question the way it is on the Order Paper!

**Mr. Ndile:** Bw. Spika, Bw. Naibu Spika, ambaye tulikuwa naye asubuhi alisema kwamba kama Swali langu limeulizwa kwa lugha ya Kiingereza, yafaa niliulize kwa lugha ya Kiswahili. Swali hili liliandikwa zamani. Bw. Naibu Spika alisema kwamba kuanzia leo, yafaa niulize Maswali ambayo yako kwa Kiingereza katika Kiswahili. Kwa hivyo, ninaomba kuuliza Swali No.143.

**Mr. Speaker:** Bw. Ndile, nimekupatia ruhusa!

**Mr. Ndile:** Ahsante sana, Bw. Spika.

#### *Question No.143*

#### RESETTLEMENT OF PEOPLE AFFECTED BY SULTAN HAMUD-MTITO ANDEI ROAD PROJECT

**Mr. Ndile** asked the Minister for Roads, Public Works and Housing:-

(a) how much money and land he has set aside for the people who will be affected by the construction of the Sultan Hamud-Mtito Andei section of Mombasa-Nairobi Road;

(b) whether he could table the names of those to be affected.

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

(a) The construction of Sultan Hamud-Mtito Andei section of Mombasa-Nairobi Road affects 231.45 hectares of land touching on individual land owned by families and people. The Government has paid Kshs36,148,723 as compensation to those affected.

(b) The people affected were paid as per the portion of the land taken by the construction of the road as valued by the Commissioner of Lands. The names and amounts paid to each individual, and other particulars of those affected, are hereby attached as requested by the hon. Member. I

would like to lay on the Table the list of those people who have been compensated.

*(Eng. Toro laid the list  
on the Table)*

**Mr. Ndile:** Ahsante sana, Bw. Spika. Nimesikia jibu ambalo Waziri Msaidizi ametoa hapa. Lakini nimekuwa nikiongea sana juu ya watu ambao wamekalia ardhi bila ruhusa, na tena, Serikali inawapatia watu wangu pesa badala ya shamba. Sina hakika kama hao watu watatumia hizo pesa kununua shamba au watakula, halafu tuwe tena na shida ya maskwota. Kwa nini Serikali haikuwapatia mashamba badala ya pesa?

**Eng. Toro:** Mr. Speaker, Sir, the people who were compensated were not squatters. The law is very clear; that when the Government acquires land it compensates the owner. That is what was done.

**Mr. Ndile:** Bw. Spika, kuna watu wengine ambao wamelalamika kwamba hawajapokea cheki zao. Ningependa Waziri Msaidizi anihakikishie kwamba watu wangu watapokea cheki zao kabla barabara haijatengenezwa.

**Eng. Toro:** Mr. Speaker, Sir, I would appreciate if the hon. Member went through the list and came and told me the people who have not received their cheques, so that I can be able to follow up.

**Mr. Speaker:** Very well. Next Question! Mr. Wamwere!

*Question No.017*

NON-PAYMENT OF SALARY TO  
MR. SACEY KIMANI

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

- (a) whether he could explain why Mr. Sackey Kimani, TSC No.234377, was not paid half of his salary for the period, June, 1992 to July, 1996, when he was put in Nakuru Prison for an offence which he was finally acquitted on 5th, June, 1996; and,
- (b) whether he could pay Mr. Kimani his full dues, given that the Office of the Attorney-General has recommended that he be paid his full pay.

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

(a) Mr. Sackey Kimani, TSC No.234377, wrote to the Teachers Service Commission (TSC) on 5th September, 1996, claiming salary for the period between August, 1992 to July, 1996; the period which he was in police custody. The TSC responded to his claims in a letter dated 15th November, 1996, that it was not in a position to pay the teacher because he did not render any services to the Commission during that period, as he was in police custody. That is in accordance with Regulation 26 Sub-Section (i) of the Code of Regulations for teachers. The teacher was, however, reinstated following his release from custody.

(b) Mr. Kimani was advised to direct his claims to the Attorney-General, since it was him who was responsible for his arrest and confinement. Indeed, in a letter to the TSC dated 3rd, March, 1997, Ref.No.CONF/LAD/100, the Attorney-General advised the TSC that he had carefully considered that case and was of the view that the TSC was not under any legal duty to pay such a teacher for the period he had been in custody. The TSC had not, in any way, contributed to the teacher's confinement.

Indeed, as a result of the confinement, the TSC, as an employer, had suffered for services that were not rendered. The teacher can, however, obtain legal redress by suing the person who initiated the legal proceeding against him.

**Mr. Wamwere:** Mr. Speaker, Sir, I do not know why the Assistant Minister is not aware of that case. Mr. Kimani went to court and the court ruled that the TSC should pay his claim. In view of the court's decision, why can the Ministry not ask the TSC to pay Mr. Kimani?

**Mr. Speaker:** Maybe, let me hear what the Assistant Minister has to say because the Question must have been filed about a month ago. Mr. Assistant Minister, what have you got to say?

**Dr. Mwiria:** Mr. Speaker, Sir, I would like to say two things. First, it is not true that the Attorney-General directed that the Ministry should pay Mr. Kimani. In fact, the Attorney-General advised us that we were under no obligation to pay Mr. Kimani.

Secondly, he could have been released under circumstances that we are not aware of, because we do not have the judgement. But the point is that the advice we got as a Ministry, through the TSC, was that we were under no obligation to pay Mr. Kimani, because the Ministry was not to blame.

**Mr. Bifwoli:** Mr. Speaker, Sir, I think it is the TSC which should pay Mr. Kimani. I want to educate my brother, as a former Kenya National Union of Teachers (KNUT) Secretary, Bungoma Branch, the advocate of the teachers. Whenever a teacher is arrested, and he is stopped from performing his duties, it is the TSC to pay the salary which the teacher missed while in custody. It is that way and there is no short cut! Could the Assistant Minister tell us when the TSC will pay that particular teacher, as per the regulations?

**Dr. Mwiria:** Mr. Speaker, Sir, I should say again that the regulations of the TSC are very clear. I even quoted Regulation 26 Sub-Section (i), which clearly states that a teacher cannot be paid for the period that he or she is out of work, unless it is the fault of the TSC. In that case, it was not the fault of the TSC. Let me say that I am one person who would like to argue for those who have been wronged.

**Mr. Bifwoli:** On a point of order, Mr. Speaker, Sir. Could the Assistant Minister produce that Act here, so that we can refer to it?

**Mr. Speaker:** Order, Mr. Bifwoli! If it is an Act or a public document, it is for you to look for it! It is not for every Act of Parliament to be laid on the Table. In any event, you can very well find them there!

Proceed, Mr. Assistant Minister!

**An hon. Member:** Very good, Mr. Speaker!

**Dr. Mwiria:** Mr. Speaker, Sir, I was saying that the allegation by Mr. Bifwoli is not entirely correct. The TSC pays if it causes a teacher to be out of work for a certain period. I have said that we sought professional advice from the Attorney-General and he advised us that we were under no obligation to pay Mr. Kimani. However, Mr. Kimani was advised to sue those who were to blame for his wrongful confinement.

**Mr. Speaker:** Mr. Wamwere, last question!

**Mr. Wamwere:** Mr. Speaker, Sir, Mr. Kimani has already sued. The court ruled that the TSC should pay him. But when he took the decision of the court to the TSC, they refused to pay him. Where else can that teacher go? He has gone to all the places! I think the Ministry should say whether it is disobeying the court order and the law.

**Dr. Mwiria:** Mr. Speaker, Sir, I do not mind saying it for the fourth time that, we were advised by the Attorney-General. It is not true to say that the Attorney-General ruled that we should pay the teacher.

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

**Mr. Speaker:** Order! Order all of you! This is actually what I had meant to ask Mr. Wamwere earlier on. As you realise, Question No.017 must have been filed by the time we returned here, which is probably four weeks ago. The Question does not make any reference to the suit at all. If, at the time the Question was being brought, the complainant knew of the existence of that order, it should have been brought to the attention of the Minister, so that he can do justice to the Question. That is what I was asking Mr. Wamwere! At the time you filed this Question, were you aware that there was, indeed, a judgement against the TSC?

**Mr. Wamwere:** Mr. Speaker, Sir, I was not aware. In fact, I was informed later that Mr. Kimani went to court and the court ruled that the TSC should pay him the salary for the time he was confined.

**Mr. Speaker:** Would it not have been good for the House if you informed the Minister of the existence of that judgement, so that when he comes to this House, he already knows all the facts? As it were, we have now taken about ten minutes of the House groping in darkness.

**Mr. Wamwere:** Mr. Speaker, Sir, I even sent that particular teacher with a copy of the judgement to the Minister for assistance, requesting him to talk to the TSC to obey the court order! So, in fact, we have done just about everything! But if the Chair so desires, I can bring the court decision here. Then, maybe, the Chair can compel the Ministry to act on it.

**Mr. Speaker:** Maybe, what I will do, because we are actually talking about a live human being, is to encourage you, Mr. Wamwere, to get in touch with the Assistant Minister, give him the judgement, let him see what it says either against or for him, and then take action. In the meantime, I stand the Question for a month.

**Mr. Kimathi:** On a point of order, Mr. Speaker, Sir. The KANU Government was being blamed for not obeying court orders. We witnessed that; even though I am a member of the party. But, we have equally witnessed total disobedience of court orders by the NARC Government! They have continued to ignore court orders. Could the Ministry of Education, Science and Technology, through the TSC, pay Mr. Kimani, if there is a court order ordering them to do that?

*(Applause)*

**Mr. Speaker:** Order, hon. Members! First of all, this House does not know of the existence of any court order. This is why I am saying the hon. Member and the hon. Assistant Minister should look into this issue and find a solution. I will defer the Question for a month. Dr. Mwiria, is that okay with you?

**Dr. Mwiria:** Mr. Speaker, Sir, that is okay. However, I would like to correct one impression that hon. Wamwere created, that he came to me to help Mr. Sackey Kimani which I was very glad to do. He never gave me a court order or ruling but I do not think hon. Wamwere should also hold it against me that I was willing to help Mr. Sackey Kimani before I knew about this judgement. So, we will try to do that. I sent him to the TSC because I would like him to be paid. However, today, according to the advice I got from the Ministry's lawyer, there has been no court order authorising us to pay. Indeed, we were advised that we are under no obligation to pay Mr. Sackey Kimani.

**Mr. Speaker:** Very well. I think I will defer it for a month. However, I have a general advice to hon. Members, which is that, when it comes to the execution of judgements held by

individual citizens, I think the House cannot execute judgements. I think the individual lawyers representing those plaintiffs should be able to execute them against the relevant Ministries. If he asks: "Who do I execute against?" It is the TSC in this case. He could either attach the money from its account or, if they refuse to obey an order, you can actually apply to have the Secretary of the TSC to be imprisoned for disobeying the courts. So, please, let use the legal system where there is an avenue and where there is not, do not use the House. The Question is deferred for a month.

Next Question by Mr. Keter!

**Mr. Wamwere:** Mr. Speaker, Sir, could I say one thing?

**Mr. Speaker:** Yes, Mr. Wamwere.

**Mr. Wamwere:** Mr. Speaker, Sir, if I created the wrong impression to the Assistant Minister, I would like to apologise to him because he has been very helpful and, in fact, I believe that he is one of the most conscientious Assistant Ministers. I did not mean to create that impression.

*(Applause)*

**Mr. Speaker:** Mr. Wamwere, that is very good. I encourage other Members to follow the spirit of Mr. Wamwere.

*(Laughter)*

*(Question deferred)*

Next Question by Mr. Keter!

*Question No.149*

ADDITIONAL TEACHERS FOR  
KOISOIL PRIMARY SCHOOL

**Mr. Salat:** Mr. Speaker, Sir, Mr. Keter is not around!

**Mr. Speaker:** You should not shout to me from the Bench! You had better inform me properly in the legal manner!

**Mr. Salat:** Mr. Speaker, Sir, I would like to seek your indulgence to defer this Question to next week when Mr. Keter will be here.

**Mr. Speaker:** The Question is deferred for two weeks.

*(Question deferred)*

Next Question by Mr. M. Maitha!

*Question No. 117*

DISAPPEARANCE OF MR. MUNYWOKI MAKAU

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

(a) whether she is aware that Mr. James Munywoki Makau who was admitted at Kangundo District Hospital on 26th November, 1987 and taken to Machakos General Hospital for X-Ray examination disappeared without trace on 1st December

1987;

(b) where his whereabouts are; and,

(c) what compensation the patient's family will receive from the Government as a result of the loss.

**Mr. Speaker:** Mr. M. Maitha, I understand that the Minister is not here and that---

**Mr. M. Maitha:** Mr. Speaker, Sir, the Assistant Minister is here.

**Mr. Speaker:** I am sorry. What was I told?

**The Assistant Minister of Health** (Mr. Konchella): Mr. Speaker, Sir, I wish to apologise to the House for not being here in the morning to answer the Question. The Minister had instructed me to answer the Question but she is out of town. Unfortunately, I did not get the information in time because I was also out of town. I apologise to the House.

Mr. Speaker, Sir. I beg to reply.

(a) I am aware that a patient---

**Mr. Speaker:** Order! I have some advice for hon. Members and Ministers. When you have informed the Chair about your unavailability and subsequently you avail yourself, then please cancel the first request to the Chair, so that it does not look like it does not know what you are doing.

Proceed!

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

(a) I am aware that a patient by the name of James Munywoki Makau was admitted at Kangundo District Hospital on 26th November, 1987. He had head and chest injuries, giving a history of having fallen into a pit latrine. He was referred to Machakos General Hospital for further treatment where he was recorded to have been seen as an out-patient on 30th November, 1987.

(b) Since available records indicate that he was seen at Machakos General Hospital as an out-patient, it is not possible to know his whereabouts. However, I appeal to any relatives who may have relevant information pertaining to the patient's whereabouts to avail it to the Government.

(c) In view of what I have stated in (a) and (b) above, the issue of compensation does not arise.

**Mr. M. Maitha:** Mr. Speaker, Sir, the answer given by the Assistant Minister is quite wrong because the information I have is that this patient had head injuries and was admitted to Kangundo District Hospital but only taken to Machakos General Hospital for an X-Ray examination, so that his injuries could be determined. Why did they, first of all, take him to Machakos General District Hospital for the X-Ray examination, if they are saying he was taken there as an out-patient?

**Mr. Konchella:** Mr. Speaker, Sir, he was referred to Machakos General Hospital because his head was swollen and thus, an X-Ray examination was necessary but more so, to see a surgeon so that he could determine whether he needed surgery or not. That is why he was referred there.

**Mr. J.M. Mutiso:** Mr. Speaker, Sir, you have just heard the Assistant Minister say that the patient required surgery and we know very well that he had chest and head injuries, having fallen into a pit latrine. How come that the patient, after being referred to Machakos General Hospital, was an out-patient instead of an in-patient?

**Mr. Speaker:** Mr. M. Maitha, to help the House, do you have the patient's in-patient's admission number because they normally have one when admitted?

**Mr. M. Maitha:** Mr. Speaker, Sir, I can bring the in-patient number, probably next week. Therefore, I request you to defer this Question to next week so that I can bring the in-patient number.

**Mr. Speaker:** Order, hon. Members! I will very reluctantly do so. I think it is the duty of hon. Members, when they ask Questions, to have all the facts, so that they can participate fully in

the House and let it make progress in its work. The Question is deferred for two weeks. Get the number and relay that information to the Assistant Minister before you come to the Floor of the House.

*(Question deferred)*

*Question No.120*

VIOLATION OF TRAFFIC  
REGULATIONS BY MOTORISTS

**Mr. Speaker:** The Question by Mr. Mukiri is deferred to next Tuesday at his request. Mr. Michuki, you look baffled!

**The Minister for Transport and Communications** (Mr. Michuki): Mr. Speaker, Sir, I am fine. However, I think the hon. Member ought to, at least, have had the courtesy to inform the Ministry that he would be absent.

**Mr. Speaker:** Very well. I think we should all have courtesies. Ministers should have the courtesy to inform hon. Members when they are not ready to answer the Questions and hon. Members to inform the Ministers when they seek their Questions to be deferred, so that we have an all round courtesy.

Thank you, Mr. Michuki. The Question is deferred to next Tuesday.

*(Question deferred)*

*Question No.112*

IMPLEMENTATION OF REP  
PROJECTS IN EMBU

**Mr. Wambora** asked the Minister for Energy:-

(a) how much money was allocated to Embu District Rural Electrification Programme during 2003/2004 Financial Year; and,

(b) how much of that money has been allocated and utilised for specific rural electrification programmes in each of the two constituencies in the district.

**The Minister for Energy** (Mr. Ochilo-Ayacko): Thank you, Mr. Speaker, Sir.

I beg to reply.

(a) In the Financial Year 2003/2004 a total of Kshs11,147,058 had been allocated to Embu District for rural electrification.

(b) Out of the allocation mentioned in (a) above, a total of Kshs8.6 million has been committed to finance the implementation of projects in each one of the two constituencies in Embu District. The projects are Kathangari in Manyatta Constituency and Mururiri-Gogo in Runyenjes Constituency and are estimated to cost about Kshs4 million and Kshs4.6 million, respectively.

**Mr. Wambora:** Mr. Speaker, Sir, the answer by the Minister is okay, but I am not happy with the way his Ministry has committed the money especially for Runyenjes Constituency. I am saying this because, earlier on, he told us that he would consult me and the District Development Committee (DDC) so that the projects which have already been prioritised by the DDC, and have raised 10 per cent of the money, are considered. How, then, did he decide to select a project on his own from the headquarters without following the advice of the area Member of Parliament and the DDC? As the area Member of Parliament and a Member of the DDC, I can table documents to show our priorities.

**Mr. Ochilo-Ayacko** Mr. Speaker, Sir, the Ministry of Energy receives a lot of requests to

execute in respect of rural electrification. Most of the requests do not come through Members of Parliament, rather they come through individual applicants who approach the Kenya Power and Lighting Company (KPLC).

The DDCs also forward the minutes of projects that they think are a priority. However, there are other projects that we intend to execute in Runyenjes and if the hon. Member is unhappy with this particular project, then, he can come to the Ministry's headquarters and indicate to us which projects are preferable to him.

**Mr. Abdirahman:** Mr. Speaker, Sir, I want to ask a question Mr. Wambora had asked in relation to planning. This is an issue I have been pursuing, not only with the Ministry of Energy, but also other several Ministries from early last year in this House. We want the Minister to categorically state the process which they use to generate information from communities. We know very well that, time and again, Government funding has been limited. The Rural Development Programme was phased out and the DDCs have not been active for the last two to three years. Could the Minister, very specifically, state the Ministry's process from the grassroots to the national level because I come from a constituency where no project by the Ministry of Energy has ever been initiated?

**Mr. Ochilo-Ayacko** Mr. Speaker, Sir, if there is a person interested in having electricity, the person or institution is expected to make an application to KPLC which would give a response indicating how much money the implementation of that scheme would take. The second step is that the person or institution is expected to commit 10 per cent to show that the person is serious and KPLC will be able to do a final design of what the scheme would look like. After this, the person can---

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

**Mr. Speaker:** What is it?

**Mr. Kimathi:** Mr. Speaker, Sir, the Minister is misleading the House because he does not have the latest news. KPLC is no longer collecting 10 per cent before there is evidence of the 90 per cent!

**Mr. Speaker:** Order! Order! That is not a point of order. Who has told you to rise unnecessarily on a point of order? Next time you are frivolous, you will see outside the door!

**Mr. Kimathi:** Mr. Speaker, Sir, I am still learning---

**Mr. Speaker:** Relax! Relax!

**Mr. Ochilo-Ayacko** Mr. Speaker, Sir, normally when you apply for electricity, it is assumed that you have the resources to pay for the expenses and so it is upon the person or institution to decide whether to approach the DDC and declare that the project is a public one and should, therefore, be funded under the Rural Electrification Programme (REP). Also, the person can get an endorsement from the relevant hon. Member. He, then, avails the entire amount of money. Otherwise, the commitment of the 10 per cent is to enable KPLC to do the design. After that has been done, the next step is to determine whether the person has raised the entire balance or the project has been recommended under REP. The final step is that if the person pays as a commercial entity, then, the project's electrification is executed by KPLC and if it comes to the Ministry as having been categorised under the REP, then the Ministry will look at the value addition. If it is a project that will benefit more people, it is ranked higher than a project that would only benefit an individual.

**Dr. Godana:** Mr. Speaker, Sir, this subject of rural electrification is the concern of each and every Member of this House with the exception, perhaps, of hon. Members from the cities of Nairobi, Mombasa and Kisumu. Could the Minister tell us whether he will ensure that, in the forthcoming Budget, which we know he is preparing now, he will make some provision for rural



electrification in every district or constituency, however small?

**Mr. Ochilo-Ayacko** Mr. Speaker, Sir, that is the ideal position, but it is only possible to make provision for districts that are currently covered under the grid. There are intentions to expand the grid to certain districts that have been falling without the grid. For instance, we are moving to Tana River District. We are also trying to get additional generators for Garissa District. Also, we are doing something about Mandera District. However, it is not realistic to cover all of them because of financial limitations.

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

**Mr. Speaker:** What is it Capt. Nakitare?

**Capt. Nakitare:** Mr. Speaker, Sir, thank you for giving me this chance. I would like to ask the Minister if he is aware that---

**Mr. Speaker:** Order, Capt. Nakitare!

*(Laughter)*

Order! Order, Members! What is happening? I want, again, to ask hon. Members to know what a point of order is all about. An hon. Member can only rise on a point of order if another hon. Member on the Floor has breached some order, rule or decorum of the House. You do not stand on a point of order to ask a supplementary question. I know some Members are, maybe, misled by certain publications that have been released of late. Certain publications of very---

*(Loud consultations)*

Order! Certain publications of very disputed ability to assess what happens in the House, have of late misled hon. Members. I can actually notice that hon. Members stand on points of order so that they are recognised even if their point of order is a nuisance and has no value. So, please, let us ignore those publications. In fact, do not give them any credibility because they do not have it. They do not assess what the value of the contribution is. I hate to think that I would be your prefect to say who is the best. I think your voters are better judges, but certainly an hon. Member standing on numerous and irrelevant points of order must not be taken to be the most active hon. Member of Parliament.

*(Applause)*

If you actually go through that record with a person who is well versed with parliamentary procedures, maybe, it will prove that that Member was the most disorderly in breaching the rules of procedure.

*(Laughter)*

So, let us now proceed! Mr. Wambora!

**Mr. Wambora:** The Minister for Energy has told us again, just like he did tell us last year, that the criteria used is for the Kenya Power Lighting Company (KPLC) to assess the cost of the project, then the group contributes 10 per cent. The Minister is not being honest to the House, because the project he has selected, and which is in my location, was submitted by the Nominated Member of Parliament to his Assistant Minister. The value of that project is Kshs23 million and they have not raised a single cent towards the 10 per cent deposit as required.

I will table a document that I presented to the Minister, dated 15th October, 2003, and a letter from the District Development Committee (DDC), indicating the projects in my constituency which have, at least, raised the required 10 per cent deposit and he has ignored them. Now, I want to ask the Minister to keep his word that those projects which have contributed 10 per cent, have gone through the DDC and have been submitted in the proper manner, will be funded.

*(Applause)*

**Mr. Ochilo-Ayacko:** Mr. Speaker, Sir, I did not know that there was a dispute between the hon. Member and the Nominated Member of Parliament from the constituency.

Hon. Wambora approached me and submitted some projects, and I have already considered them. We intend to implement them under the French Credit Phase II. The projects in the district under that credit are as follows:

- (1) Gatituri Market and Chief's Camp;
- (2) Njathaini, Gikambara and Gatiru Markets;
- (3) Njagairi Market;
- (4) Bubori Market;
- (5) Ugweri Market;
- (6) Kiamuruki; and,
- (7) Njukiri Markets

These are the projects from the district which he submitted for my attention.

In conclusion, I would like to say that the area Member of Parliament should be happy that the projects are being executed in his constituency.

*(Applause)*

**Mr. Speaker:** Next Question by Mr. Kimeto!

**Mr. Kimeto:** Mr. Speaker, Sir, before I ask my Question, I would like the name of "Pauline Chepkuriri Kosge" appearing on the Order Paper to read as "Pauline Chepkurui Kosge".

*Question No.115*  
COMPENSATION FOR  
MS. CHEPKURUI KOSGE

**Mr. Kimeto** asked the Minister for Environment, Natural Resources and Wildlife:-

(a) whether he is aware that Ms. Pauline Chepkurui Kosge was attacked by a stray hippopotamus on 21st March, 2003, at Ndanai Location, Sotik Constituency, and broke three ribs and one arm; and,

(b) what compensation he will pay Ms. Kosge for the injuries sustained, which have left her incapacitated for the rest of her life.

**Mr. Speaker:** Where is the Minister? Mr. Kimeto, I am afraid that the Minister is not here!

**Mr. Kimeto:** I would like to postpone my Question until such time---

**Hon. Members:** Dr. Khalwale!

**Mr. Kimeto:** Mr. Speaker, Sir, I am being informed that Dr. Khalwale is here on behalf of the Minister.

*(Applause)*

**Mr. Speaker:** Order! Order! Dr. Kituyi, would you answer this Question?

**The Minister for Trade and Industry (Dr. Kituyi):** Mr. Speaker, Sir, I am ready to take your instructions to the relevant Minister.

**Mr. Speaker:** Well, then, take the following instructions to all Ministers.

As I was listening to the Morning Sitting proceedings, only one Minister was present. There is, certainly, an improvement this afternoon. But in the morning, there was only one Minister in the whole House. Now, take the following instructions to your colleagues: The Chair and the House will consider it contemptuous of the House by any Ministers who fail to turn up, particularly in large numbers. If a Minister cannot avail himself or herself, he or she should, at least, bother to let the Chair know of his or her absence. Otherwise, this is now becoming contemptuous of the House. Please pass that message.

**The Minister for Trade and Industry (Dr. Kituyi):** Mr. Speaker, Sir, I undertake to do that, only that I was in this House this morning, and I was not the only Minister present!

**Mr. Speaker:** How many were you?

**Hon. Members:** Only two!

**Mr. Speaker:** Order! Order, Members! Maybe you were not alone, but you had the company of only one more. That does not absolve the Government, to whom the Front Benches have been allocated at the taxpayers expense, to come to Parliament and sit there to answer Questions. We actually pay you to do that! The House expects you to answer Questions. I am being a little serious on this issue, although I could be more serious than this, but I am being just a little serious. So, pass the message.

Hon. Kimeto's Question is deferred until Tuesday, next week.

*(Question deferred)*

*Question No.019*

RELEASE OF SCIP FUNDS TO GUSII  
CO-OPERATIVE SOCIETIES

**Mr. Obwocha** asked the Minister for Co-operative Development and Marketing:-

(a) how much of the SCIP I and II funds were released to Gusii Coffee Co-operative Societies; and,

(b) whether he is satisfied that the funds were properly accounted for.

**The Minister for Co-operative Development and Marketing (Mr. Ndwiga):** Mr. Speaker, Sir, I beg to reply.

(a) The outstanding loan balances of the total amount released to the Gusii Coffee Co-operative Society is Kshs4,506,193-10 and Kshs43,790,860.

(b) An Inter-Ministerial Task Force has been set up to look at the utilisation of the funds, with a view to determining the societies that qualify for loan write-offs.

**Mr. Obwocha:** Mr. Speaker, Sir, The Minister has said that an Inter-Ministerial Task Force has been set up to look into these debts with a view to writing them off. I have not asked for a write-off. I have asked whether these funds have been properly accounted for. This is Small Coffee Improvement Projects I and II (SCIPs). We want to know whether these funds have been properly utilised. Could the Minister tell us how much money was given to the Kisii Farmers Coffee Co-operative Union? This society is known to have squandered a lot of funds belonging to the farmers.

**Mr. Ndwiga:** Mr. Speaker, Sir, the hon. Member will appreciate that my Ministry conducted an inquiry into that society, particularly because I was convinced that the society had squandered the farmers' funds. The inquiry indicated that a lot of money was embezzled from that society. I am not satisfied that the SCIP funds were properly utilised. Indeed, the reason why most coffee co-operative societies are in deep trouble is because of the SCIP programmes. Most of the funds were not properly utilised and, therefore, members of the respectively co-operative societies remain with high debts yet the programmes were not undertaken. Farmers are unable to repay the loans. That is why we have set up the Inter-Ministerial Task Force to look into ways of relieving the farmers of that burden.

**Mr. Kaindi:** Mr. Speaker, Sir, could the Minister, as a matter of national concern, explain to this House what measures he is taking to improve the management and the organisation of the co-operative societies which squander their members' money and yet the brunt of that goes to the farmers?

**Mr. Ndwiga:** Mr. Speaker, Sir, I invite the hon. Member to look at today's Order Paper and he will see that I have brought the Co-operative Societies (Amendment) Bill to this House. It is the third one after the Privatisation and the Government Financial Management Bills. That is what I intend to do.

**Mr. Obwocha:** Mr. Speaker, Sir, part of this money was given to Nyangoko Coffee Factory in my constituency. Could the Minister inform this House how much money was given to the coffee factory? The money was for the electrification of the factory, but the project was only half-done. Could the Minister consider giving additional funds to that factory to complete the power project?

**Mr. Ndwiga:** Mr. Speaker, Sir, like I said, that problem is in many coffee co-operative societies. Indeed, most of them have not completed the electrification projects because the funds were embezzled. We have discussed the issue with the Co-operative Bank of Kenya and if the co-operative society approaches the bank in Kisii, they will look at their balances and consider whether to give the factory more funds.

The electrification of coffee factories was under another programme and my colleague has confirmed to me that funds meant for this programme were not utilised. That is one issue we have with the European Union. This does not fall under SCIP, but under the STABEX funds.

### QUESTION BY PRIVATE NOTICE

#### COMPENSATION FOR VICTIMS OF UNEXPLODED ORDINANCE

**Mr. Ngoyoni:** 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 on 18th February, 2004, two boys, namely, Sukule Timado (12 years) and Iitinga Mirgichan (14 years) were injured by unexploded ordinance at the British Army Training Field at Lore Soro?

(b) Is he further aware that 15 head of cattle were also killed during the above incident?

(c) What measures is the Minister taking to ensure that the families of the victims are compensated and hospital bills incurred at Wamba Hospital settled?

(d) Could the Minister halt any further military exercises until the area is cleared of any unexploded ordinance?

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

(a) Yes, the Government is aware that there have been incidents at Samburu Range. So far, four incidents have occurred as revealed by our preliminary investigation. The incidents took place

on 15th February, 2004, 25th March, 2004, 15th April, 2004 and 20th April, 2004 respectively. Whereas our records do not show any incident on 18th February, 2004, I appreciate the concern raised by the hon. Member. Meanwhile, a comprehensive investigation team is undertaking findings on all the incidents that have occurred and those that have not been reported by the preliminary investigation team with a view to concluding the matter, once and for all.

(b) and (c) Apart from dealing with human injuries, once the investigations are completed, they will bring out other collateral damages and possibilities of settlement of the hospital bills. The team will also come up with a formula for compensation, where possible.

I would like to assure the hon. Member that the Government is very concerned about the incidents. Hence, we will ensure that justice has taken its course.

**The Minister for Trade and Industry** (Dr. Kituyi): On a point of order, Mr. Speaker, Sir. At the risk of looking like one wanting to improve the statistics on my first point of order this year, while appreciating the fact that when dormant ordinances explode they can cause havoc, and they wreck havoc in that part of the world, could you assist the slow-footed, like myself, to understand how an unexploded ordinance can kill cows?

**Mr. Speaker:** Order! It comes in the following version. First, an ordinance is fired by the army or by anybody else and it lands without exploding. It attracts children to play around with it and then it explodes. So, I hope now you understand!

*(Laughter)*

**Mr. Ngoyoni:** Mr. Speaker, Sir, the Assistant Minister had not finished answering the Question.

**The Assistant Minister, Office of the President** (Mr. Dzoro): Thank you Mr. Speaker, Sir.

(d) The Government has no plans to halt any further military exercises in Samburu Range as it is a gazetted Military area; a danger area. Whenever Samburu Range is active, the local Provincial Administration is informed by the Military to alert the surrounding communities of the danger of the on-going exercises, and also the danger of unidentified objects. Besides the local administration, a Safety range officer is always available on site and he liaises with the local populace. Further to this, exercise pinnacle is carried out for clearance of unexploded ordinance on completion of any exercise. This reduces the vulnerability of such incidents.

Following these unfortunate incidents, the Government has put in place proper supervisory measures and checks on the ground.

**Mr. Speaker:** Mr. Ngoyoni, has your Question been answered?

**Mr. Ngoyoni:** Mr. Speaker, Sir, the written answer that I have has a lot of variance with the answer the Assistant Minister has read and is unsigned. It bears the name hon. Dr. Christopher Murungaru, MP. Maybe you can help me.

**Mr. Speaker:** I am asking that because I was listening to the Assistant Minister and he gave a general answer to the Question. I do not think he addressed the issue of the two boys. Mr. Ngoyoni, are you happy with the way the Question has been answered?

**Mr. Ngoyoni:** Mr. Speaker, Sir, not at all. Could you defer it? His answer was too general for my Question. My Question was quite specific. Can we defer it?

**Dr. Godana:** Mr. Speaker, Sir, it is clear that he has not answered the specific Question. It may be right for you to defer it. I think that it is good that we raise other related concerns, so that when he comes back, he can come up with a comprehensive answer. I, therefore, would like to pose two supplementary questions to him so that he takes care of them when he comes back with his supplementary answer.

What is the status of the pieces of land which have been gazetted? Are they still trust, within Samburu and Marsabit Districts? Is it Government land, meaning that the status of the land has changed and, therefore, it is not trust land which is available for grazing by the local people?

What accounting safeguards are there to ensure and account for each and every piece of ordinance that is used there so that, at the end of the exercise, the military knows how many of their ordinances they fired exploded and how many unexploded items they left in the field?

**Mr. Speaker:** Very well, I will leave it at that. I will defer the Question because the Assistant Minister has not dealt completely with the issues that have been raised by Mr. Ngoyoni. Mr. Assistant Minister, you have to know the facts. Send your people to the ground so as to address the issue that has been raised by the hon. Member. How long will you require?

**Mr. Dzoro:** Mr. Speaker, Sir, I will answer the Question on Wednesday next week.

**Mr. Speaker:** Is that okay with you, Mr. Ngoyoni?

**Mr. Ngoyoni:** Mr. Speaker, Sir, I would like to give some information to the Assistant Minister. As we talk now, the boys are not only incapacitated but also have pieces of ordinances in their bodies and are lying at the Wamba Mission Hospital untreated. Maybe the Assistant Minister could do something meanwhile.

**Mr. Speaker:** Is there anything that the Government can do about the boys?

**Mr. Dzoro:** Mr. Speaker, Sir, the concerns raised have been noted and appropriate action will be taken.

**Mr. Speaker:** Very well! We will defer the Question to Wednesday. I hope that, meanwhile, the Assistant Minister will address the issue of those two little boys, and take care of their health, their lives and help them recover.

Is there any Minister with a Ministerial Statement?

### MINISTERIAL STATEMENTS GOVERNMENT POLICY ON DEMOLITIONS

**The Minister for Energy** (Mr. Ochilo-Ayacko): Mr. Speaker, Sir, I wish to give a Ministerial Statement regarding Government policy on demolitions. This is a response to a request for a Ministerial Statement sought by hon. Mwenje.

The policy of the Government is to clear all illegal structures encroaching on power lines wayleave stretch and road reserves. Over time, substantial encroachment has occurred involving illegal allocation of land and construction of structures mainly residential and commercial buildings. This policy is the commitment on the part of Government to immediately clear roads and wayleaves of illegal and unauthorised structures, so as to offer quality transport, roads, and electricity to the people. However, this exercise has been temporarily halted to enable the relevant Government departments to give sufficient notices, and also to allow those affected to salvage some of their goods or items.

The Government is aware that the owners of these structures do not have legitimate rights to the property and have, therefore, no stake over the parcels of land that they have encroached upon. It is also an offence to infringe on the wayleaves and we will continue to enforce the law to ensure the provision of quality electricity services as well as the safety of people living under the power lines. I would like to appeal to all those affected and their hon. Members of Parliament to co-operate with us to ensure that this exercise is successful.

The encroachment that is going on, particularly under the power lines, is a danger to these people and also affects the quality of supply of electricity to the City and to the country.

**Mr. Speaker:** Who raised the issue?

**An hon. Member:** Mr. Speaker, Sir, it was Mr. Mwenje.

**Dr. Godana:** Mr. Speaker, Sir, when last time this issue was raised, I sought a more authoritative Statement from the Minister for Justice and Constitutional Affairs because the issue touches on the very essence of what the law says regarding demolitions. Who has the power to demolish and what is the source of the power? Is it within the purview of a Minister's political power to wake up one morning and decide that a particular building was illegally erected and, therefore, order its demolition? Do demolitions have to be justified by way of judicial endorsement? We are still in the same confusion. The Minister has handled the matter from the technical side. This House needs to be given a comprehensive Statement by either the Minister for Justice and Constitutional Affairs or the Attorney-General on what the law is as regards demolition of buildings.

**Mr. Kipchumba:** Mr. Speaker, Sir, I wanted to seek a clarification from the Minister. There are some buildings that were, indeed, constructed before the power lines were put up. I want the Minister to give us an explanation. Now that some of the power lines were put up after the buildings, and the owners of the buildings have plans that were approved by the various local authorities and Government arms, what is the Government's position on this? I thought that it is easier to move the power lines than demolish the buildings whose construction was approved by the Government?

**Mr. Kombe:** Mr. Speaker, Sir, I wish to seek clarification from the Minister. The Ministry is giving notices to people now. However, some people who are being given notices have already put up houses in certain areas, where there are no power lines. The KPLC wants the houses demolished so as to have power lines passing through those areas. What is the position of the Ministry regarding such an issue, because my people at Marereni have been issued with the notices?

**Mr. M'Mukindia:** Mr. Speaker, Sir, I would also like the Minister to clarify to this house exactly the length of the notice that he is giving to people, who may have built houses below these power lines. He should also tell us, as a matter of Government policy, exactly how long the notices take to expire. Sometimes they take only a week, a day, two days or three when someone has already put up a house worth Kshs1 million. Could he give us the length of time of the notice?

**The Minister for Energy (Mr. Ochilo-Ayacko):** Mr. Speaker, Sir, as regards the point raised by hon. Godana, the demolitions are premised upon the fact that the structures are built on land that does not belong to the builders. The land where there are lines, and the wayleaves, under which the structures have come up, belongs to the Kenya Power and Lighting Company (KPLC). As regards the structures that are constructed on road reserves and areas that were set aside for roads, the Government firmly believes that the people who purport to have title deeds do not have proper and lawful titles. However, the dispute arising from such cases can be referred to courts. That will not stop Government plans to provide roads to the citizens of this country and ease congestion in the City. Regarding pulling down of buildings that are under power lines, the Ministry of Energy and the KPLC are negotiating with people who have put up permanent structures. We are trying to find alternatives, although it is a little costly. We intend to take most of the power lines, especially the ones that are 33KVA, underground. However, we are negotiating with the owners of the buildings to help us meet the additional costs. We are, therefore, not planning to pull down the buildings.

Already negotiations have been going on in Dagoretti Constituency. They will take place in other parts of the City. Regarding people who live under power lines and have temporary structures, it is being arranged for them to have alternatives. They should settle elsewhere for their own safety. The length of notices is about ten weeks. Already, a lot of people have co-operated. They have taken our notices seriously and have moved out of the wayleave lines. Others have also

pulled down structures that were infringing on road reserves, for instance along Ngong Road.

**Mr. Kombe:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The Minister gave clarifications to other questions but he has not given clarification on mine. I do not know whether he is in order.

**Mr. Speaker:** Well, I do not know. I do not speak for the Minister.

**The Minister for Energy** (Mr Ochilo-Ayacko): Mr. Speaker, Sir, I did not understand the clarification sought. If you indulge the hon. Member to repeat himself I will be happy to respond to his request.

**Mr. Speaker:** What was it?

**Mr. Kombe:** Mr. Speaker, Sir, the clarification I sought is that Kenya Power and Lighting Company has given notices to residents of Marereni Village in Magarini Constituency to pull down their structures, so that power lines can pass through that area. I wanted to find out from the Minister if that is really in order, because my understanding is that the Ministry has been finding out from affected residents of other areas whether it is possible for it to erect power lines through their areas. In this case they are giving notices where they are not supposed to give them.

**Mr. Speaker:** Mr. Minister, if I understand him right, you have been demolishing buildings because you had erected your power lines and people went and build under them. So, you have to remove them because they found you there. Now the hon. Member is saying that you are finding people there and removing them, so that you can install your power lines. In other words, you are displacing the people. What will you do about it?

**The Minister for Energy** (Mr. Ochillo-Ayacko): I am sorry, but that is not the correct position. In places where we are asking people to move away in order to install power lines, we compensate them because they were there before us. We compensate them adequately. That has happened in Kiambu area. If, indeed, what the hon. Member is raising is happening, he can rest assured that if his people were to give way they would be compensated. I do not think that the point falls under this Ministerial Statement.

### POINTS OF ORDER

#### STATE OF HABASWEIN-MODOGASHE ROAD

**Mr. Abdirahman:** On a point of order, Mr. Speaker, Sir. I stand to seek a Ministerial Statement from the Ministry of Roads, Public Works and Housing regarding the very bad state of Habaswein-Modogashe Road, and more specifically the Habaswein Bridge, which is on the Uaso Nyiro River, which is seasonal. In the last ten days, people have not been able to come to Garissa and beyond. One Government officer, whom I talked to this morning told me they had to pass through Daadab in Lagdera Constituency, thereby travelling an additional 260 kilometres. This does not ordinarily happen when they have to come directly to Garissa. That bridge is actually the lifeline of people in Wajir and Mandera Districts.

People have already started crying that there is shortage of food commodities. The funds that we have at the districts commonly referred to as the DRC funds are not sufficient to cater for the damage that we have already experienced on the bridge. People were using a diversion and I am told the culverts were washed away following the heavy rains on the 17th of this month. What urgent steps will the Ministry take to restore that road to good condition?

**Mr. Speaker:** Very well. I hope there is a Minister to respond to that.

#### KILLING OF TWO NGOMONGO ESTATE RESIDENTS



**Mr. Omondi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I rise to seek a Ministerial Statement from the Minister of State in charge of internal security and Provincial Administration regarding the following. Over ten people invaded a residential flat in Ngomongo Estate in Nairobi on Saturday 17th April this year, between 8.00 p.m. and 9.00 p.m., harassed and beat up the residents, occasioning the deaths of two people, one of whom was a 15-year-old school boy. I seek that Statement from the Ministry.

**Mr. Speaker:** Very well.

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

What is it, Mr. Ndambuki? You must always catch the eye of the Chair.

CLOSURE OF COCA COLA  
BOTTLING PLANTS

**Mr. Ndambuki:** On a point of order, Mr. Speaker, Sir. Yesterday I requested a Ministerial Statement from the Minister for Trade and Industry on two factories, which will be closed this Friday, but it seems as if the Minister has just walked out.

**Mr. Speaker:** Order, hon. Members. I have told hon. Members several times that the best way to get a Minister to be committed to the House is to ask a question. We are now supplementing Questions with Ministerial Statements. It is laziness on our part. Ministerial Statements should be on matters of policy. Closing of a factory is not a matter of policy. It is an actual fact. It will be closed. You should ask a Question, so that the Minister will come to the House and say why it is being closed.

**Mr. Ndambuki:** Mr. Speaker, Sir, I asked for the Ministerial Statement because 20,000 Kenyans will lose their jobs of Friday.

**Mr. Speaker:** Mr. Ndambuki, that does not alter the fact that you must proceed by way of a Question. Please go and do it because once you do that, the Minister will come here and answer the Question. If he does not, you can entreat me to come to your assistance. Please do it now and I will facilitate you as quickly as possible.

**Mr. Ndambuki:** Mr. Speaker, Sir, I have heard you, but for the last time could you ask the Minister to answer this one and I will not do that again.

**Mr. Speaker:** No! He cannot answer. It is not a Question. You are asking him to make a Ministerial Statement.

**Mr. Ndambuki:** Mr. Speaker, Sir, I asked for it and he knew about it. I am very much concerned because these are Kenyans who will lose jobs. The Minister should have just issued the Statement.

**Mr. Speaker:** Let me tell you the following. I have absolutely no power to force a Minister to come and make a Statement, but I have power to ask a Minister to answer a Question that is before the House. So, will you please proceed along those lines. Is there anyone here from the Ministry of Trade and Industry?

**An Hon. Member:** The Assistant Minister is here!

**Mr. Speaker:** Does he know anything about those factories?

**The Assistant Minister for Trade and Industry (Mr. Miriti):** Mr. Speaker, Sir, the hon. Member was advised that the Ministerial Statement will be issued next week.

**Mr. Speaker:** Very well. We will now make this the business of the House.

Now, is there anybody here from the Ministry of Roads, Public Works and Housing to take note of the Ministerial Statement being sought by Mr. Abdirahman? There is nobody from that Ministry. Mr. Abdirahman, I am sorry I cannot help.

**Mr. Abdirahman:** Mr. Speaker, Sir, I thought that, under collective responsibility, a Minister may undertake to communicate to a colleague, unless we are setting up new precedent where no Minister can take responsibility or---

**Mr. Speaker:** Order, Mr. Abdirahman! Let us be of help to you. Mr. Mungatana, could you pass this message to the Minister for Roads, Public Works and Housing?

**The Assistant Minister for Regional Development** (Mr. Mungatana): Yes, Mr. Speaker, Sir.

*(Laughter)*

*(Mr. Katuku moved towards  
the microphone)*

**Mr. Speaker:** Mr. Katuku, what are you doing there? You cannot just take the microphone without my authority!

**The Assistant Minister for Finance** (Mr. Katuku): On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** What is it? Now, that is the right procedure for you to follow. Proceed!

**The Assistant Minister for Finance** (Mr. Katuku): Mr. Speaker, Sir, now that Mr. Mungatana has undertaken to pass over the message to the Minister for Roads, Public Works and Housing and, going by the mood of the House, it appears that the House does not take him seriously, I wanted to undertake to do exactly what Mr. Mungatana has said he will do.

*(Laughter)*

**Mr. Speaker:** Order, Members! We must now move on!  
Next Order!

## BILLS

### *Second Reading*

#### THE PRIVATISATION BILL

*(The Assistant Minister for Finance  
(Mr. Katuku) on 21.4.2004)*

*(Resumption of Debate interrupted  
on 27.4.2004)*

**Mr. Speaker:** Mr. M. Kilonzo, you have 23 minutes to make your contribution.

**Mr. M. Kilonzo:** Thank you, Mr. Speaker, Sir. I am very grateful for your indulgence that I continue with my contribution to this Bill.

When I was on the Floor yesterday, I took the opportunity to point out the dangers of passing a law of this nature because, it is not only badly drafted, but it also ignores very serious

issues pertaining to the dangers, risks and the problems of privatisation. It is common knowledge that in modern times, at least in the last few years, privatisation is now called, "*briberisation*" for reasons that I will demonstrate as I continue to make my contribution. One of the reasons I say that I should not be understood to be opposing privatisation as a policy is that if you privatise Kenyan enterprises using a law like this, you will, in fact, more or less be passing away the State to private individuals.

Mr. Speaker, Sir, I would like to start by looking at Clause 2, which defines privatisation. Hon. Members will notice very clearly that, in the definition of privatisation, it is not stated nor is it clear to whom a transfer will be made. That is one of the reasons why modern economists are calling privatisation, "*briberisation*". Unless a country has a clear policy on to whom transfers of public entities can be made, the dangers of abuse are tremendous.

Secondly, if you look at the definition of privatisation in Clause 2(a), it states that:-

"Privatisation" means a transaction or transactions that result in a transfer, other than to a public entity, of any of the following:-

(a) assets of a public entity including the shares in a State corporation"

Mr. Speaker, Sir, to give you a few examples, if you take the Tana and Athi Rivers Development Authority (TARDA) and the Kerio Valley Development Authority (KVDA), they both fall under that category. Is it right for this august House to pass a law that enables the Cabinet, in very shallow consultations to sell off entities of that nature, that are rendering essential services to our country, and whose value cannot actually be ascertained in monetary terms?

Further on in the definition, you will find confirmation of what I submitted yesterday; that a public entity includes a Government department. I know that the NARC Government took over power from the KANU regime, but it is amazing that NARC is now proposing that this House authorises the Government to sell its departments. It means that, in fact, very easily the Ministry for Justice and Constitutional Affairs can be sold off, if you use this definition. Therefore, this is a law that should not be allowed to go into our Statute books. It is an extremely dangerous law. If you imagine a situation where some people can sit somewhere, calling themselves a Privatisation Commission, and then they sell a Government department, you are setting up a law that will totally destroy the very fabric of our society.

Mr. Speaker, Sir, Clause 3(1) simply says:-

"There shall be a privatisation programme."

Again because of the design of the Act, and I am extremely amazed because this country knows that the case of the privatisation of Kenya Airways is now being used as a model, not only in East Africa, but also all over the world. It is being used for teaching classes both in law as well as in investments, as to how a country can engage in privatisation. Therefore, when you find a draft of a law of this nature, which ignores our own home grown experience in privatisation by merely saying that there shall be a privatisation programme without spelling out time scales of when, where and how this will be done, it is a law, with all due respect that I urge the House to reject. That very clause alone states that, "There shall be a privatisation programme", without spelling out the modalities and that is extremely dangerous.

Mr. Speaker, Sir, Clause 3(2) states that:-

"The privatisation programme shall be formulated by the Commission and approved by the Cabinet."

As I mentioned yesterday, this is an extremely dangerous legislation to put in place because it is not always that you get a Cabinet agreeing. Right now, it is obvious to hear people talk about collective responsibility.

Mr. Speaker, Sir, our country is saddled with a Cabinet that differs more often than not; they

are insulting each other across the country. Therefore, I urge, and I very humbly make this request, that if the House deems it fit to pass this law, then this clause should be amended to make sure that, that approval is given by Parliament. I will demonstrate this as I go further in putting in my comments.

Mr. Speaker, Sir, if you look at Clause 4, again as I said yesterday, you will notice that it is clear that this law has been created purely for purposes of pleasing organisations like the World Bank because it is written like a text in an Economics class. Clause 4(1) says:-

"In formulating the privatisation programme, the Commission shall have regard to the desired benefits of the programme as described in Subsection (2)."

As I mentioned yesterday, this is not a phrase that you can use in law because it is not enforceable. You cannot tell a court of law to enforce a clause saying, "shall have regard". What other countries do, those which must accept a privatisation law, is to set up guiding principles that are binding on the Government and those charged with the responsibility of supervising the privatisation process.

Clause 4(2) is equally dangerous and confirms what I have been saying, that this is a law that is purely being imposed on this country for purposes of pleasing organisations that do not have the interest of this country at heart.

Clause 4(2) (a) says:-

"The desired benefits of the privatisation programme referred to in subsection (1) are the following:-

(a) the improvement of infrastructure and the delivery of public services by the involvement of private capital and expertise."

Mr. Speaker, Sir, this country is very well known by the Chair and this august House. We all know that the infrastructure in Kenya is not evenly distributed. There are areas that enjoy tremendous infrastructure. There are others that do not even have the infrastructure. There are districts in this country that do not even have a kilometre of tarmacked road. There are constituencies in this country which do not even expect to get electricity because, after listening to the Minister for Energy, he says that this will be done when funds become available. S

So, when you talk about the improvement of the infrastructure, you are, in fact, starting from the point that the infrastructure already exists.

Mr. Speaker, Sir, when you talk about the improvement of the infrastructure, you are, in fact, starting from the point that the infrastructure exists. Economists have recommended - and I do urge that upon the Government - that you must understand that you cannot address privatisation from the perspective of macro-economics. You must address it from a perspective of structural issues.

Sub-section (b) talks about the reduction of the demand for Government resources. There will never come a time, in a Republic like this, when Parliament will say that the Government should not give resources to its citizens. That is because it will also forfeit the right to tax them. As long as there is the law of taxation, and as long as you are providing for citizens to pay taxes, then you cannot also legislate for the reduction of demand for Government resources.

Mr. Speaker, Sir, if you look at Sub-clause (c) - and that is what brings me to the very key issue here - it talks about the generation of additional Government revenues by receiving compensation for privatisation. The World Bank and the International Monetary Fund (IMF) concentrates on macro-economics. It is more concerned about your deficit than whether you have rendered services to Mr. Katuku's Constituency in Mwala. Therefore, those are areas which are critical and must be lifted, transformed and changed, so that we can know that the Government will pay attention to the actual structural issues, as opposed to basic macro-economics. As I said

yesterday, and it bears repetition, there is nowhere in the world where a government regards governance as purely a matter of plus or minus a shilling. It is never an issue of money. The primary issue of governance is the provision of essential services to the country. Unless those are catered and properly provided for, then this law will be an extreme departure from the responsibility that the Government has to its citizens.

*[Mr. Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, Clause 6 is equally dangerous. It says:  
"The Minister may, with the approval of the Cabinet, make a regulation requiring the Commission to include in the privatisation programme, a transaction that is not a privatization, and this Act shall apply with respect to such transactions."

This is an extremely bad and dangerous law! Why? It is because the Minister is not answerable to Parliament. As I stated earlier, and I would like to repeat it again briefly, privatisation requires the existence of a very extensive infrastructure on markets, competition and distribution of resources across the board, so that no one region takes advantage of the other, or no one region grows at the disadvantage of the others. Therefore, when you leave that responsibility to one Minister in a situation where the Government, more or less, is sleeping on the desire and the request of this country for a new Constitution, you are encouraging not only the "*briberisation*" that is being talked about by the economist, but also an extremely dangerous situation where a few individuals will be the ones to decide what is to be sold or not and, more importantly, how much is to be paid for it.

Mr. Temporary Deputy Speaker, Sir, if you look at the history of privatisation, the only countries that have succeeded with proper privatisation, as I speak to you now, are Hungary, Poland and China. Those countries have managed to attract enormous direct foreign investment because of their policy of privatisation. It is also unanimous that those countries have rejected the prescriptions of the IMF and the World Bank. Those countries have gone for home-grown methods of carrying out privatisation. As a result, they have succeeded. Now, if you look at Clause 10 - Contents of Privatisation Proposal - it is outrageous that the Government is contemplating only the very few items that are shown here. Missing is the following: How will the privatisation process deal with the gaps that are created? That is because, automatically, once you start privatisation, it creates gaps. Look at the simple examples of Standard Chartered Bank and Barclays Bank. When those companies decided to cut their costs, they went round the country closing branches! They also undertook many other factors that removed banking facilities from ordinary Kenyans. So, that will happen again when you privatise. How will you deal with those gaps? It is missing from Clause 10 and this law.

Secondly, there is competitiveness of the industry. For some reason, the drafters of this law forgot that you cannot privatise, if the result of that is to create monopoly. The monopolies would then automatically create political incentives not to change them, because they would have developed their own cliches within the society, to make sure that they do not attract competitiveness.

Mr. Temporary Deputy Speaker, Sir, it is common knowledge that, by the time Kenya Airways was privatised, sufficient machinery that led to the creation of companies like Regional Air and African Safari Airline were put into location and yet, that was a model developed in this

country. If this law was in force at that time, you would not have been able to privatise Kenya Airways because of the fact that, those factors are not catered for.

Mr. Temporary Deputy Speaker, Sir, the other one is the social cost involved in privatisation. As I have said, it is almost always automatic that those who buy corporations belonging to the Government proceed in the following manner:-

(a) They start stripping assets. They pick certain assets to sell, so that they can recover their costs.

(b) They do lay-offs. They fire workers. They call it retrenchment.

Many people in this country think that it is only loss of employment that is a social cost. There is a social cost attached to the fact that the children of the person who has lost his job stop going to school. Sometimes, they even lose their wives because they no longer enjoy the income that the man was earning. So, Clause 10 must address the risk of asset stripping, social stability and loss of jobs and the consequences attendant to those very important factors that must be catered for.

With regard to Clause 12 - again to demonstrate why this law should not be accepted - it should be said at the very least, if the Government was serious, that the Commission shall implement each privatisation proposal as approved by Parliament. Then Parliament would have to say what method of approval would be used. It should either be a Sessional Committee or another form of committee to take care of that.

If you look at Clause 13, it is even more dangerous! It says that for each privatisation, there shall be a steering committee to implement the privatisation. Then, the steering committee is only an internal system of picking up the existing commissioners. There is no provision for professional advice. Again, I am sorry to go back to Kenya Airways. In order to privatise Kenya Airways, the Board had, first of all, to discuss with Swiss Air. If there was a committee like this, Kenya Airways would have been privatised to Swiss Air, and then it would have collapsed with it. But the Board recognised the problems of Swiss Air. Then it went and hired Speedlink in England, who then advised the company on how to privatise. But using the same members of the Commission to be in the steering committee without leaving room--- It will now be law! Mr. Temporary Deputy Speaker, Sir, we were able to do that in Kenya Airways because it was not law. But now it will be law. You cannot go and pick whoever you like. That means that you are not only committing what we call "institutional incest", but the danger of that is to kill the institution itself.

Mr. Temporary Deputy Speaker, Sir, regarding Clause 14 - Fair Value - how on earth would those people be able to value fair value of social services? Could it be possible to go to a market place in Kenya today, and establish the value of a bank branch that was withdrawn? If we were to privatise Kenya Commercial Bank today, and then the new owners say that they no longer want the branches that are spread out throughout the country, how would you value that loss to the Kenyan community? Therefore, when they talk about "Fair Value" in Clause 14, without giving some guidelines and telling the country what they want to achieve, what they would be valuing and what standard would be used--- Recently, we were faced with conflicting valuations of a parastatal and, in the end, it was not privatised because of those problems.

Clause 15 talks of both Kenyans and non-Kenyans. You can imagine the risks that have been approved in other countries, where you privatise and all of a sudden, you get capital flight. They come in, buy the shares and sell them in the stock exchange, again using the model of Kenya Airways. That is why I am saying this is a bad law. We merely put a clause saying you will not be able to sell your shares for a given period of time. But again, the drafters of this Bill have not considered that it ought to be a legal provision, because if you leave it out, they will say it is not in the Act.

Mr. Temporary Deputy Speaker, Sir, Clause 16 talks about "Minister may direct the

Commission---" We want the National Assembly to be the one to decide how the sale of Kenyan assets, if at all, is going to be managed and supervised. If this Bill is to be acceptable, then that Clause should be amended to include Parliament.

Clause 18 talks about a valuation without giving guidelines as to how you can value certain invaluable items offered by public resources.

If you look at Clause 20(4), you feel pity for the Government if they think this is the way to privatise our parastatals. I say this without fear of contradiction, that all the items included in Clause 20 (4)(a), (b), (c) and (d) are items that are negotiated commercially by those who want to buy your assets. You cannot put it into a Bill and say, "a state corporation to which this section applies shall not allow assets of the state corporation to be dissipated." You cannot say, "shall not incur any liabilities" and you are putting it in the law. That means, whoever wants to buy would, first of all, have to contend with what law you have included in this particular legislation. Again, I dare say---

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, Mr. Kilonzo, your time is up!

**Mr. M. Kilonzo:** Mr. Temporary Deputy Speaker, Sir, I wish I had a little more time, but with those and many other reasons, I beg to oppose the Bill.

Thank you.

**Mr. M. Kariuki:** Thank you, Mr. Temporary Deputy Speaker, Sir. It is with a very heavy heart that I have to support this particular Bill. I feel extremely insulted to hear that this is a 'donor-driven Bill'. This House has a very special responsibility to the people of Kenya, to ensure that we are the people who take care of the security of their property and lives. Which is this other force that now drives a Bill to this House that does not take the interests of our people into consideration?

Mr. Temporary Deputy Speaker, Sir, it is good to learn from other jurisdictions. A country called Thailand, last year, had major celebrations. In 1997, Thailand had a serious economic crisis and, for the first time, they were forced by the circumstances of the day to borrow US\$25 billion from the IMF and the World Bank. The repayment period was 30 years. They decided to shorten the period because, in accepting that facility, their Parliament was literally compelled by those multi-lateral donors to pass 21 pieces of legislation. Among the pieces of legislation was a similar one to the one we are discussing today. Now, last year, since they were able to make up and pay up the loan in a shorter period than anticipated, one of the things that Parliament did was to shelve the 21 pieces of legislation.

That is why I am saying that we must be conscious of our responsibility. Any person who goes to the world Bank and IMF to beg and compromise themselves on the terms of the World Trade Organisation (WTO), may live to regret that position one day.

Mr. Temporary Deputy Speaker, Sir, that is why I am saying it is with a very heavy heart that I support this Bill. The sovereignty of this nation is invested in this Parliament and we must act in the interests of our people at all times. Therefore, to hear that we are dealing with donor-driven Bills here, is an insult to this House.

If you look back at the history after Independence, the move was towards nationalisation. There was good reason to nationalise because, at Independence, hardly any African person had property that he could call his own. Everything was owned by our former colonial masters and it was, therefore, necessary, in order to bridge the gap between the rich and the poor, that the assets were placed under State control. That has been the trend until the late 1980s when we had this pressure from the World Bank and other donors to privatise.

Mr. Temporary Deputy Speaker, Sir, one of the things that we have to bear in mind, as we discuss this particular Bill today, is whether privatisation in this country is going to bridge the gap between the rich and the poor. We are told that, in fact, Kenya is one of the top nations in terms of the gap between the rich and the poor. Now that we are taking public property and putting it in

private hands, we must bear that in mind. Is it going to work in the interest of our people or are our people going to get poorer and poorer?

Mr. Temporary Deputy Speaker, Sir, now, 40 years after Independence, we can now say we have a middle class, an African middle class which was not there 40 years ago. If this privatisation is targeting to vest the national wealth in that middle class, I would be quite comfortable with it. But if the wealth of this nation is going to be vested in some foreign hands, then we are headed for a second colonisation. This is going to be another form of colonisation and we are going to lose our *Uhuru* after 40 years.

*(Applause)*

Mr. Temporary Deputy Speaker, Sir, maybe there is a saving grace in this Bill and that is, for the last ten to 12 years, the KANU regime carried out a programme of privatisation without any legal framework whatsoever. Public assets were looted or sold away at throwaway prices. At least, if there is anything to congratulate this Government for it is that, for the first time, we are going to have a legal framework from which business can be conducted. If you look at what has been sold out, Kenya Milling Corporation, for example, which was in my constituency, the report of the Public Investments Committee, in 1999, established that not a single penny was paid to the public coffers for the sale of Kenya Milling Corporation. It was a case of looting of a public asset. It is a shame. That is why I am saying that we, at least, have something to boast about in this particular Bill.

Mr. Temporary Deputy Speaker, Sir, we also had the East African Diatomite Industry. It was a State corporation and with its history of about 40 years, it never made losses even for one day. One asks the question; why did it have to be sold yet it is a profit-making corporation? It was part of the larger scheme to loot public assets.

I think we have two issues to consider in this matter of privatisation. There is a fine difference, and I think a major one too, in terms of privatisation and commercialisation. We can commercialise a public venture so that it can make profits and be more efficient, without having to privatise the shares. I think this is an option that we should be considering more seriously.

What is happening now in our local authorities is that we are placing the management of water in public companies where there will be professional managers, yet the shares remain fully owned by the local authorities. That is commercialisation.

Mr. Temporary Deputy Speaker, Sir, we want to ensure that people can receive what they expect to be delivered to them by that particular corporation. This Bill should have considered that option. We can commercialise State corporations without necessarily having to privatise them and give them to some individuals.

In considering this Bill, it is important to look at the world's trend. In some of the countries that are said to have developed in a very short while, like South Korea, the steel mills are still 100 per cent State-controlled. It is the major industry there. In Taiwan, the steel mills are still 100 per cent State-controlled. At the United Kingdom, and Mr. Muite reminded us that by 15th June this year, the British Railways will return to the public after 15 years of experiment in the private sector-- We should be asking ourselves: Why are we going where others are coming from? This is what we are supposed to learn. We should not blindly embrace a donor-driven Bill, so that we can endear ourselves to those hand-outs which we are getting, and which are not of any effect to our economy.

Mr. Temporary Deputy Speaker, Sir, the World Bank and the International Monetary Fund (IMF) have been carrying out experiments in the Third World on their policies. We had the Structural Adjustment Programmes (SAPs). It was an experiment which has failed after 20 years. There is not a single country today in the world which can boast that it has developed as a result of



embracing the SAPs. The Third World countries have continued to be poor. The World Bank and the IMF have been accused of carrying out their programmes without a human face. However, they are very tactful people. They know about fear. Their new rhetoric today is about poverty eradication. This is a rhetoric they are selling around the world, but it has not changed in essence. It is still the same body that wants to enrich the financial class in the West. It is the financial community in the West that benefits from these policies and not the poor developing countries. In fact, the end result of begging from these institutions is that we remain in permanent bondage so that we have to borrow their money today and tomorrow. At the end of the day, we have to surrender our sovereignty because this money is not without strings. They want to determine how we run our foreign policy and economic planning. At the end of the day, they are going to take over everything. We are really running into danger. This is the caution I want us to think about before we can discuss the merits and demerits of the Bill.

Mr. Temporary Deputy Speaker, Sir, with regard to key State monopolies and strategic State corporations, this is an area we cannot afford to privatise whatsoever. While I embrace the proposal by a previous speaker, it is possible to have a public enterprise as a holding company for the assets of State corporations. After that, we can hand over the management of that particular corporation to the private sector, so that we can probably have better technology and more efficiency. We can start with the Kenya Railways and the Kenya Ports Authority. We can have a body that holds and owns the assets because it is a State monopoly. We cannot afford to put up another one because it is too expensive. We can contract people to manage the day-to-day management of that particular corporation.

Mr. Temporary Deputy Speaker, Sir, once a State corporation has been sold, we get peanuts. Even if we get Kshs3 billion out of it, that cannot sustain the economy for a long time. The idea of privatisation should be that we are placing these organisations in more efficient hands and we are assured of enjoying a certain amount of revenue every year, which will be injected into the economy. If we sell an asset for Kshs1 billion and at the end of the day, for the next 10 years, we do not get any revenue by way of tax from that corporation, we are making losses. So, we should think in terms of sustainability of the private sector after the acquisition of the assets or the shares of the public sector. Can we be assured that it will continue to be a source of revenue for the Government? That is what will sustain the economy, but not the immediate returns we get to pay off or meet our deficits or balance of payments. This is something we have to focus on, on a very serious note.

Mr. Temporary Deputy Speaker, Sir, privatisation has gone on for the last 15 years and one of the most shocking consequences has been the fact that nobody takes care of the workers in these particular parastatals. If you look at the Public Service Regulations, and the regulations under the State Corporations Act, which have been formulated by the State Corporations Advisory Committee therein, there is a guarantee. If you look at the Public Service Regulations, the State Corporations Regulations relating to the rights of workers, you will find that the retirement age has been placed at 55. These legislations have put some kind of job security for the Government staff, and those who work in the parastatals. This privatisation and liberalisation programme came in the name of downsizing the labour force. Without any regard to the existing statutes and existing regulations, people have been laid off. I would imagine a situation where the workers are paid for the balance of their time, perhaps, five or ten years with actual benefits to enable them to go and settle, is considered. We have behaved in a most inhuman way.

In 1999, there was serious retrenchment in the Civil Service. The World Bank and the IMF had undertaken to pay off benefits of civil servants who were retrenched. Some Kshs800 million was given for that exercise. It was not enough. After that, the World Bank withdrew the balance.

The consequences have been serious and devastating on the lives of our people. Those persons have not been paid their dues to date. It is the same with the Kenya Railways, the Kenya Seed Company and the Kenya Farmers Association.

Mr. Temporary Deputy Speaker, Sir, as we privatise, we must anticipate the consequences that are likely to befall our people. We must have a proper legal framework to take care of the consequences that might ensue. If you look at Clause 40 of this Bill, it anticipates a situation where the State Corporations Advisory Committee is supposed to make terms and conditions to take care of the employees in the venture that is going to be privatised. I think this section should be amplified; that before any privatisation is carried out, the rights of workers, who are already there, should be taken care of to their satisfaction. Until and unless the benefits are fully paid, they should attract a salary from the State.

I would like to look at some aspects of this Bill. I would like to concur with the previous speakers who raised the question of the involvement of Parliament. Sections 3, 6, 7, 33, 34, 35, 36 up to 38 require to be seriously looked at. We cannot sit here, as the elected representatives of the people, to watch public assets being squandered and looted. We are the people who should be vested with the power to vet any privatisation venture. There is absolutely no need for a commission. The Government can make it an in-house matter and table the reports here for discussion by this House. We do not need a commission. The Cabinet should prepare its Paper and say that they want to privatise the Kenya Railways tomorrow and these are the terms and conditions. Can this House debate and approve? This is the kind of powers we want. We were sent here by the people to protect their property, and not to hand over to a Cabinet which we had no hand in picking.

Mr. Temporary Deputy Speaker, Sir, it is important that Parliament does not surrender its powers to the Cabinet and civil servants. Even if the Commission were to remain, which I am opposed to, its composition raises serious issues. It comprises of the Permanent Secretary to the Treasury, the Investments Secretary and other civil servants. What different does it make? What kind of Commission is that? A commission is supposed to enjoy a certain measure of independence. These are civil servants who receive directions from the Minister every day as what to do. Where is their independence? We would like a commission that will look into the issue of privatisation in the most objective and independent manner. Apart from the Permanent Secretary to the Treasury, all the other persons should be picked from stakeholders. The Permanent Secretary can be there because of the liaison factor between the Government and the Commission. To ensure that the Commission is independent, the stakeholders should be allowed to pick their representative, who should then be empowered to elect their Chairman and the Secretary, if need be. That is the only time we can say that we have an independent Commission looking into the issue of privatisation.

Mr. Temporary Deputy Speaker, Sir, in my view, Section 4(F) has a very important principle, which should be supported. This principle is the broadening of the base of ownership of the Kenyan economy and the enhancement of capital market development. I have already expressed my views about the discrepancy in the standard of living between the poor and the rich in Kenya. One of the things we should consider is that, as many Kenyans as possible should have a stake in the privatisation exercise.

In South Africa, there is no single company which can get a Government tender unless it has 51 per cent local ownership. In this country, we have opened our doors. Foreigners can come and buy a whole enterprise. At the end of the day, the profits made are exported to the home countries of the foreigners. We must have a clause to protect the interests of our people. We are a nation and people must be able to feel that they are Kenyan. That is different from being a foreigner in this country. So, a clause must be created for our people to ensure that in the privatisation exercise, 51 per cent of all shares will be bought locally by Kenyans. That will be a condition.

I would also like to embrace Section 15, which provides for Savings and Credit Co-operative Societies (SACCOs) to buy shares. The only little investment that our people are able to make in the course of their work is their savings in the SACCOs. Even, for hon. Members, at the end of five years, the only thing that they can collect from here is their savings from the SACCOs. This has become the way of life of Kenyans. If the SACCOs are allowed to invest in this privatisation, we will be able to spread the ownership base of the enterprises that we are going to have. If you have a SACCO with about 10,000 members, and you have about five such SACCOs buying shares in one venture, you would have spread the ownership base of Kenyans to about 50,000. It is, therefore, very critical that we open the door for the SACCOs to have first priority in this privatisation exercise. We are sure to retain the control of those enterprises in a large way when our people feel that they have a stake in this particular venture. So, I embrace the provisions of Section 15(4).

Mr. Temporary Deputy Speaker, Sir, looking at this Bill, you will realise that everything will be Government-controlled. The Government Financial Management Bill, which we discussed the other day, provides for the Minister for Finance to assume all the powers. In this Bill, again, the Minister for Finance assumes all the powers. It would appear that if there is any Prime Minister in the making in this country, it is the Minister for Finance. This is because he who pays the piper calls the tune. If he has to control everything that goes to every Ministry, and who is going to enjoy the State assets on privatisation, at the end of the day, he is the most powerful Minister. I do not know why our brothers are fighting for the premiership and forgetting where real power is.

I would like to conclude by referring to the provisions relating to bankruptcy. Once we privatise, we obviously run into the danger of bankruptcy. The fact that the State would have privatised those institutions, that has not saved them from the potential danger of bankruptcy. The Companies Act, which I believe will be repealed in the course of the year, has failed to make proper provisions about receivers and managers. We could have a situation where a public corporation is privatised and at the end of the day, that particular venture goes under. How do we save the investors' stake in that private venture? It is important that this particular Bill should have considered putting in place a machinery for management of receivers and managers. Today, under the Companies Act, receivers are appointed on an unknown criteria. At the end of the day, they squander the assets of a State corporation. We have had the Kenya National Assurance which went under. In all cases where institutions were put under receivership, the receivers were not able to account for their assets. We must have a machinery for making receivers and managers accountable. This Bill should have made a provision for ensuring the appointment of receivers and managers, and the criteria which should be used to ensure that they do not abuse their powers to get away with people's property. Therefore, I recommend that we introduce very serious amendments to this Bill at the Committee Stage.

I have one more point on joint ventures. That is another provision which we should put in place in this Bill. Today, the law about joint ventures is a very unfortunate law. Under the International Arbitration Treaty, you go into a joint venture and when you go into a dispute, you have to go to Paris to resolve it. We should be able to assert our sovereignty. Since we are discussing privatisation, the issue of joint venture will inevitably have to arise. Where the Government or the local people wish to retain a certain amount of control and enter into a joint venture with a foreign company, it is important that those provisions are considered.

With those remarks, I beg to support.

**Mr. Omingo:** Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me a chance to contribute to this Bill.

On the outset, I must send my apologies to the people who prepared this Bill, because it is a

disappointment. I am an accountant by profession and I am motivated to remove the Government from business. However, I am constrained to believe that we can sell our birthright or a house that you are living in and actually take a shanty in Mathare to live in there when you had really what you called your own. The import of this Bill is noble, but we are being driven by some superior powers beyond premise of the Republic of Kenya to the detriment of the people we represent here.

If I were the Minister for Finance, with due respect, I would withdraw this Bill, mutilate and re-construct it. After that, I would sell it to hon. Members. This is an extremely bad law. We need to ask ourselves: Where did we go wrong with our public entities? The problem was mismanagement. That we are bringing in this Government Financial Management Act in place, then it negates the import of the Bill we are trying to discuss because it actually addresses the issue of mismanagement of public resources.

Mr. Temporary Deputy Speaker, Sir, did you also know that the Kenya Re-insurance Corporation was being privatized in mysterious circumstances at a cost of Kshs800 million; way below the market value? In 2003 alone, the Corporation made a profit of Kshs700 million. Are we actually giving out our birthright? Are we men and women enough who are supposed to protect the society, "For the Welfare of Society and Just Government of Men?" This is bad law and we must examine ourselves, to determine where we went wrong. Even then, I would want to throw a challenge to any of the hon. Members who support this Bill. I have a very basic illustration; you have a car that you want to sell and you want it to fetch the maximum value of the money that you want to attain. Can you not take it to a panel beater who will spray-paint it, put some nice decorations on the sides and make your car attractive for sale? You can get more value for your money if you sold it on "as is" basis. What am I saying? We have identified the critical problems ailing our parastatals. We know them; mismanagement, nepotism, who was politically-correct to run an institution; who was advertising much more for the then ruling party, KANU, than the other, and who was actually close to power. Now that we have identified our problems, why do we not fix our cars?

Mr. Temporary Deputy Speaker, Sir, the Kenya Re-insurance Corporation, and I think Members of Parliament must stand up to be counted, is a typical illustration of how wasteful we want to be with our resources. Let us fix our cars and, at least, market them to get more value. We know where the problems are; if we can, let us inject a little capital into them and raise the share capital of those parastatals and sell them. If we sell them on "as is where" basis, we will not be prudent in financial management, and Kenyans and history will judge us very harshly.

Mr. Temporary Deputy Speaker, Sir, before I go to the contents of the Bill, I would like to say that we were in a seminar at Amboseli National Park with the National Social Security Fund (NSSF). A gentleman from Gambia did give us a very emotional illustration about what the donor community pretends to do to us; that they are supporting us, when they are burying us alive. He did tell us that when the National Social Security Fund of the Republic of Gambia grew to a point of a giant financial institution, including an estates management agency for the retirees of that nation, the World Bank asked him: "Mr. Director, are you too sure you are going to handle this big pie that is growing by the day?" The response of the gentleman was: "Yes, this is Africa. That in Africa, it does not matter the size of a pie; if anybody wants to poke his finger in the pie, the size does not matter." Indeed, in Gambia, they blocked the so-called "big brothers" from interfering in the running of their affairs. Can we not stand for a while and say, "no" to what they are dictating upon us? It is high time that Kenyans identified themselves with their people and not the donors.

Mr. Temporary Deputy Speaker, Sir, I will start with the issue of setting up a Commission. This Commission has been given wonderful massive powers to set up the rules, recommend to the Cabinet and when finally the Cabinet gives it a nod, then the money is taken. Where do they deposit

the money? The entire observation of this is all wrong. The funds are set aside in a particular Fund, from where they will be withdrawn and used to run the operations of the privatization. We are selling to make the Government liquid. Why do we not even deposit this money in the Consolidated Fund? Why must it go to an imaginary fund where some people are going to poke their fingers and draw from it, even when they are not answerable? The powers given to the Commission are enormous, and if anybody by any stretch of imagination is going to convince me to pass this Bill, it must be drastically re-written and amended for us to consider it.

This is because I do not think I am convinced that Parliament can actually wrap items belonging to Kenyans and give them to a particular Commission, and this Commission sits with the 26 Cabinet Ministers, including the Attorney-General who sits in it, to say: "Blow the whistle and things happen." This is wrong! Parliament, if anything, must assert itself and ratify any proposal to privatize. For instance, how do you privatise the National Cereals and Produce Board (NCPB)? It is not specific that we are going to privatise it. It is not selective but they will make recommendations. Suppose by strange happening, the NCPB is part of this; a body that gives us strategic food reserves for our people. We want to sell that parastatal and start begging for food in case we do not have a strategic food reserve. If we privatize the Kenya Ports Authority (KPA), in this era of terrorism, these guys will be taking breakfast at the Inter-Continental Hotel when we are in this Parliament. We must, at least, bring sanity in this Bill, if it is ever going to see the light of day.

Mr. Temporary Deputy Speaker, Sir, we are talking about the criteria for even selecting these commissioners. I think it is important that we also identify who is going to sit in this Commission, and that Parliament has a hand in terms of the credentials of people who sit in this commission. We are soon going to see people globe-trotting to actually form companies off-shore, to carry our assets away. They are going to do it. We heard it in the passport deal and we want to confirm in this House that, they are actually globe-trotting to look for funds to support our security items, including passports. Who tells you today, they have not formed companies off-shore to come to do this kind of nonsense here? Parliament will not allow this. If we did allow this, like I said, we will be selling our birthright. Even then, as I said, it is important that we actually improve or even do the sweeping; just removing a bit of dust from some of these parastatals before we sell them. We shall improve the share value of these assets, in which case, we shall fetch more money. However, if we sell them as they are, I doubt whether we will be doing Kenyans service.

Mr. Temporary Deputy Speaker, Sir, I will give the example of the NSSF, which we were with at a seminar. Before we do anything, all the proposed privatization of the parastatals of this nation should come to the Floor of the House before we give them a nod. Clause 8 of the Bill, in my opinion, sounds terribly ambiguous and confusing. It says:

" A privatization that is not included in the privatization programme may be implemented and managed by the responsible public entity, subject to subsection (2)."

Mr. Temporary Deputy Speaker, Sir, subsection "2" says:

"A privatization that is within one of the following classes shall not be implemented unless it is included in the privatization programme:-

- (a) the transfer of a public entity's interests in a state corporation or other corporation;
- (b) the transfer of the operational control of a state corporation or a substantial part of its activities; and,
- (c) any other privatization prescribed by regulation.

Why are we going into this big jargon that actually does not make sense? We are talking about the same thing, and only referring to another subsection to confuse people. I want to tell these drafters that Members of Parliament now have actually gone to school very well. We have a class of

very distinguished Members of Parliament who are actually very intelligent. We cannot have a situation where somebody puts a comma before a full stop, like we did see in the Constitution-making process, and it changes the entire setting of the explanation that was meant to be. This time round, we are going to stand up to be counted.

Mr. Temporary Deputy Speaker, Sir, if we look at the way the proposals have been formulated under Clause 10, we will find that we are only identifying the ailing parastatals. Something which is of great importance is; why do we not ask them why they have said that? It is important that we know why they said that, before we classify them, because there are some parastatals we can rehabilitate. There are many more parastatals which are viable. There are also many parastatals we intend to privatise because somebody stands besides there to acquire them. Who tells you that, today, they are not doing it? Hon. Members, let us stand up to be counted. We must be watchful; this is happening today.

One hon. Member did say here that this Bill was drafted during the previous regime, but it is being refined. Now that we have a new Government, why can we not have something a little different because things have since changed? We should tell the donors that we are fighting graft. Although we are not doing it effectively, let us rehabilitate our parastatals before we sell them. One hon. Member said here yesterday that I would buy an item at whatever price today, when I have already fixed a price elsewhere and make huge profit by off-loading the Kenyan employees to another foreigner. At the end of the day, the NARC Government will not achieve the 500,000 job opportunities it promised Kenyans that it will create every year. In my opinion, it is minus 500,000 job opportunities. If this Bill was done that time, are we saying that this Government has not done much to warrant the "big brothers" to change their attitude about our parastatals? Are we then saying that the *status quo* remains, with regard to what used to happen in the past? It is unfortunate. We need to give those parastatals time, or privatise them in a piecemeal manner. We should improve them if we can. We should also improve the share value of their assets because Kenyans have pumped money into those parastatals. Hon. Members, we cannot, and we should not sell our assets at a throwaway price.

Mr. Temporary Deputy Speaker, Sir, Clause 13 talks about the steering committees. One hon. Member did ably say that the steering committee is the composition of the Commissioners. So, is there any value addition? We will agree who will privatise firm "X" because he has a special interest in it. Why do we not have somebody outside the Board to advise? This clause is superfluous. If the members of the proposed Commission are the ones to form the steering committee to privatise some of our parastatals, then we can as well say that the Commission shall actually be the same as the steering committee. This means that the cake is already divided. We know who is going to sell what and to whom. The case of Kenya Reinsurance Corporation should ring a bell to sensible Kenyans, including hon. Members of Parliament, whom I know are very intelligent and sensible.

That brings me to the issue of how other countries have managed themselves. If we have identified the problem to be managed, and the "big brothers" who are called the "donors" are ready to provide some expertise, why do we not import and contract managerial skills to manage those parastatals, improve them and give them ten, three, four or five years as deemed fit by hon. Members? We should lease our parastatals to them, but at the end of the day, our great-grandchildren will inherit them. Why are we selling them? We can sub-contract the skills which they think we do not have, although we do have them.

What is happening, for your information, and I am sure you are aware, is political expedience. Even today, telephone calls are being made to the National Social Security Fund (NSSF) to drop some cases because they touch on politically-correct people. Why are we

pretending here? The issue here is that management has been tied to the Executive. The Executive has got an interest in the person it appoints to head a parastatal and as a result, that person cannot perform. Bring a "dream team", like Dr. Leakey's "dream team" and let them manage those parastatals for a while. The problem is that we are chasing our tails. Privatization is an excuse we can do away with by changing the management. We should import experts, appoint them to head those parastatals, give them a contract of five, three or ten years, if hon. Members so wish, and they will turn round those parastatals for purposes of improving their share value and Kenyans retain their inheritance. My plea to you, hon. Members is that we must not sell our birthright.

*(Applause)*

Again, there is a proposal in the Bill that the assets to be sold or the parastatals to be privatised should be valued. The Government has not provided the technical skills to this committee to evaluate those assets, so that we can get a proper value. If I have an agenda which I know most of them have--- I can assure you as night follows the day, the people to sit in the proposed Commission are already known. If I have an interest here, what would bar me from putting a minor request, for example, to the National Oil Corporation of Kenya (NOCK), buy it at that rate and then sell it at ten times that value? We must have a technical evaluation team, which will be publicized for Kenyans to know what the NOCK owns. I am saying this because they can also hide some assets. Kenyans will know that out of this, they are getting that, if we publicise the valuation of the assets in the print media. Otherwise, if we let it loose as it is, the NOCK can be sold for as little as Kshs100,000. Let me assure you that this can happen. It is not a miracle. It has happened in the past.

I do remember the KENATCO sold Mercedes Benz cars at Kshs20,000 or Kshs10,000 each, and yet their mileage was 20,000 kilometres at that time. This can happen. I am saying that even at the evaluation level, Kenyans must be involved because it is their property which is being valued. The monies invested in those parastatals are actually a contribution from Kenyan taxpayer. Kenyans must be involved at every stage, including valuing and appreciating the value of their assets to be privatised, if at all we are going to privatise them. Of course, I am not for the privatization of some of those parastatals, but if I must lose, then I should lose honourably, knowing that we have had value for our assets.

There are several countries which have actually resisted this animal called "the big brothers" or "the donor community". Some countries have actually imported technical managers, which I have just explained. South Africa is a big economy and is an example. It has refused to privatise its parastatals. Gambia is a very small country and it has also refused to privatise its parastatals. Here in Kenya, we are being cowed. Are we not men and women enough to say no? Can we not be men and women enough to say no?

*(Applause)*

It is important that we do this. Gambia is the size of our Central Province but it stood firm. This country is an example for the NSSF regarding what it has done in that country. We must stand up to be counted.

Mr. Temporary Deputy Speaker, Sir, I would like to talk about a company not providing credit. If you are selling shares of a parastatal being sold, it should not finance them as well. That is a good provision because, essentially, if you are providing finances, then you are liquid enough not to sell.

It is important to understand that in my pigeon hole, today, there was an Investment Promotion Bill. That tells you that our Government almost puts its priorities upside down. I am not too sure whether you saw the Investment Promotion Bill in the pigeon hole today. But I am sure hon. Members saw it. Will you tell Kenyans the importance and sweetness of investing in their parastatals because they are going to buy shares? You privatise the parastatals before you bring that Bill before this House, so that Kenyans can understand how important the sale of their assets is. The Privatization Bill has come before that Bill. I am not anticipating debate, with due respect, but I did see that Bill in passing. Such a Bill is about to be brought before this House. That Bill should have been brought before the House before this one so that Kenyans can be informed and are educated on how to invest in the parastatals to be privatised. We are about to sell our parastatals, and yet we are telling Kenyans that they can come and buy Gikomba kiosks because that Bill may not see the light of the day before this one.

Mr. Temporary Deputy Speaker, Sir, Kenyans will have lost a chance to invest because the promotion exercise and encouragement for Kenyans to invest are coming after this Bill.

We are challenging our Government, and I am sure my good friend who is a young turk, Mr. Mungatana, will pass this message; that our priorities are upside down. Mr. Mungatana, they are upside down! The encouragement should come before the Bill. You should tell Kenyans about the sweetness of investing in their own parastatals before you sell. There will be retention, job creation and economic wellbeing. Now, you will sell and later tell Kenyans that they should learn to invest in their own assets. That is a shame!

Mr. Temporary Deputy Speaker, Sir, I talked about the composition of the membership of the Commission. It shall comprise of a Chairman, appointed by the President. A tribunal Chairman, appointed by the President! Again, you know where we are going? People were used to have everything done at the pleasure of the President. Some people could die at the pleasure of the President! You could be appointed at the pleasure of the President! Now, the person in charge of the Commission shall be appointed by the President. I am not questioning the quality and competence of the appointment by the President. But then, where is Parliament? A tribunal is a place where you go for recourse when you have been hurt elsewhere.

Mr. Temporary Deputy Speaker, Sir, I hope you are listening.

**The Temporary Deputy Speaker** (Mr. Khamasi): Yes, I am listening!

**Mr. Omingo:** With due respect, Mr. Temporary Deputy Speaker, Sir, I am saying that the Chairman of the Commission shall be appointed by the President. The Tribunal Chairman shall be appointed by the President. The membership guard below are appointed by the Minister. We have seen some Ministers---

**The Temporary Deputy Speaker** (Mr. Khamasi): Order, Mr. Omingo! You stand a risk of me invoking Standing Order No.87. So, be careful.

**Mr. Omingo:** Mr. Temporary Deputy Speaker, Sir, I was only suggesting: Why can we not have Parliament? I am not challenging the competence of His Excellency the President. That is for sure and I said that. But I am saying that a tribunal is set up to address issues brought about by aggrieved persons. But now, the aggrieved person will meet the same person with the interest and power in the tribunal! I am saying: "Can Parliament also have a hand in this?" If not, can Parliament vet those names, for example? It is important because we have seen some Ministers running amok. Some of them are appointing their brothers and cousins to big parastatals and, at the end of time, they are procuring goods and services at the benefit and expediency of their master. That is what we must check. The appointment here is questionable.

I am also not very comfortable because our Attorney-General is overwhelmed by responsibility. He is all over! I would suggest. Not that I have anything against my good friend, Mr.



Amos Wako, but I am saying that the Attorney-General is almost in all these issues. That is why, more often than not, he has not been able to deliver very efficiently. That is because his office has less capacity. I think we must also help the Attorney-General to build capacity. But before we do that, I would suggest that, that name be substituted with somebody else. He is too busy advising the Government, mitigating on behalf of the Government and sitting in committees. He is a very good officer but, sometimes, more often than not, he cannot meet all those expectations. He is all over and today, a judge reprimanded our own Attorney-General for not advising the Government. It is not that he is not advising the Government, but he is overwhelmed by responsibility. I would suggest that, maybe, somebody else from the Ministry of Justice and Constitutional Affairs can help him. I know he plays a crucial role! I am not challenging him! But I think the responsibility bestowed on him is overwhelming.

Clause 33(f) reads:-

"Four members, not being public officers, appointed by the Minister by virtue of their expertise in such matters as will ensure that the Commission achieves its objectives."

Criteria for selection must be known. We also know that some of us have rewarded our good friends, including the friends on the opposite side in terms of what we want to achieve for purposes of building family income. Let us have somebody to manage this. Let such persons be of integrity and I think for that reason, Parliament needs to be involved.

Mr. Temporary Deputy Speaker, Sir, the tenure of office of this Commission is three years. I am also wondering that if at all we are going to privatise, are we sure again that we are going to run quickly in three years and sell everything? If there must be a privatisation programme, we should do this thing on an *ad hoc* basis because I can assure you that when we are going to privatise and put this money in the fund, we run a risk of this money being drawn by these permanent officers and then we do not have anything in liquidity for the Government. If this happens, then the purpose of privatisation will have been lost. Why do we not have these people on *ad hoc* basis and to enable us be prepared?

For instance, when a company is being wound up, we have liquidators being appointed for that purpose. This issue of rewarding people with jobs to "eat" into our liquidity and yet we are going to sell our own assets, I think does not make any moral sense, or rather, economic sense because I can assure you that within three years, we shall sell at Kshs100. After three years; because we might sell by the end of three years for example, during the expiry of their term, we shall have a quarter if not less, of the funds in that particular fund. It is important that we also come up and indicate that this fund should actually be taken to the Consolidated Fund and not an imaginary fund that is run by a Commission which is going to squander the money by drawing on the funds on an *ad hoc* basis. We do not have to have a Commission sitting for three years. For example, if we refuse and we have appointed them and they are coming to the expiry of three years, we shall simply reappoint them. That is why we need to have them on *ad hoc* basis to prevent the flow of this liquid cash that we seriously need.

Mr. Temporary Deputy Speaker, Sir, the powers of a Minister in this particular Bill are too much. Did you know that a Minister is just a notch away from a Member of Parliament and we have given this man wonderful powers, just next to God, that he has powers under Clause 44(b) which reads:-

"Such information as the Minister may direct."

Are you saying "such"? It gives him the discretion of powers, including even changing the value of shares from five to three for purposes of political expediency or marshalling up his powers. We need these funds to go to the Consolidated Fund. There is no need of having these funds in an

emergency fund.

Mr. Temporary Deputy Speaker, Sir, having sat in the PAC for one year, the kind of blunders and abuse when this kind of fund is set aside, if you saw it as I said, you will require divine intervention for anybody who has committed such a crime to be forgiven. The crimes I see on such a kind of an account, particularly when the Chairman has got a term of three years, that money will not be there. So, actually, we are privatising to enrich a few guys and then they go home with the loot and Kenyans will be left languishing in poverty. Let us have the Commission on *ad hoc* basis, if we must privatise, otherwise, I am not for privatisation.

Mr. Temporary Deputy Speaker, Sir, I will conclude by saying that this country has been mismanaged because we do not have financial discipline. Because of the economic plunder and abuse of office by officers, Kenya is sitting on Kshs711 billion in public debt. It means in effect, that, that is 70 per cent, and I will say it again and again, that it is 70 per cent of our GDP and that if we make a shilling today, 70 cents will go to pay debts and then you use 30 cents for the development of roads and power supply. That is why it will take us about a century to have power supply. I am asking: "Can we, for heaven's sake, have this country sit within the financial discipline and be run under the provisions of the law for the posterity of success of our children and grandchildren?"

With those few remarks, I oppose.

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

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

**Mr. C. Kilonzo:** Thank you, Mr. Temporary Deputy Speaker, Sir. In the first place, let me thank the Minister for Finance for publishing this Bill. The Bill is advancing a transparent and acceptable procedure for the disposal of public assets. The Government has no business doing business and, therefore, must support this Bill on privatisation.

Mr. Temporary Deputy Speaker, Sir, it makes no sense that the Government plays the role of a regulator and at the same time, engages itself in business. The Government should really limit itself to providing services and a good environment to do business. We all know very well that parastatals and public entities were being used for the purposes of looting funds from the public. A time has come to ensure that this practice is never ever again practised in this country.

Mr. Temporary Deputy Speaker, Sir, if I go into specifics and in particular Part II - Privatisation Programme of the Bill, Clause 3(2), it says:-  
"The privatisation programme shall be formulated by the Commission and approved by the Cabinet".

We have seen Cabinets which have been very corrupt before. Are we really going to give all those powers to the same Cabinet? What I will propose is that the Cabinet approval should be subjected to parliamentary scrutiny because any privatisation programme that is approved by Parliament will have the public trust. All clauses which provide for Cabinet approval should really be substituted and provide for parliamentary approval. The benefits of privatisation are clearly stated in this Bill but most important, no more funds from the Government will be wasted in trying to support non-performing parastatals.

Mr. Temporary Deputy Speaker, Sir, if we really go inside the Bill again, I will talk about valuation. The sub-heading is very nice in Part III - Privatisation Process, Clause 20; the subheading

states; "Valuation required for each privatisation." But there is nothing in that Bill that really talks about what is required. In the first place, under Clause 18(2), they are proposing that:-

"The valuation shall be performed by a qualified person appointed by the Commission".

However, nowhere in the Bill is a qualified person defined. To remove any doubt, I propose that the valuation be done by a valuer defined under the Valuers Act, Cap.532. However, more importantly, we know very well that for all parastatals which have been sold, there are always valuations which have been done and originally, if you are not politically correct, then you do not do any valuation for a parastatal on sale. All parastatals which have been under-sold, there have been valuation firms and valuers who have been told how to do those valuations. Those have been political valuations! It makes no sense when you get a corporation being under-sold and yet there was a valuer involved.

Mr. Temporary Deputy Speaker, Sir, as we take these people who stole from the parastatals to court, we should also attach the valuers to be the second defendants in court. It is very wrong to have people called valuers--- I am a valuer myself, and many others in this House, but it is very wrong to have people who say they are professionals out there, who have been producing documents to allow people to steal from the public. We need also to make sure that under this Bill, we really see what is the methodology of valuation. How are these properties going to be valued? We need to seek details on what is to be the basis of these valuations. We have seen cases where parastatals have been sold on the wrong values. Instead of selling the parastatal on the open market value, it is sold on a closed sale market value at a throwaway price.

Mr. Temporary Deputy Speaker, Sir, this needs to be properly stated in the Bill. Further inside, Clause 33(1) states that the Commission shall comprise of the following members: "(a) the Chairman who shall be appointed by the President." Are we not still going back? We are trying to reduce the powers of the President and yet this Bill states that it is the President who will appoint the Chairman of the Privatisation Commission. The minute you give the President powers to appoint the Chairman, you have already compromised the entire exercise.

Mr. Temporary Deputy Speaker, Sir, the Chairman of the Privatisation Commission should not really be appointed by the President. We should instead say that the Chairman be chosen from among the members of the Commission. Further down, Clause 33(1g), provides for only three members to be appointed by the Minister, one of them from the Law Society of Kenya, which I think is a good idea. The other member is to be appointed from the Federation of Kenya Employers. I, also, have no problem with that. The third member is to be appointed from the Council of the Institute of Public Accountants. There is no problem with that too. However, the core of every privatisation is the valuation. The valuation of a public entity for privatisation purposes is the core of the whole exercise. So, if you do not have a valuer sitting in this Commission, what are you really talking about?

The Minister, according to this Bill in Clause 18(3) has powers to make rules on valuation. Obviously, we should not assume that the Minister is a Valuer. We do not have a single Minister who is a valuer and even if we have, it is not every time that we shall be having one who is a valuer. With regard to that clause, if we were to give the Minister powers to make rules on valuation, something he does not know, how will he come up with the rules if he is not guided by the Commission? How, then, will the Commission guide the Minister if it lacks the necessary expertise? That is a very big omission and we need to have a valuer in the Privatisation Commission.

Mr. Temporary Deputy Speaker, Sir, Clause 49 is all about secrecy. However, this is an era of transparency. We need to put all our cards on the table. The Clause provides for the Privatisation Commission to keep information acquired in confidence. What does that mean? It means that we are giving the Commission powers to sell property and keep it secret. That clause should be totally deleted from the Bill. There is nothing to hide if you are selling a parastatal. When selling a

parastatal, the exercise must be done in an open market. So, why do we say that the Commission should keep the details as a secret? If we really want to fight corruption, we must make sure that whatever we pass in Parliament has no such loopholes.

Mr. Temporary Deputy Speaker, Sir, I must say that privatisation is good. However, it is only good if we make sure that all the properties that we are privatising are actually sold. Majority of the shares should be sold to Kenyans, and to indigenous Kenyans for that matter. If we are going to pass and support this Bill, it has to be on condition that it is only going to benefit Kenyans, and it must be indigenous Kenyans. Privatisation is a new form of colonisation. It cannot be anything else. Very soon, if we sell all parastatals, then, all the managing directors will be Europeans for that matter. All the general managers, who knows, will come from India. You will find that if you pass along Uhuru Highway at 5.00 O'clock or 8.00 O'clock in the morning, you will encounter vehicles that belong to foreigners. If that becomes the case, where will Kenyans go? They will become headmen and supervisors in the companies. Privatisation is only good if it only benefits the common man.

Privatisation has not originated from Africa and in this case, not in Kenya. It originates from Europe, specifically Western Europe. In these countries, economies have expanded and they have nowhere else to invest. So, they come to Africa and in Kenya to tell us that we must privatise. That is their strategy to come to our country and invest in our property because they have nowhere else to invest their money. We need to be very careful! The former regime was very particular. It has been accused of using parastatals to steal money from the public. However, on the other hand, we also need to check on the other side of this issue. They might have been right on this particular issue. If we surrender all our economic power, what shall we be talking about? There is no country which can be politically strong, if it is not in full control of its economy. Kenya can only be politically strong, if we are in charge of our economy. If we sell all our parastatals; for example, we sell Kenya Power and Lighting Company (KPLC) to an American company, Telkom to a British company, and all the major airports to another Western country, what then would happen if we were to differ politically? They will just hit back at us economically, and we will have lost our political independence.

Mr. Temporary Deputy Speaker, Sir, how far are we willing to go with privatization? Are we going to say that we are going to sell all the parastatals starting from KenGen, KPLC, then we mover further ahead and sell Telkom and Kenya Seed Company; then next time we start selling our roads? Where will we stop? It is a common fact that parastatals were originally created to make sure that the wealth of this nation was not taken away by Western countries, but taken over by Kenyans until such a time when they will have enough money to buy those parastatals or public entities. But nowadays, we are being told that if we do not do this or that, we are not going to be given money. This country has stayed for more than ten years without money from the World Bank or the International Monetary Fund, but we are happy we survived! Money is good because it is going to make our economy grow fast, but at what cost? It should not be at the cost of selling our parastatals! But on the other hand, if we are selling them to a Njoroge, a Mutiso, a Wafula or a Ruto, then there is no problem.

But then, we also need to know which parastatals to dispose of. We do not want to sell certain parastatals, even to indigenous Kenyans, only to find that they are holding this country at ransom! If we sell Telkom to a Mr. X, and he decides to hold this country at ransom, he can easily do that! He can also control the policies of this country. A nation is considered by its wealth, and the nation itself should be holding the wealth, then secondly, the citizens should hold the economy. Thirdly, maybe, our relatives in neighbouring countries can have a hand in the economy. Then, fourthly, the foreigners can have minimal share in the economy.

Mr. Temporary Deputy Speaker, Sir, this Bill has come at the right time when we need to look at the parastatals which were disposed of, and then ask ourselves whether those parastatals were sold off at the right prices. If not, these were public monies! If we are saying that we are going to recover land which was illegally allocated, should we not go back and say that we also want to recover those parastatals which were sold off at throwaway prices? Somebody, who I do not want to quote, once said that everybody must carry his own cross. Have you looked at those other properties which were grabbed from the public? We must also look at those parastatals!

Mr. Temporary Deputy Speaker, Sir, before I conclude, Mr. Temporary Deputy Speaker, Sir, we have known very well that we need to be very careful with the privatization of parastatals. We need to ask ourselves if there is a hidden agenda behind their privatization. Are we being forced to do so? If not, then we can even wait until after ten years, then we can come and debate on whether or not we need to privatize these parastatals. If it is necessary, then, well and good! But the bottom line is simple; privatization has to benefit Kenyans only!

**Mr. Wario:** Asante, Bw. Naibu Spika wa Muda, kwa kunipa fursa hii ili niweze kuchangia Mswada huu.

Nimesikitishwa sana na Mswada huu wa Ubinafsisishaji. Mswada huu unanua kuleta sheria ambayo itadhulumu watu maskini katika nchi ya Kenya. Huu ubinafsishaji ni ubepari uliokomaa na usiotambua utu, utaiifa na uzalendo wa Wakenya. Hii thibitisho kwamba Mswada huu ni Mswada wa wafadhili. Ni lini sisi tutaweza kulinda uzalendo wetu? Je, ni lazima twende kuwanyenyekea wafadhili huku tukiwapigia magoti na kuwaomba? Kama kuna ukoloni mamboleo, basi, ndio huu. Ni muhimu kwa Bunge hili kuhifadhi heshima yake kwa kupinga huu Mswada ili usiwe sheria katika nchi ya Kenya.

Bw. Naibu Spika wa Muda, kutokana na Miswada ya wafadhili kama hii, Wakenya wengi wamepata mateso ambayo ni vigumu kupata suluhisho. Ni Wakenya wangapi wamesimamishwa kazi bila hatia yoyote? Wamesimamishwa kazi kwa sababu Mzungu anataka wasimamishwe kazi. Itakuwaje basi sisi tuunge mkono Mswada huu? Kifungu cha 15 kinazungumzia mambo ya umilikaji. Kifungu hiki kinawapa kipaumbele wageni kushinda Wakenya ambao ni wazalendo wa nchi hii. Ikiwa tulikosea, hapa tulipo tumeamua kukosoa kosa hilo. Ni viwanda vingapi ambavyo vimefungwa katika nchi ya Kenya? Si kwa sababu viwanda hivyo havikuwa na faida kwa nchi hii, bali havikutakikana na Shirika la IMF na Benki ya Dunia. Nia yao ni kuvifunga viwanda hivyo ili kesho watuletee kile wanachotaka. Ukiangalia Kifungu cha 2(a), tafsiri yake haitoshi. Mpokeaji ni nani? Kwa nini amefichwa?

Bw. Naibu Spika wa Muda, ningependa kutoa mfano wa ubinafsishaji. Katika sekta ya utalii, ndege inayowabeba watalii ni ya Mzungu; gari linalokwenda kuwapokea watalii ni la Mzungu, na hoteli ambamo wanalala watalii hao ni ya Mzungu. Aidha, meneja wa hoteli hiyo ni Mzungu. Ni kama tumewachia Shirika la IMF na Benki ya Dunia utawala wa nchi hii. Ikiwa Bunge hili litasimama wima kuunga mkono Mswada huu, mimi nitakuandika historia kwa kupinga Mswada huu. Wakoloni ni wale wale, ila leo wamekuja kwa kupitia mlango wa pili.

Bw. Naibu Spika wa Muda, hii ni dhuluma kwa nchi zinazoendelea. Mapema mwaka 1980 hadi kufikia leo, nchi yetu haiwezi kuuza mifugo nje kwa sababu kuna maradhi hafifu ya mifugo. Lakini tulipokosa soko, maafisa wa Forodha katika Bandari ya Mombasa wamenasa tani kadhaa za nyama ambazo zimeathiriwa na maradhi ya *Mad Cow*. Baina ya *Foot and Mouth Disease na Mad Cow Disease*, maradhi gani ni hatari zaidi? Wametunyima soko kwa sababu ya maradhi hafifu. Wao wametuletea mama ya maradhi yote ulimwenguni. Tusipochunguza ubinafsishaji huu kwa makini, utatuletea matatizo kama haya. Hii ndio maana ninasema kwamba Serikali ya Chama cha "kusambaratika" cha NARC imekosea kwa kuwasilisha Mswada huu Bungeni. Ningependa iondoe Mswada huu mara moja ili tuweze kujadiliana kwa madhumuni ya kuuboresha ili uwe Mswada wa

Wakenya na siyo wafadhili.

Bw. Naibu Spika wa Muda, ikiwa huu ndio ubinafsishaji, basi hauna maana na usikubaliwe katika nchi ya Kenya. Ukisoma Mswada huo, utagundua kwamba kila uwezo umepewa Baraza la Mawaziri. Tuna hofu kubwa sana dhidi ya Baraza la Mawaziri. Hivi majuzi, pesa zilizotengewa maendeleo katika Ofisi ya Makamu wa Rais na Wizara ya Maswala ya Humu Nchini zilitumiwa kulipa deni la mtu binafsi. Nilisema hapa Bungeni kwamba pesa zilizotolewa za Shirika la Mikopo la Wakulima (AFC) zilitumiwa kufanya siasa na baadhi ya Mawaziri. Hii ndio sababu tunasema kwamba ni tisho kubwa kuweka imani yetu kwa Baraza la Mawaziri. Kifungu chochote kinachopendekeza kwamba uwezo upatiwe Baraza la Mawaziri, ninapendekeza kwamba uwezo huo upewe Bunge. Bunge nalo litapitisha chochote kilichomo katika huu Mswada ikiwa kweli Serikali inadhamiria kuleta faida katika nchi hii.

Bw. Naibu Spika wa Muda, huu ni ubepari uliokomaa. Kifungu cha 33 kinazungumzia Tume ya Ubinafsishaji. Mwenzangu alisema hapa kwamba duniani kote, nchi zinanuia kupunguza mamlaka ya Rais wala si kuyaongeza. Tume hii ni muhimu. Wakati itakapobuniwa, majina ya watu watakaoteuliwa yanahitaji kuidhinishwa na Bungeni

Kwa hayo machache, napinga katakata.

**Mr. Wambora:** Mr. Temporary Deputy Speaker, Sir, I want to take this opportunity to support this Bill conditionally. There are aspects of the Bill which require a surgical amendment. The others are good.

Let me start with the reason why I think privatisation, to a limited extent, is a good thing. We have seen privatisation working very well in parastatals, like the Kenya Airways. The Kenya Airways is being emulated all over Africa.

Secondly, I am aware of commercial operations by public organisations which require to be privatised and not even through this Bill, but straightaway and immediately. A good example is the Kenya National Trading Corporation (KNTC). Over the last ten years, even when I was in the Ministry of Trade and Industry, we tried to commercialise this organisation and make it more efficient. Up to now, it is not making profit. It is just a loss-making organisation. It is in a sector which is being handled very well by the private sector. It should be privatised immediately without waiting for this Bill to be passed.

The other parastatal which should be privatised immediately without waiting for this Bill to be passed is the Nyayo Tea Zones Corporation. I have said again in this House that the original purpose of this corporation was soil conservation. This was a completely misplaced concept. You do not conserve soil by cutting down indigenous trees, undergrowth and bushes and expect to conserve the soil. Time has come for this parastatal to be sold to the adjoining factories, which are owned by the small-scale tea growers.

There are parastatals which are more critical and strategic, for example, the Telkom Kenya Ltd, and the Water and Sewerage Department of the Nairobi City Council. They are very inefficiently run. These entities will not justify immediate privatisation. An opportunity must be found to commercialise these organisations, so that they can serve Kenyans without necessarily being privatised.

Mr. Temporary Deputy Speaker, Sir, we have another category of parastatals, namely, the monopolistic public organisations, like the Kenya Power and Lighting Company and the Kenya Electricity Generating Company (KenGen). These parastatals are critical to the running of this country. They have been mismanaged and have been giving very poor services to Kenyans. That is why there is an outcry out there for privatisation. They need to be commercialised. If they must be privatised, then Kenyans must own, at least, 51 per cent of their assets.

Let me go to specific articles very quickly. I want to look at Section 3(iii), which talks about

the privatisation programme, which shall be published in the Kenya Gazette.

Clause 17(2) contradicts the other clause and says that the Commission shall put a notice of proposed privatisation in at least two newspapers with a national circulation. Those two Clauses can be married together to incorporate both the gazette notice and the notice in the newspapers with the national circulation, so that the transparency in the privatisation programme comes out clearly. The country has lost a lot of money through parastatals which are run in an opaque manner, or a way that has created a lot of suspicion. The country has lost a lot of money. Clause 23 talks of the notice of the proposed transfer in the Kenya Gazette. That is a good thing. Clause 28 encourages further openness upon publication of a notice after an agreement is made. All these show that the authors of the Bill were keen on openness and transparency. I support that aspect.

I would like to concur with my colleagues who are unhappy with Clause 3(2), which says that the privatisation programme shall be formulated by the Commission and approved by the Cabinet. I concur with those who say that such a programme requires endorsement by this House, because we represent the people and must endorse any privatisation that is to be done in this country. Privatisation involves colossal sums of money and resources. The value of these assets is very high. The sectors served by the parastatals are also very sensitive.

I would also like to comment on Clause 38, which talks of appointment of an executive director. This also requires parliamentary approval in line with current thinking. I do not want to dwell so much on this Bill, but a Privatisation Fund, as defined by Clause 48(5), is for the restructuring and paying of consultants. I feel that this is just recurrent expenditure which should not take such colossal sums of money. This kind of money should be used for development to stimulate the economy of this county.

With those few remarks, I wish to support.

**Mr. Gachagua:** Mr. Temporary Deputy Speaker, Sir, I would like to take this opportunity to support the Bill with a number of conditions. Clause 4(2) of the Bill highlights the benefits of the privatisation programme. My view is that a lot of the benefits can be achieved without running the programme as it has been proposed in this Bill. One of the objectives of privatisation is to make State corporations more efficient, and to deliver services in a better way.

What the Bill proposes, in my view, can be achieved without going the way the Bill is proposing.

For instance, the real problem in our State corporations is lack of proper management. Even those individuals or corporations from outside the country which become interested in acquiring these assets do so purely because of the profits that they will realise. All they do is to introduce better management methods and a more efficient way of doing things. I can state without any fear of contradiction that we do have the necessary managerial skills in this country, if only we were to efficiently employ them in our institutions.

My contention is that before any privatisation programme is implemented, we must look into each and every State corporation or asset that is earmarked for privatisation, and involve the current management in very serious consultations to know the problems in that particular institution. It is only after we have had an opportunity to discuss in detail with those people who are there that we can say that there is a recommendation that we move in a certain direction to dispose of a certain asset, but this Bill does not provide for that. Before anything comes up for privatisation, we must have an opportunity to actually know that we have a problem that may need the kind of recommendation at hand.

The Bill also proposes that one of the benefits is that we will have an infusion of capital from outside into the country. The trend these days is to access capital locally. We do have SACCOs that have enormous resources at their disposal, and that could be marked for investment in

some of these State enterprises. That is one area of accessing capital, instead of going for capital outside. Currently, as you are aware, the cost of borrowing is very low, and even local entrepreneurs must be given a chance to access funds to be used in these kinds of enterprises. I would want to see a bit of local participation being given an opportunity before we open up the privatisation programme for every Tom, Dick and Harry from everywhere.

Our management has been the problem in most of these State corporations. The real problem has not been the management *per se*. It has been the method in which the management has been procured. In the past, the practice has been to appoint any one either because he is politically correct, or because he comes from a certain region and so on. If we were to pursue a policy of appointing people with the necessary skills to managerial positions, you will find that our institutions will start benefiting immediately.

I am particularly happy with the way Dr. Kituyi did the appointment of the managing director for the East African Portland Cement Company. He did it through a competitive process giving a lot of Kenyans a chance so that we will end up with individuals who have been selected through a vetting process.

After that, you cannot argue that so-and-so was nominated to a certain position because he comes from a certain place. I would like to see more of that. If we took that approach, our institutions would benefit more and more from the existing managerial skills in the country.

We may give a lot of encouragement and proposals to target State corporations for privatisation, while ignoring the fact that the bulk of the activities in the country are actually in the Ministries. If you look at the activities that are going on, for instance, in the Ministry of Roads, Public Works and Housing, you will find that a lot of individuals who are employed there are actually involved in day-to-day construction activities in a very inefficient manner. On one hand, you are targeting corporations and so on, while on the other hand you are leaving the bulk of the civil servants being involved in the work that they do very inefficiently. I would also want us to target those public institutions where this is going on.

Mr. Temporary Deputy Speaker, Sir, the other issue is the civil servants. This has been a problem with the World Bank, IMF and all the donor institutions, because civil servants are not giving us the best service. Service output and delivery are very low. One of the reasons why service delivery is low is because of poor management. This is because civil servants have security of tenure. It is impossible to sack a chief or a messenger, even when he is not performing because of the way the Civil Service has been structured. We must restructure the Civil Service if we want proper service delivery, so that the immediate boss of an officer is able to discipline and sack him. This is the only way in which we will get officers to deliver services. When you create a system that is so protected and protracted, then, obviously, you will end up with inefficiency. I would like the Government to also target areas of inefficiency in the Ministries.

Finally, even as we target parastatals and corporations for privatisation, we cannot do it the way this Bill is suggesting. We cannot do it in a *carte blanche* way by putting all State corporations and assets on the same footing. I see a need for categorisation. I see a need for earmarking strategic institutions like Telkom Kenya Limited and Kenya Power and Lighting Company for special treatment. These institutions are so strategic that when it comes to privatising them, it is important that this House has an opportunity to deliberate on that matter. I am aware that this House cannot be turned into an institution that just deals with privatisation. So, there may be need to have a Commission, as proposed in the Bill, that deals with less strategic institutions. Much as we should have a proposed columissary, it is also not suitable, because it is top heavy with civil servants, and this beats the purpose of having it in place. I would agree with Mr. M. Kariuki that we should have only the PS, Treasury, in that Commission and the rest of the members should be drawn from



stakeholders in the private sector, including some individuals from the institutions targeted for privatisation.

Mr. Temporary Deputy Speaker, Sir, the value of the institutions targeted for privatisation is everything. We have had instances in this country where assets have been valued for nothing. If these valuations are low, then it beats the very purpose of raising capital from the privatisation programme. I would suggest that there should be a requirement for a minimum of three valuations from reputable, independent firms for inclusion in the privatisation programme. That will discourage anybody who may be interested in getting a particular firm to give a certain price for a certain institution.

I support this Bill with a lot of hesitation. I would propose, if it is possible, that this Bill be taken away for now and be brought back with all the proposed amendments. If that is done, then we will be able to support it.

With those few remarks, I beg to support.

**Prof. Olweny:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill. I wish to support it with reservations because of the way it has been drafted and the timing. This Bill has been brought with the assumption that public corporations have performed poorly, and that they have been riddled with mismanagement and corruption. It has been brought on the assumption that public corporations have not generated the expected revenue. That is true, but previously, these corporations have been made to service politics for politicians in this country. That is, whatever little money that these corporations have been generating, they have always given it to the powers that be. For example, the Harambee money has always come from these corporations. Whatever money that politicians have needed in this country, most of it has come from these corporations. That is one of the reasons which has made these corporations to be seriously mismanaged because if they are being looted, of course, they will not perform. The previous Government, in particular, was notorious for this. They used to have briefcase boys who would run from one corporation to another, fund-raising for the powers that be in the Government.

Mr. Temporary Deputy Speaker, Sir, it is assumed that if these corporations go private, they will perform. While it may be true, I have my doubts because we have had several private enterprises in this country that have collapsed. For example, a number of banks collapsed, yet they were private. We also had other private undertakings. A good example in this country was a private transport company in the name of Overseas Trading Company (OTC). Where did it fizzle out to? It sold out its buses to Akamba Transport Company (ATC), which has got some of the oldest buses around today in this country. It is not that they perform very well, yet it is one of the most expensive to travel in. Other examples of private companies that have collapsed are Ramisi Sugar Company (RSC) at

Mr. Temporary Deputy Speaker, Sir, previously, there was an attempt to privatise a number of corporations. It was done haphazardly. Look at the example of the mills in Nakuru. It was done very poorly! The previous Government tried to privatise a number of them, but the process was riddled with corruption. It is our hope that if we give the Government the go-ahead to privatise our corporations today, it will be done properly and transparently.

The Bill suggests that we are going to have one person in the name of a Chairman, and a Chief Executive Officer (CEO) for the Commission. We have to be very careful about that arrangement. We may end up with similar problems that we had before. My suggestion is that, as my colleagues have suggested here, let the privatisation arrangement be properly supervised, and if need be, by the Cabinet. It would be better if it was brought to Parliament to do the arrangement.

Mr. Temporary Deputy Speaker, Sir, if the Government is to get rid of its corporations, as a number of colleagues have said repeatedly here, we should not make them foreign. That will be the

worst that we would have done to this country. Let Kenyans, at least, buy not less than 60 per cent of the shares of the corporations that are going to be privatised. Let the Government itself maintain some shares for protection. At least, it should maintain not less than 10 per cent. I would suggest that if anybody from outside wants to buy shares from corporations that are going to be privatised, let it not be more than 30 per cent. I would not like to see a situation where, for example, if we were to privatise the Kenya Railways Corporation, 70 per cent of the shares are bought by foreigners. Then, somewhere along the line, they will say: "This is not performing!" Then, they will sell it out and then it dies! Then Kenya will no longer have a railway system! Let anybody who wants to buy shares in this country not have more than 30 per cent. That way, we shall have control of some of the corporations that our taxpayers have paid for so dearly.

With those few remarks, I beg to support with reservations.

**Dr. Rutto:** Mr. Temporary Deputy Speaker, Sir, I wish to contribute to this Bill. I would like to support it, but with reservations. First and foremost, this Bill is urging us to withdraw Government hands from business, and transfer the business that was run by parastatals to private hands. We are, in effect, admitting that the Government has been a poor manager. It has been inefficient, wasteful and has not encouraged enough competition.

Mr. Temporary Deputy Speaker, Sir, history shows that there could be some elements of truth in some these observations. But my observation is that some of these issues have to do with administration and management. I agree with Mr. Gachagua that, by withdrawing the Government from business, we are actually admitting that the Government has been a poor manager.

Privatisation tends to generate competition that is required for a better performance of these public entities. It is also assumed that privatisation will encourage hard work in those who will be charged with the responsibility of running those entities. It is also assumed that in this way, we will encourage greater earnings through privatisation. Now, the Bill also assumes that privatisation will create better controls. In other words, better control mechanisms will be established and will ensure that these entities perform in a more economically viable way. It assumes further that privatisation will inject efficiency into the system for enhanced economic gains. It assumes that privatisation creates a more caring atmosphere, in other words, it will encourage a move towards making people in charge of those entities to be more caring.

Indeed, there is a remarkable careless attitude in Government, particularly when public servants are delivering services. They do not perform their duties in a caring manner. Even the way they handle machinery and their responsibilities in office, they do it in such a way that there is lack of care.

Now, we are assuming that by privatising these entities, there will be more care and better maintenance of equipment and facilities. In other words, we are saying, by privatising, we are creating better responsibility, efficiency, better monitoring systems and a better promise of economic gains.

Mr. Temporary Deputy Speaker, Sir, I think, while debating a Bill of this nature, which requires us to sell public property to private hands, there are various questions that we need to ask ourselves. First and foremost is, of course, the question why are we privatising? What is the point of privatisation? One of the reasons, of course, is what I have alluded to in my contribution, which is that public entities have been inefficient and we have lost revenue through these entities.

Now, by privatising, we boost the economic performance of those entities. But the question that we need to ask ourselves is, in whose interest? Again, to what extent is this boost going to benefit Kenyans, both in time and also in quantity? So, are Kenyans going to benefit from this? We need to note that a public entity, and in particular, the entities that we are discussing, have indeed, some economic value. In other words, in their operations, when they still exist in the hands of the

Government, they generate some money.

We are also saying that those entities do not only have economic value, but they also have social value. They create employment for our people. They provide opportunities for education. They provide health opportunities. Moreover, certain institutions have stimulated certain directions of social transformation. In other words, when we are privatising a public entity, we not only need to pay attention to its economic value, but also the social value which that entity has contributed.

This morning, I read an article in the papers which was written by a trade unionist and he is urging us to look at the losses, particularly, the social losses that are likely to be incurred when we get rid of these parastatals. I think we should not ignore those factors. We should not ignore the fact that we are going to render our young people jobless. When you privatise an entity, the one who buys it will make sure that he or she employs only those that can provide the greatest economic gain for that particular person. I believe when Government establishes certain institutions of this nature, they not only seek to produce some money out of it, but they wish or seek to extend some social service to its people. We should not ignore those factors.

We should ask ourselves what losses are we likely to incur in the process, and in particular, those social losses that we are not likely to see while focusing on economic gains. Why are we privatising? The Bill indicates that these entities have been a drain on Government resources, meaning that we have perpetually, as a nation and a Government, injected capital in them but they do not produce back desirable results. In other words, Government resources have been pumped into those entities but nothing comes out of them. Part of the reason why the Government has been incurring losses is because controls in these entities have not been tightened in the past. Elsewhere, there have been suggestions that in order to improve the management of these entities, we need to recruit those who run those entities on contract, so that if they do not perform well, they can be sacked. In other words, employment opportunities for people who are charged with the responsibility of running these entities should make it clear to them that unless they produce, they are going to lose their jobs. We need to strengthen administration and management rather than giving up and saying that we are selling, or saying that we cannot manage those institutions.

There has been reference to the fact that this Bill has been influenced, in fact, by the donors. In other words, privatisation is an agenda that is flowing from outside and, therefore, we are busy responding to urges from outside.

Mr. Temporary Deputy Speaker, Sir, if it is true that we are responding to the requirements of the World Bank and the International Monetary Fund, then there is a political problem. If we are selling these entities to outsiders, then we are also selling our political rights. In other words, we are giving up our political control to outsiders. We are giving in to what another hon. Member had referred to earlier on as neo-colonialism. When someone controls your own economy, there is also the likelihood that he will control your politics. We have suffered because of colonialism and even today, we are still suffering. If it is true that we are responding to the IMF and World Bank requirements, then we have no moral responsibility to go by what they demand. In actual fact, we are selling ourselves to outsiders and giving up our rights.

Secondly, there is also a moral problem if we are responding to the World Bank and IMF in this privatisation business. We are admitting that we are incapable of running our own institutions, and another person can be hired from outside or brought in through the back door to run them. That is to declare that we, as a nation, are incapable of creating our own future and history. That would also mean that we are incapable of transforming our own circumstances and compete with the rest of the world. I think that is not a proper direction. We should demonstrate to the world that we can make our own history and run our own affairs in a more dignified manner.

Let me now turn to the specific articles in the Bill, some of which have been referred to. I

am against the creation of a Commission. I would like to join other hon. Members who have said that this is an additional drain on the economy. If we are going to privatise, there is no need of creating a permanent Commission. After all, privatisation or selling of these entities will be temporary. The use of the Commission and its creation as a permanent entity in the privatisation process is misguided. We are creating jobs for people who will be reading newspapers after they have finished privatising these entities.

I also join other hon. Members in saying that the Minister, in the Bill, has been given a lot of powers. He is given the powers to appoint members of the Commission. The President appoints the chairman. In the past, we have known that Ministers do not take care of objectivity while appointing members into such commissions. They are likely to appoint their own friends and relatives. We should give Parliament some responsibility in the appointment of a Commission, if this will be acceptable. In my view, it is not necessary.

Secondly, I want to comment on the qualifications of the Chief Executive Officer (CEO). The qualifications of all other members of the Commission have been mentioned. For instance, the Bill provides that the Chairman should have a university degree in either law, economics and accounting. However, no reference has been made to the qualifications of the CEO. Elsewhere, it is only mentioned that he should possess experience and expertise in law or financial management or banking or economics. There is need to provide for specific qualifications for the Executive Director.

When we come to the Privatisation Appeals Tribunal, again, the appointment needs to be checked. The Bill gives the President and the Minister the powers to appoint its membership. There is no way in which one can contest the composition of the Tribunal. There is reference in Part IV concerning consultancy. There is nowhere else consultancy has been created. Therefore, there is need to specify the role of consultancy in this Bill. I would like to say that the spirit of the Privatisation Bill is good. In other words, we are seeking to enhance economic performance of the institutions being targeted. If the points that I have mentioned are not considered, I believe that we may be doing the wrong thing.

Mr. Temporary Deputy Speaker, Sir, I support the Bill, but with reservations.

**Mr. Midiwo:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill.

Mr. Temporary Deputy Speaker, Sir, from the onset, I would like to say that I support the spirit of privatisation. However, I want to oppose the Bill. I think a few things need to be done first. The idea is good, but if the Government meant well, this Bill should have been subjected to the Departmental Committee on Finance, Planning and Trade to iron out the inadequacies in it. There are so many things that are wrong. I, personally, do not believe that the Government has any business doing business. I do not believe the Government has any business owning shares in the National Bank of Kenya (NBK) and the Commercial Bank of Kenya (KCB). I oppose this approach to privatisation. If we are to sell some of these corporations, then their ownership must go to indigenous Kenyans and not to foreigners. There are many loopholes in this Bill. This will ensure that our parastatals are sold to foreigners. We chased away the colonialists in 1963 and we have no business bringing them back through the back door.

If the Government needs to privatise the banks, which is the main reason why the World Bank and the International Monetary Fund (IMF) are forcing us to privatise, we must sell the shares through the Nairobi Stock Exchange. We must be specific on what percentage of the shares foreigners can buy, so that we protect the interests of Kenyans. Therefore, the KCB and the NBK, and other entities that are to be privatised, must be bought by Kenyans. If foreigners want to buy shares in these institutions, we must specify the shareholding that they can buy. We do not want

foreigners to own everything in this country. That is specifically what the IMF and the World Bank are trying to force us to do. They want to make us dependent. There are employees in those entities. They do not want us to own any wealth in this country. It is the duty of this House to reject such proposals and seal any loopholes that will take us back to the colonial days.

If we must privatise anything, especially the viable business ventures, we should do so with certain conditions and limitations. The Government cannot run away from providing services such as electricity, telephone and water. As I speak, our development partners, particularly the IMF and the World Bank, are insisting that we privatise provision of water. I believe that is wrong. We have no business having foreigners charging us for our own natural resource. The Government must take appropriate steps. We will not do it for the first time. In Nyeri, for instance, we have a local parastatal created by Nyeri Town Council providing water very efficiently. We do not need a foreign firm to come here and show us how to do billing. This country has enough expertise and we can very well do that.

The question of privatising State corporations must be properly addressed. Are we privatising them because they are not managed well or is it a question of ownership? I have said that the ownership of these institutions must revert to the local people. If the problem is management, we can reach reasonable levels of acceptable management by selling the shares of these institutions through the Nairobi Stock Exchange. That means we do not need commissions. If the Postal Corporation of Kenya or the NBK were to be sold, let us go private. Let those institutions appoint Boards of Directors who will be answerable to the shareholders of those particular companies.

Mr. Temporary Deputy Speaker, Sir, this Bill is not good. I read a lot of mischief in many sections of the Bill. One of these sections relates to the way the Commission is appointed. We have come a long way. We have come so far away as to reach the level where we are; where, at least, Parliament has some teeth. Therefore, we have no business passing a Bill that will make Parliament powerless. Even though so much will go wrong--- We can tell from the Bill; that a Minister makes the appointment, then the Commission becomes independent. We cannot afford to do that. Whether those people are vetted, appointed by the Cabinet or fronted by the Minister and discussed in Parliament, they must come and get approved ultimately by Parliament. Parliament is the supreme organ for the people of this nation. Therefore, we cannot and we have no business giving that kind of power to one man. We already have several reasons not to do that.

Just yesterday, until now, we are questioning what Ministers are doing with public funds, and there are many more questions out there. Kenyans are wondering about corruption. There is the case of the "passport deal;" the tender deal, which as it turns out, looks so open, but corrupt and smells so bad; that a maximum of three or four people are trying to steal Kshs2.7 billion shillings, money that this country could easily well use in the health, education and investment sectors. It could also be used in paying tea, coffee and sugar farmers. We have no business creating other Pattnis or enacting laws that will create more Pattnis in this country.

Mr. Temporary Deputy Speaker, Sir, if we have to privatize these institutions, we must have valuation, and we must do it through competent people. We do not want political valuation. Early last year, we saw a situation where people with good political connection were buying seven-acre homes for as little as Kshs10,000 in the up-market areas of Nairobi, for example, Loresho and Lavington. Up to today, I doubt if they have been brought to book. We have no business as a nation, condoning that. We must do things differently, and I think the NARC Government specifically made many promises to Kenyans. Kenyans are still hoping that, maybe, a little good can come out of a Government that promised so much and is delivering the negative.

There is the issue of the whole drafting of the Bill, where there is a steering committee which has a Permanent Secretary in it. This is the mischief that we, as a Parliament, have been

trying to cure. As a nation, we have been trying to have some separation of powers. Therefore, if we have some people who are working in certain Ministries and seconding them to this so-called steering committee, what you are doing actually is creating a state of confusion, so that you can have a legal vehicle

for corruption. We are not going to have that. I would propose that, if we want to do the privatization genuinely to benefit the populace of this country, we have to engage reputable accounting firms, as opposed to talking about these steering committees and commissions. We can engage, for example,

PriceWaterHouseCoopers, and other reputable Kenyan accounting firms to evaluate these companies and sell them off at the stock exchange.

Mr. Temporary Deputy Speaker, Sir, I also notice that some of the membership in this commission are nominated by the Law Society of Kenya (LSK). The LSK, in my view, is a watchdog and it has no business being in commissions that it is supposed to watch. Just the fact that Mr. Ahmednassir, is colluding with the Government in corrupt deals right now is a good pointer that we cannot have that. We cannot have people like Mr. Ahmednassir in this Commission. They are part of the problems that we are facing. They are participating where they should be watching. Therefore, I beg to urge the Government to withdraw this Bill and publish it afresh, make it make sense and take it through the necessary Parliamentary Committee, which is the Finance, Planning and Trade Committee, in which I sit. Bring the Bill to us and let us make changes to it. Let us make it make sense for this country, and I will support it with all my heart.

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

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Thursday, 29th April, at 2.30 p.m.

The House rose at 6.30 p.m.