

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 19th November, 2009

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

Report of the Departmental Committee on Defence and Foreign Relations on the Status and Ownership of the Military Cargo Aboard MV Faina.

(By Mr. Keynan)

NOTICE OF MOTION

ADOPTION OF REPORT ON STATUS/OWNERSHIP OF
MILITARY CARGO ABOARD MV FAINA

Mr. Keynan: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the Status and Ownership of the Military Cargo Aboard MV Faina.

QUESTION BY PRIVATE NOTICE

LEGALITY/VIABILITY OF NEWLY CREATED DISTRICTS

Dr. Khalwale: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

What is the legality and viability of the newly created districts in view of the recent judgment by the Kisii Resident Judge declaring them illegal?

The Minister for Co-operative Development and Marketing (Mr. Nyagah): Mr. Deputy Speaker, Sir, under the principle of collective responsibility, I am waiting for the Minister to come and answer this important Question!

Mr. Deputy Speaker: Do you want to answer on behalf of the Minister?

The Minister for Co-operative Development and Marketing (Mr. Nyagah):
Mr. Deputy Speaker, Sir, I do not have a copy of the answer!

Mr. Deputy Speaker: We can move on to other Questions as we wait.

ORAL ANSWERS TO QUESTIONS

Question No.193

DOCTORS AUTHORISED TO SIGN P3 FORMS IN EACH PROVINCE

Mr. Nyamai asked the Minister of State for Provincial Administration and Internal Security:-

(a) to table a list of the doctors authorized to sign a Kenya Police Medical Examination Form (P3) in each province; and,

(b) what urgent steps he is taking to ensure that there is an increase in the number of doctors authorized to sign the forms.

Mr. Deputy Speaker: Where is the Minister of State for Provincial Administration and Internal Security? Let us move on to the next Question.

Mr. Mwakulegwa!

Question No.050

FUNDS FOR CONSTRUCTION OF VOI BUS PARK

Mr. Mwakulegwa asked the Deputy Prime Minister and Minister for Local Government, considering that the controversy surrounding Voi Bus Park has been resolved and alternative land identified, when he will allocate funds for this vital project.

Mr. Deputy Speaker: Where is the Deputy Prime Minister and Minister for Local Government?

Let us move on to the next Question!

Question No.081

NON- ALLOCATION OF FUNDS FOR MAINTENANCE OF NANYUKI-LEWA ROAD

Mr. Ruteere asked the Minister for Roads:-

(a) why no money has been provided for the maintenance of Nanyuki-Lewa Road for the last two financial years; and

(b) when he would take action to seal the large potholes and generally maintain the road whose bad state has caused several accidents.

The Minister for Public Works (Mr. Obure): Mr. Deputy Speaker, Sir, on behalf of the Minister for Roads, I beg to reply.

(a) It is not true to say that no money has been provided in the last financial year for maintenance of the Nanyuki-Lewa Road. The Ministry of Roads has been providing money for the maintenance of Nanyuki-Lewa Road as follows:

In the year 2007/2008, a total of 125,155,248 realised from the savings of the Nkubu-Meru-Lewa Road were spent on the maintenance of the Road. Emergency repair works were carried out between August 2007 and February, 2008 through a company called Intex Construction Company.

(b) In the current financial year, a sum of Kshs11,246,542 has been budgeted for repairs and routine maintenance of the road to bring it up to a good motorable condition. The works carried out comprise of partial overlay and construction of sections of the road, totaling 14 kilometers, potholes patching over the entire road and drainage maintenance. So, some work has been done and money has been allocated, as I have said, in this financial year.

Mr. Ruteere: Mr. Deputy Speaker, Sir, the written answer I have talks about Kshs125 million and not KshsKshs125,000. However, the years mentioned as the time when money was given--- The road is worse off than in past years. It is shocking to know that Kshs125 million was given for maintenance of a stretch of about 40 kilometers. We would like to know what kind of maintenance this was, because the road is in a pathetic situation. Was it resealing, pothole patching or what kind of maintenance was it? Motorists are finding it difficult to drive from Nanyuki to Lewa Dam as of now.

Dr. Obure: The works that were carried out comprised of partial overlay and reconstruction of sections of the road. This involved a total of 14 kilometers which at that time were badly damaged. There was also further work done to seal potholes and rectify drainage work.

So, all that was done but I am informed that the condition of the road has deteriorated. I will convey that message to the Minister to give instructions for the sum of Kshs11 million in the current Budget to be applied immediately to make the road motorable.

Mr. Mwangi: Mr. Deputy Speaker, Sri, while I do appreciate the answer given by the Minister, and recognizing that the Ministry has done well all over the country in attending to these problems---

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! Consult in low tones.

Mr. Mwangi: Mr. Deputy Speaker, Sir, I understand that there is only one Chair.

I would wish to ask the Minister to inform this House why the road between Kenol and Murang'a was abandoned and the contractor left site. The road was dug up to the extent that it is not motorable anymore. When is the Minister going to allocate more funds to complete the project?

Mr. Obure: Mr. Deputy Speaker, Sir, you will appreciate my dilemma. I am not quite in a position to deal with that particular question, because I think it is substantially different from the Question that I was dealing with, but I will relay this information to the Minister, with a request that he deals with it.

Mr. Chanzu: Mr. Deputy Speaker, Sir, from the number of Questions that we have been directing to the Ministry of Roads, you gather that we talk about a lot of figures in terms of money being spent. What is the Ministry doing? I think there is a problem of information not getting to the headquarters from the ground very quickly? For example the Question that I asked about Kisumu-Kakamega Road, and compared with

the answer he was giving, it shows he does not get proper information from the engineers on the ground. What is he doing to ensure that he gets proper information and speedily about what is going on, on roads like this one?

Mr. Obure: Mr. Deputy Speaker, Sir, there could be problems of communication, but you are all aware that the Ministry of Roads has recently carried out major reforms, including the establishment of specific road authorities to deal with specific jurisdictions covering our roads network. I believe that these reforms were aimed at improving and dealing with the kind of problems the hon. Member has raised. I do hope that with the establishment of regional centres around the country, the authorities will be able to deal with specific sections of our roads, so that the question of the headquarters not knowing what is happening on the ground will not arise anymore. That will be history. I am personally confident that the current set-up will deal with the kind of question raised by the hon. Member.

Mr. Joho: Mr. Deputy Speaker, Sir, I would like the Minister to inform the House on what measures the Ministry undertakes on roads that are hardly five years old and already have serious potholes, for example, the Voi-Mtito Andei Road. We know that it is hardly five years old and already there are very serious potholes on it. Are there measures in place to get the contractors to re-do or maintain roads to the required standards?

Mr. Obure: Mr. Deputy Speaker, Sir, he is talking about a major road in this country, which continues to be destroyed because of the load carried on it. You know that the Ministry recently took severe measures to enforce axle loads, and all transporters and motor vehicle owners who carry heavy loads were required to comply with the requirements of the law by removing the fourth axle. All that has been done, and I am aware that the situation has improved considerably. We now expect our roads to last longer and serve people more effectively.

Mr. Ochieng: Mr. Deputy Speaker, Sir, if you look at the amounts being quoted in connection with roads--- We are talking about Kshs140 million to repair a section of a road of about 40 kilometres long. Could the Minister tell us how much is required to refill potholes or even tarmack one kilometre of a road?

Mr. Obure: Mr. Deputy Speaker, Sir, it is very difficult to be specific on this particular question, because the cost varies. It is really the work of engineers who carry out estimates before any work is undertaken. I would like to say that it is generally very expensive to carry out any road development. It is equally very expensive these days to carry out even repairs due to the cost of materials and the kind of designs involved. Consideration has also to be given to the quality of road you want, the number of vehicles expected to pass on it and the load expected to be conveyed on it.

Mr. Langat: Mr. Deputy Speaker, Sir, I think the hon. Member has asked the Minister a specific question, namely how much the Ministry spends on average on one kilometre of a road, but he is not answering it!

Mr. Deputy Speaker: Order! The Minister has to complete the answer before you can determine whether he has answered it or not. You cannot cut him short then say that he has not answered it.

Mr. Obure: Mr. Deputy Speaker, Sir, I started by saying that it is very difficult for me to be specific about this, because it really depends on what kind of road you expect to construct. On the whole, I would say that the average cost per kilometer, if you

are doing a new road, would be anything between Kshs40 million and Kshs50 million. I would like to say that those figures have to be verified but roughly that is what it costs.

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

Mr. Ruteere: Mr. Deputy Speaker, Sir, now that Kshs125 million was spent on a 14-kilometre stretch and the entire stretch of 52 kilometres from Nanyuki to Lewa Junction is completely dilapidated, and only Kshs11 million has been allocated, what assurance is the Minister going to give that the Kshs11 million is going to be used on the section that needs repair? Is it going to be released quickly so that the road does not deteriorate further?

Mr. Obure: Mr. Deputy Speaker, Sir, I confirm once again that Kshs11 million is available and arrangements will be made to ensure that money is released to carry out repairs on the sections which are badly damaged. I am sure the Minister for Roads will consider long-term action by way of carrying out permanent works on that road.

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

Question No.280

NUMBER OF CLASSIFIED/TARMACKED ROADS IN BORABU DISTRICT

Mr. Ombui asked the Minister for Roads:-

(a) whether he could indicate the number of classified and tarmacked roads in Borabu District; and,

(b) what steps the Government is taking in order to improve and expand road infrastructure in the district.

The Minister for Public Works (Mr. Obure): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The following is a breakdown of both classified and untarmacked roads in Borabu District. We do not have any Class A roads in Borabu District; we have 12 kilometres of Class B roads, that is paved to bitumen standard roads; we have 21.5 kilometres of gravel roads of C classification; we have 29 kilometres of Class D gravel standard; we have 10 kilometres of Class E gravel standard; We have 17.2 kilometres of earth roads, Class E; we also have 54.4 kilometres of roads under the settlement roads classification and then 29.2 kilometres of rural access roads or gravel roads.

(b) The Ministry is rehabilitating Keroka-Sotik Road at a contract sum of Kshs.1.2 billion where part of this road, in fact, a large chunk of it, passes through Borabu District. In addition, a total of Kshs1.5 million has been set aside to be used under the *Kazi Kwa Vijana* Programme. The money has been utilized in carrying out off carriageway road maintenance work by the local youth within the district. The Ministry of Roads will also improve and expand the road infrastructure in accordance with the work plan drawn by the District Roads Committee for the year 2009/2010.

Mr. Ombui: Mr. Deputy Speaker, Sir, I thank the Minister for the answer he has given. However, since he has given clearly the distances covered by each road, could he state clearly where each road starts from and where it ends?

Mr. Obure: Mr. Deputy Speaker, Sir, that is a mammoth assignment! I have a map here of Borabu District showing all the roads I have mentioned.

Mr. Deputy Speaker: Could you, please, table it?

Mr. Obure: Mr. Deputy Speaker, Sir, I will table it.

(Mr. Obure laid map document on the Table)

Mr. Deputy Speaker: I presume that you are satisfied, Mr. Ombui!

Mr. Ombui: Mr. Deputy Speaker, Sir, my Question was very clear. I asked the Minister to give a list of the classified and tarmacked roads in Borabu District. He has given distances. However, these distances must start from somewhere and end somewhere. I do not know which roads are covered in Class “C”, “D” and “E”. I need to get very clear information.

Mr. Obure: Mr. Deputy Speaker, Sir, we talked about 12 kilometres of Class “B” Road constructed up to bitumen standard, that is Keroka–Sotik Road. A large section of the road between Metamaywa and Chebilat is in Borabu District. The Borabu section actually covers the 12 kilometres I mentioned. We talked of Class D Roads, here we are referring to Ikonge-Chebilat section in Borabu District. We talked of Class B Road, this is Kijauri to Raitigo. Again, we talked of Class D between Getare and Mokomoni. We talked of another Class E Road; it is the road through Chepng’ombe Estate. Another Class E, earth road is between Nyasiongo and Nyamasibi. The last one is Class E, this is gravel road between Raitigo and Bomet.

Mr. Affey: Mr. Deputy Speaker, Sir, classified roads attract funding. There are not very many roads which are classified in North Eastern Province. That is why every financial year, the province continues to suffer in terms of road rehabilitation. What is required for a road to be classified? What is it that the Ministry requires to justify the classification of a road? Is it that you have to know the Minister and he can do it for you?

Mr. Obure: Mr. Deputy Speaker, Sir, going back specifically to North Eastern Province where the hon. Member wants us to classify roads, I referred earlier to the question of the recent reforms, we now have the Kenya Rural Roads Authority (KERRA) which will be operating in the region. We are also going through these reforms to establish the Constituency Roads Committees to replace the District Roads Committees (DRC). I feel that is an area where hon. Members of Parliament who operate their own constituencies, can influence the kind of work they want carried out on these roads. I do not want to say much, but let us adopt the concept of Constituency Roads Committees. I hope this will be done next week and then we will sit in those Committees to influence the kind of roads we want rehabilitated in our own areas.

Mr. Ombui: Mr. Deputy Speaker, Sir, I am not still satisfied with the answer given by the Minister. In his answer, he has mentioned, Getare-Mokomoni Road. This is a road which is almost one and a half kilometres. He has talked about 29 kilometres. Could I respect him to come with a comprehensive answer as far the starting points and ending points of these roads are concerned? The answer he has given is not very clear.

Mr. Obure: Mr. Deputy Speaker, Sir, I did not say that Getare- Mokomoni Road is 29 kilometres long. Again, I will lay the schedule on the Table of this House, so that the hon. Member can scrutinize it further. This map shows the classified roads in Borabu District.

I believe that the answer I have given is fairly comprehensive; I suggest the hon. Member for North Mugirango examines the list which I have laid on the Table.

(Mr. Obure laid the document on the Table)

Question No.196

DISMISSAL OF MR. JOHN WACHIRA KIHIA

Mr. Kioni asked the Minister for Forestry and Wildlife:-

(a) if he could state the circumstances under which Mr. John Wachira Kihia was dismissed from services of the then Ministry of Environment and Natural Resources; and,

(b) why he was dismissed, considering that the then Nyandarua District Forest Officer conveyed to them a letter dated 21st March, 2003, indicating that he had been unwell.

Mr. Deputy Speaker: Minister for Forestry and Wildlife!

Next Question, hon. Affey.

Question No.254

ESTABLISHMENT OF HIGH COURT
IN NORTH EASTERN PROVINCE

Mr. Affey asked the Minister for Justice, National Cohesion and Constitutional Affairs:-

(a) why the Government has not established a High Court in the whole of North Eastern Province; and,

(b) when he plans to establish one.

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

(a) The Judiciary is aware that the whole of North Eastern Province lacks High Court Station.

(b) To address this, the Garissa Magistrate has been gazetted as a High Court sub registry. The station has also been identified among others for the construction of a High Court under the Judiciary Performance Improvement Project (JPIP) to be funded by the World Bank. This will be done as soon as funding negotiations are finalized

Mr. Affey: Mr. Deputy Speaker, Sir, you realize that the Assistant Minister has confirmed that actually North Eastern Province is the only province in the country today which has no High Court essentially denying the people of that region access to justice. Cases are referred from Mandera to Marsabit which is over a distance of 1,500 kilometres. It, therefore, means that many people in that area have resorted to settling their disputes through the traditional methods. Cases of murder and rape are now determined by elders because people have no access to justice in that part of the country. He himself received a report from a task force that was appointed by the Government and chaired by Eng. Sharawe. One of the recommendations of that task force which the President and the Prime Minister promised to implement immediately was to provide a High Court facility. Why can the Government not use that report to upgrade the sub

registry in Garissa in order to perform the functions of a High Court before they can build a new one?

Mr. Cheptumo: Mr. Deputy Speaker, Sir, I would like to agree with my colleague here that it is very unfair that the Kenyan people in northern Kenya are unable to access the High Court. Because the Government has realized this unfortunate situation, they are now saying that there are funds to put up a High Court in Garissa. It is, indeed, a very unfortunate situation. I want to say that there are serious steps which are being undertaken and very shortly, we will be putting up a High Court in Garissa.

Mr. Olago: Mr. Deputy Speaker, Sir, I am glad the Assistant Minister appreciates that access to justice is a constitutional right. The fact that there are negotiations going on about the funding or constructing of the High Court in Garissa is not enough. In view of the fact that the people of North Eastern Province are all suffering from lack of access to justice, could the Assistant Minister tell the House exactly when he expects construction to start in Garissa?

Mr. Cheptumo: Mr. Deputy Speaker, Sir, I am informed that in the next six months or so, we are going to begin construction of the High Court in Garissa.

Mr. Imanyara: Mr. Deputy Speaker, Sir, it has taken the Government more than 40 years to realize that the people of North Eastern Province require justice. Pending the construction of this court, would you consider visiting justice or a circuit system whereby judges in the nearer stations can be sent to this area to administer justice while you consider whether or not you will build this court?

Mr. Cheptumo: Mr. Deputy Speaker, Sir, the proposal by my learned senior is, indeed, a good one. I want to promise that we will consider, as a Ministry, if that can be pursued.

Mr. Njuguna: Thank you, Mr. Deputy Speaker, Sir. As the Assistant Minister has very ably responded to this Question, because it applies to North Eastern Province and noting that serious commitment, could the Assistant Minister, at the same time, indicate the amount of money that they have already earmarked for this facility so that this marginalized area could also appreciate the construction of the court facility?

Mr. Cheptumo: Mr. Deputy Speaker, Sir, this financial year, Kshs462 million was set aside for constructing High Courts and I cannot specifically state the specific figure for this particular project. I will try and establish that fact and pass this information on to my colleague.

Mr. Deputy Speaker: Hon. Affey, your last question on this?

Mr. Affey: Mr. Deputy Speaker, Sir, I just want to thank the commitment given by the Assistant Minister and I hope that he can follow it up. The court in Garissa now, as he said, is a sub-registry. I am told that in Machakos, they had a sub-registry which has now been made a High Court facility. Can you consider, in the meantime, upgrading this facility so that it can handle the cases?

Mr. Cheptumo: Mr. Deputy Speaker, Sir, the same idea is what my senior learned friend, hon. Imanyara, proposed and I think I had made a commitment that we will consider that proposal.

Mr. Deputy Speaker: Next Question!

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has said that he is going to consider this proposal. Is it a commitment that he

will do so or he is going to consider it? How long will it take them to consider in order to come to a conclusion?

Mr. Deputy Speaker: Mr. Assistant Minister, give a firm commitment!

Mr. Cheptumo: Mr. Deputy Speaker, Sir, considering is part of commitment.

Mr. Deputy Speaker: Okay, it is fair enough.

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. I think the subject is very serious and the Assistant Minister does not appear to understand the difference. Mr. Imanyara was proposing visiting justice; that means a judge from another station going there for a number of days and coming back. But hon. Affey is asking the sub-registry to be upgraded, in the meantime. Those are two different things.

Mr. Cheptumo: Mr. Deputy Speaker, Sir, there was clear distinction between the two positions and I was very clear. I said the construction of the High Court in Garissa will be done within six months. Within the period of six months, I said we can consider upgrading this facility. That is another proposal in addition to what my senior learned friend also proposed.

Mr. Deputy Speaker: Next Question, hon. Elijah Lagat!

Question No.388

SUPPLY OF WATER TO NANDI CENTRAL/ WESTERN
PROVINCE THROUGH CHEPSONOI WATER PROJECT

Mr. Deputy Speaker: I am made to understand that the Minister is not in a position to answer this Question. She is, apparently, not feeling well. This Question will be put on the Order Paper on Wednesday afternoon next week.

(Question deferred)

Question No.394

LOANS WRITE-OFF FOR FARMERS IN MOLO CONSTITUENCY

Mr. Kiuna asked the Minister for Agriculture whether he could consider writing off the loans advanced to farmers in Njoro, Lare and Mau-Narok divisions in view of total crop failure caused by prolonged drought and post-election violence.

The Assistant Minister for Agriculture (Mr. Mbiuki): Thank you, Mr. Deputy Speaker, Sir. I wish to seek the indulgence of the House so that I can answer this Question next week on Thursday because the answer which I have received is very unsatisfactory.

Mr. Deputy Speaker: Okay, that is fair enough!

Mr. Kiuna: Mr. Deputy Speaker, Sir, as I accept the request which has been put by the Assistant Minister, I would like him to go and do thorough research because this Question has been asked severally. We have a feeling that there are some areas which are being marginalized. Other areas have been considered yet in my constituency, these people have not been considered.

Mr. Deputy Speaker: That is fair enough! The Chair directs that this Question appears on the Order Paper on Thursday afternoon, next week and the Minister will come with a satisfactory answer.

(Question deferred)

Question No.441

MONEY DISBURSED TO TETU FOR PSII PROGRAMME

Mr. Deputy Speaker: Mr Nyammo not here?
Next Question, by Mr. Clement Waibara!

Question No.473

RESETTLEMENT OF IDPS IN KYENI FOREST

Mr. Waibara asked the Minister of State for Special Programmes:-

(a) whether she is aware that there are thousands of Internally Displaced Persons who have been camping in the Kyeni Forest, Gatundu North constituency for 17 years, following the 1992 post-election violence;

(b) what measures she is taking to ensure that they are resettled in their original homes or given alternative land so that they may rebuild their lives and when will it be done; and,

(c) when she will also resettle hundreds of other IDPs affected by the 2007 post-election violence in various camps in Gatundu North Constituency and make arrangements to provide them with basic living necessities.

The Minister of State for Special Programmes (Dr. Shaban): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that there are thousands of Internally Displaced Persons who have been camping in the Kyeni Forest, Gatundu North constituency for 17 years following the 1992 post-election violence.

(b) My Ministry has not taken any measures towards resettling the said IDPs. The mandate of the Ministry in resettling IDPs is limited to those affected in the 2007 post-election violence after Legal Notice No. 11 of 30th January, 2008.

(c) My Ministry does not have reports of IDPs affected by the 2007 post-election violence from Gatundu North constituency. All registers of IDPs were closed on 31st December, 2008.

Mr. Waibara: Mr. Deputy Speaker, Sir, is the Minister in order to mislead this House that she is not aware of IDPs camping at Kyeni Forest and yet the Ministry has been giving them relief food for 17 years now? I would wish to table a list of names of the IDPs in Kyeni. The list includes names of those affected during the 2007 post-election violence.

(Mr. Waibara laid the document on the Table)

Mr. Deputy Speaker, Sir, I collected that document from the District Commissioner (DC) today. I am very sure that the Minister has a list of the names in the Ministry. Could she tell us whether these IDPs received the Kshs35,000 that was given to them for reconstruction of their settlements? Could she also tell us the plans she has for the IDPs who have been in Kyeni Forest for 17 years now? Are they squatters or refugees? Are they hawkers as they were referred to by a Government Minister?

The Minister has said---

Mr. Deputy Speaker: Order, Mr. Waibara!

(Laughter)

Dr. Shaban: Mr. Deputy Speaker, Sir, in normal circumstances, I should have been excited to hear his voice on the Floor of the House considering that it is his maiden speech. However, considering that he has the wrong information, I must then correct him.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Mr. Waibara has actually laid on the Table a document showing the list of names of IDPs who are camping at Kyeni Forest. Without the Minister even looking at the document, she already doubts the hon. Member! We had an opportunity to look at the document and actually it has rubber stamps from the DC's and DO's offices.

Dr. Shaban: Mr. Deputy Speaker, Sir, it is important for hon. Members to know the procedure which is to be followed. The Procedure is not for hon. Members to come up with lists and bring them to our offices. Provincial administrators were tasked to do that. We did the exercise which was supposed to have ended at the end of September, 2009. However, I extended the duration, within which the lists would have been brought to my office, by three months.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Minister to stand up and say that it is not for the Members of Parliament to lay documents on the Table even before she looks at them? Is it in order for her to tell a sitting Member of Parliament that it is not for him to table documents when his role as a Member of Parliament is to represent his constituency and lay any necessary documents on the Table?

Dr. Shaban: Mr. Deputy Speaker, Sir, hon. Members are free to bring documents here and table them. However, the procedure for bringing registered lists to our Ministry has to be followed. Members of Parliament were not tasked to be the ones to register IDPs in their areas. That document, whether it was done by the provincial administrators or not, it was not my duty to go there to collect it. I gave an extra time of three months for provincial administrators to deliver the lists to my office. It is not fair for a list to be

brought to me one-and-a-half years later and I do not even know how it was manufactured! Why was it not done at the time it was supposed to be done?

Mr. Deputy Speaker, Sir, as for the supposed IDPs who are living in Kyeni Forest in Gatundu North, we have been feeding people---

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

Mr. Deputy Speaker: Order, Dr. Khalwale! Allow the hon. Minister to finish what she has to say!

Dr. Shaban: Mr. Deputy Speaker, Sir, we have been feeding people in Gatundu North but, according to our records, we are not aware that they were IDPs. So, feeding people is one of the duties and mandates of my Ministry. I continue to feed people all over the country. I am not aware of this particular case and I do not have to stand here to give the wrong information to this House!

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. I beg to insist that the House directs the Minister to look at this list of 35,000 Kenyans who she has been feeding for 17 years. Could she confirm whether the list of names is real or fake? Where else can these people go?

Mr. Deputy Speaker: Order, Dr. Khalwale! When papers are laid on the Table, they are given to the Chair for authentication. You do not expect that to be done in a matter of a flash! The Chair is going through the papers! Indeed, the papers have been stamped by the DO, Mangu Division, Gatundu. However, the papers do not indicate whether these people are internally displaced or not. The document is talking about "households". It, nonetheless, states the place of origin---

(Laughter)

(Mr. Waibara stood up in his place)

Order, Mr. Waibara! Much as this is your maiden Question and speech, you still have to understand the rules of the House! You do not argue with the Chair!

(Laughter)

The document states the places of origin of these individuals. For example, it states that the places of origin are Rift Valley Province, Nyanza Province---

Dr. Khalwale: Yes!

Mr. Deputy Speaker: Order, Dr. Khalwale! Do not give me the pleasure of sending you out of the House for the remainder of the afternoon!

So, the document states that and I will direct that it be given to the Minister.

An hon. Member: This is a very serious issue!

Mr. Deputy Speaker: Order! The Minister has said that it is not the responsibility of the Minister to collect papers on the Floor of the House. Indeed, there are procedures in the Government. When she says that the procedure of submitting the list of names of IDPs to her office---

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

Mr. Deputy Speaker: Order! She has a point when she says that there is a procedure to be followed when forwarding these names. In any case, Madam Minister, go through the list of names and proceed to answer the questions.

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

Mr. Deputy Speaker: What is your point of order, Mr. Mbugua? The Minister is not on the Floor for you to rise on a point of order! You normally rise on a point of order when you want to say that somebody is out of order.

Mr. Mbugua: Mr. Deputy Speaker, Sir, the maiden speech and Question by the hon. Member were interrupted! Is it in order for this House to interrupt a maiden speech?

Mr. Deputy Speaker: Indeed, the tradition of the House is not to interrupt an hon. Member when he or she is making a maiden speech. But for God's sake there is nothing called "Maiden Questions" which go in a whole litany!

Eng. Maina: Mr. Deputy Speaker, Sir, the issue of IDPs has been going round and round. We are aware, and this is proof, that there are many IDPs who have never been catered for. I seek your direction regarding those IDPs who are still here and there. They have been acknowledged by this Government through its administration and yet the Minister wants to deny them. I seek direction as to how they are going to be re-settled.

Dr. Shaban: Mr. Deputy Speaker, Sir, maybe, if I explain to the hon. Members, it will be easier for them to understand! Even in the list of names of people from Central Province, there were no names of IDPs in Gatundu North.

The verification exercise took place for six months, starting from July, 2008 to the end of the year. Where were these people? Why were they not registered then? Secondly, all genuine registers have been counter-signed by two persons, namely, the area District Commissioners (DCs) and our co-ordinators in those districts. Looking at this document, I do not have to go back to our records. There is no signature of our co-ordinator. Even according to our records, we do not have any IDPs in Gatundu North! Those are the facts.

Mr. Deputy Speaker, Sir, there is the issue of people coming up with new registers every day. Almost two years later, we cannot have IDPs being registered left, right and centre; and being registered in the wrong way by politicians! Politicians are even putting in the so-called "registers", names of their campaigners and calling them IDPs!

(Several hon. Members stood up in their places)

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

Mr. Baiya: On a point of order, Mr. Deputy Speaker, Sir. The Question raised by Mr. Waibara is very clear – that there are IDPs in Kyeni Forest, in his constituency. The Minister has even been given a list of those IDPs. Those of us who are on the ground

know that these people are there. They live in very deplorable conditions. Is it in order for her to dismiss that list, instead of going to the ground to verify this fact? These are Kenyans, and they are IDPs.

Mr. Deputy Speaker: What was your point of order, Mr. Lessonet?

Mr. Lessonet: Mr. Deputy Speaker, Sir, mine is a supplementary question.

Mr. Deputy Speaker: Proceed!

Mr. Lessonet: Mr. Deputy Speaker, Sir, there is a consequence of the directive given by the Prime Minister on the people who are moving out of the Mau Forest. How many people are you likely to be feeding right now and how many people do you anticipate to be feeding in the next one month, as a consequence of the directive of the Prime Minister on the Mau Forest IDPs?

Mr. Deputy Speaker: Mr. Lessonet, you are out of order in the sense that you have asked a totally different Question.

Mr. Lagat: On a point of order, Mr. Deputy Speaker, Sir. When the Minister was answering the Question, she said that some politicians are compiling lists of IDPs. Could she substantiate that allegation by giving us a list of the politicians who are making lists, and produce those lists?

Dr. Shaban: Mr. Deputy Speaker, Sir, I do not even have to go very far. We can even see a list that has been brought here, which is not counter-signed by my co-ordinator! So, it is pretty obvious that politicians are actually coming up with lists!

Mr. Kioni: On a point of order, Mr. Deputy Speaker, Sir. You can see the way the Minister is answering this Question and how she is actually making it an issue that is entertaining her! This is not an issue that entertains! For her to come here and allege that those of us who are affected by this issue are listing our campaign managers as IDPs is imputing improper motive on us. This issue needs more seriousness from the Minister. She has a list of people, and not bags of potatoes! It is important that she pays attention to it and gives it the seriousness it requires. Just the other day, these IDPs were called "hawkers". I think we are now playing with a big issue. It is important that the dignity of this House is maintained. The seriousness that this issue requires must be given to it. We do not want people to be entertained by IDPs here!

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Order! Order, hon. Members! Let us have the Minister respond to the point of order raised by Mr. Kioni and then you can raise points of order.

Yes, Madam Minister!

Dr. Shaban: Mr. Deputy Speaker, Sir, first of all, I did not know that "hawking" is an insult. I have just realised that today. Not all those IDPs are hawkers, but quite a number of them used to do small businesses. What do you call business people who usually go round selling things? They are hawkers! That is not an insult. I am surprised that today, "hawking" is being referred to as an insult!

Having said that, what I now want to point out is very interesting. If the issue of IDPs had been left to our Ministry to deal with, we would have been through with it by now, but it has been made worse because of political interference. So, could politicians leave us alone, so that we can do our work?

(Laughter)

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

Mr Deputy Speaker: Madam Minister, are you ready for his information?

Dr. Shaban: Mr. Deputy Speaker, Sir, let him go ahead and inform us. Maybe, there is something I do not know.

Mr. Deputy Speaker: Mr. Ruto, give us the information. Maybe, it will get us somewhere.

Mr. Ruto: Mr. Deputy Speaker, Sir, I want to inform my “sister” that she is treading on very dangerous grounds. It is expected that when she is given a list of IDPs, she would go with it to be verified by the technocrats. It is not appropriate---

Mr. Deputy Speaker: Order, Mr. Ruto! That is not information. It is an advice. Go and advise her at your own time. If you rise on a point of information, you are supposed to give substantive information that would add value to our deliberations.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: What is it, Mrs. Odhiambo-Mabona?

Mrs. Odhiambo-Mabona: Mr. Deputy Speaker, Sir, are we in order to continue discussing a list that has been disputed by the Minister? Can we not give her a chance to go and verify that list, instead of harassing her over facts she is yet to verify?

Mr. Deputy Speaker: Mrs. Odhiambo-Mabona, are you suggesting that the Question be deferred?

Mrs. Odhiambo-Mabona: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Indeed, the Chair is of the same opinion; that the Minister goes back to her office, verifies the information and comes back to answer the Question again, because of the sensitivity of the matter. That is not to say that the Minister is wrong or the hon. Member Questioner is wrong. It is because the matter is sensitive. The Minister should go back to her office and bring us more information. Therefore, the Question shall appear on the Order Paper on Wednesday morning, next week.

(Question deferred)

Mr. Olago: On a point of order, Mr. Deputy Speaker, Sir. There is an issue that arose earlier on. Dr. Shaban is known to be a very sober Minister but this afternoon, she has been particularly belligerent. You heard her inform the House---

Mr. Deputy Speaker: Order! Order, Mr. Olago! You cannot call a fellow Member of Parliament belligerent. If you wish to do that, you can go and come back with a substantive Motion. The matter---

(Mr. Olago attempted to stand up in his place)

Mr. Deputy Speaker: Order! Do you want to stand when the Chair is on his feet? The matter has been put to rest.

Next Question by Mr. Kapondi!

Question No.482

EX-GRATIA PAYMENT TO FORMER MEMBERS OF PARLIAMENT

Mr. Kapondi asked the Deputy Prime Minister and Minister for Finance whether he could table the names of former Members of Parliament who have received *ex-gratia* payment, as recommended by the Justice Cocker Tribunal, showing the total amount involved as well as the status of tax deducted from each of the recipients.

Mr. Deputy Speaker: Order! Mr. Minister, you did communicate certain information to the Chair. Would you want to repeat the same or would you want the Chair to deal with the matter?

Mr. Kapondi, the Chair has received communication from the Deputy Prime Minister and Minister for Finance that says as follows:-

“The benefits and *ex-gratia* of the former Members of Parliament does not fall within the mandate of the Treasury. It is with Parliament.”

I decline to believe that this is true. Normally, such Questions are addressed to the Leader of Government Business. In this case, since we do not have a Leader of Government Business, you will direct it to the Prime Minister. So, let this Question appear on the Order Paper to be responded to during Prime Minister’s Time on Wednesday, next week.

(Question deferred)

Mr. Deputy Speaker: Hon. Members, let us go back to Dr. Khalwale’s Question by Private Notice.

QUESTION BY PRIVATE NOTICE

LEGALITY/VIABILITY OF NEWLY CREATED DISTRICTS

Dr. Khalwale: Mr. Deputy Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

What is the legality and viability of the newly created districts in view of the recent judgement by the Kisii Resident Judge declaring them illegal?

Mr. Deputy Speaker: The Minister of State for Provincial Administration and Internal Security is still not here! Under the circumstances, that is flouting of the provisions of Standing Orders. The Minister, therefore, will not transact any business in this House pending giving us a satisfactory answer for their absence from the House today.

ORAL ANSWERS TO QUESTION

Question No.193

NUMBER OF DOCTORS AUTHORISED TO SIGN
P3 FORMS IN EACH PROVINCE

Mr. Nyamai asked the Minister for State for Provincial Administration and Internal Security:-

(a) to table a list of the doctors authorized to sign a Kenya Police Medical Examination Form (P3) in each province; and,

(b) what urgent steps he is taking to ensure that there is an increase in the number of doctors authorized to sign the forms.

Mr. Deputy Speaker, Sir, I am asking this Question for the second time.

Mr. Deputy Speaker: The Minister is not in and; therefore, under the circumstances, the same order is given. The Minister will not transact any business in this House pending furnishing the Chair with a satisfactory reason for failing to answer this Question today.

Next Question by Mr. Mwakulegwa!

Question No.050

FUNDS FOR CONSTRUCTION OF
VOI BUS PARK

Mr. Mwakulegwa asked the Deputy Prime Minister and Minister for Local Government when he will allocate funds for Voi Bus Park considering the controversy surrounding it has been resolved and alternative land identified.

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

The construction of the bus park was terminated by the Ministry because of controversy surrounding the ownership of land which was not resolved before the Budget of 2009/2010 was prepared. Now, since the controversy has been resolved, the Ministry proposes to factor the project in the 2010/2011 Estimates.

Mr. Deputy Speaker: Mr. Nguyai, you should have apologized to the House for coming late!

The Assistant Minister for Local Government (Mr. Nguyai): Mr. Deputy Speaker, Sir, my apology for coming late. In fact, the written reply had not arrived and I was waiting for it. I sincerely apologize to the House for not being on time.

Mr. Mwakulegwa: Mr. Deputy Speaker, Sir, the answer is very brief but all the same, now that the Assistant Minister has given an undertaking of proceeding with the project, could he consider allocating some funds during the Supplementary Budget?

Mr. Nguyai: Mr. Deputy Speaker, Sir, I assure the Member that all efforts will be made. However, as you are aware Supplementary Budgets are normally within the framework of the existing Budget and so, if that fails, we will factor it in 2010/2011 Budget.

Mr. Shakeel: Mr. Deputy Speaker, Sir, could the Assistant Minister inform this House why he wants to put this money in the Supplementary Budget and why the Voi Municipal Council should not put it in their own budget? The cemetery saga was a result of the same reason. The Ministry of Local Government put it in its Supplementary Budget and it did not go through the council.

Mr. Nguyai: Mr. Deputy Speaker, Sir, the process of allocation for the construction of bus parks can be done on either process. I think the issue of transparency and accountability barely depends on the parties that are going to run the procedure. I do not think that is too big an issue or too big an item.

Mr. Nyamai: Mr. Deputy Speaker, Sir, the issue that affected Voi Bus Park has affected many bus parks in this country. These are mainly the bus parks which were being done under the Urban Development Authority (UDA). Among them is Kitui Bus Park. What is the Ministry doing to make sure that all these bus park projects which have stalled are completed? They are all over the country.

Mr. Nguyai: Mr. Deputy Speaker, Sir, we obviously are negotiating and trying to push as huge a budget allocation as possible but I think it is important to note that we were given only Kshs100 million for the construction of bus parks. With the ongoing projects it was not sufficient. However, we are pushing as hard as possible to ensure that we get a better budgetary allocation. That is obviously a factor of liaison with the Treasury and the Budget report that will be laid on the Table in June.

Mr. Joho: Mr. Deputy Speaker, Sir, I am aware that the bus park which was to be constructed was under the ownership of the Voi Municipal Council. Could the Assistant Minister inform this House the cause of controversy in terms of ownership? Was it grabbed or allocated by the municipal council and to who and why?

Mr. Nguyai: Mr. Deputy Speaker, Sir, Mr. Joho obviously has asked a very relevant question. The course of the controversy initially was that the residents themselves did not want the location and went to court. They were given a hearing and injunction. Eventually, the contractor had to terminate the initial construction. After negotiation and arbitration, a new site was settled for. By the time the site was settled for, the Budget Estimates had been done. That is why this particular project was not factored in.

Mr. Deputy Speaker: Fair enough! Last question on that, Mr. Mwazo!

Mr. Mwakulegwa: Mr. Deputy Speaker, Sir, considering that bus parks are vibrant economic activities in any urban centre, why did the Ministry fail to package this to be included in the Economic Stimulus Programme?

Mr. Nguyai: Mr. Deputy Speaker, Sir, under the doctrine of collective responsibility, I can only say that it is a factor that will be considered. However, I think I need to mention that the number of bus parks that are required in almost every business centre in this country are numerous. I think we need to have more innovative ideas in terms of getting them constructed. I would urge Members to consider looking into public/private partnerships as a way of solving the problem of meeting the demand for bus parks. We will obviously look and see if we will ensure that it is in the next economic stimulus package.

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

Question No.196

DISMISSAL OF MR. JOHN WACHIRA KIHIA

Mr. Kioni asked the Minister for Forestry and Wildlife:-

(a) the circumstances under which Mr. John Wachira Kihia was dismissed from services of the then Ministry of Environment and Natural Resources; and,

(b) why he was dismissed, considering that the then Nyandarua District Forest Officer conveyed to them a letter dated 21st March, 2003 indicating that he had been unwell.

Mr. Deputy Speaker: The Minister for Forestry and Wildlife still not here? Under the circumstances, the Minister will not transact any business in the House pending furnishing proper reason why he is not able to answer this Question today.

Next Question by Mr. F.T Nyammo!

Question No.441

MONEY DISBURSED TO TETU FOR PSII PROGRAMME

Mr. Deputy Speaker: Mr. Nyammo is not here! Question is, therefore, dropped!

(Question dropped)

Next Order!

POINTS OF ORDER

IMPLEMENTATION OF CHANGES IN SCHOOL SYLLABUS

Mr. Baiya: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Education. In January this year, the Ministry of Education, through the Kenya Institute of Education (KIE) implemented changes in the school syllabus allowing students to take simpler sciences as opposed to pure sciences. Last week, the Ministry, through the Kenya National Examinations Council (KNEC), issued a restriction on the implementation of the changes it had earlier done. It restricted the directive to involve whole schools and not individual students.

I am seeking to know the following:-

(i) Why has the Ministry restricted the option to schools belatedly and without involvement or consultation with the relevant stakeholders as it had earlier done?

(ii) What does he propose to do about the current Form Three students who took up the option of the simpler sciences early in the year, but are currently stranded as a result of the latest directive, considering that they cannot go back to the pure sciences half-way the syllabus duration?

(iii) What action does he propose to take to ensure that in the future, different institutions in charge of syllabus and examination management under his Ministry will co-ordinate and work harmoniously while implementing similar changes to avoid confusion and hardships to students and other stakeholders?

Mr. Deputy Speaker: Prof. Olweny, would you want to give an undertaking on when you will have the Ministerial Statement ready?

The Assistant Minister for Education (Prof. Olweny): Thank you, Mr. Deputy Speaker, Sir. I undertake to bring a Statement to the House on 1st of December. That will be Tuesday.

Mr. Deputy Speaker: Tuesday when? Tuesday next week or the week after?

The Assistant Minister for Education (Prof. Olweny): Mr. Deputy Speaker, Sir, the week after next week. This is because the whole of next week the Ministry of Education will be involved in an International Conference in Mombasa.

Mr. Baiya: Mr. Deputy Speaker, Sir, I just want to point out that the issue is quite urgent because there are actually some students who are already stranded; they do not know whether to do pure sciences or to abandon the subject. .

Mr. Deputy Speaker: Mr. Assistant Minister, will you consider having the Ministerial Statement on Thursday, next week?

The Assistant Minister for Education (Prof. Olweny): Mr. Deputy Speaker, Sir, the whole of next week, we will be in Mombasa for that conference.

Mr. Deputy Speaker: Fair enough! Under the circumstances, the Chair directs that we have the Ministerial Statement available on Tuesday, the week after next week.

Yes Mr. Olago Aluoch!

PLIGHT OF MAU FOREST

Mr. Olago: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State for Special Programmes on the apparent problems afflicting the voluntary evacuees from the Mau, pertaining to shelter and food sustenance. In particular, the Statement ought to address itself to the following pertinent and urgent issues:

(i) What steps has the Ministry taken to ensure timely delivery of food and shelter to those who are leaving the Mau?

(ii) Why the Ministry staffers are unwilling or not ready to act proactively and promptly?

Mr. Deputy Speaker, Sir, that is all!

Mr. Deputy Speaker: The Minister of State for Special Programmes!

The Minister of State for Special Programmes (Dr. Shaban): Mr. Deputy Speaker, Sir, I will be ready with the Statement on Thursday, next week.

Mr. Deputy Speaker: Fair enough. The Chair so directs.

Next Order!

COST OF PROPOSED CABINET RETREAT IN MOMBASA

Mr. Mungatana: On a point of Order, Mr. Deputy Speaker, Sir. The Assistant Minister, Ministry of State for Provincial Administration and Internal Security, Mr. Orwa Ojode, had undertaken to give a Ministerial Statement on the trip to the Coast today. In fact, he had indicated that he would be ready with it today. So, we want to know what the indication from the Government is.

Mr. Deputy Speaker: Yes, indeed, he was supposed to have given two Ministerial Statements today. As you know, he is already under sanctions. He was not available to answer the Ordinary Questions and the Questions by Private Notice. The Chair's directive has first to be vacated before he can take a date.

Next Order!

BILL

THE COMPETITION BILL

*(The Assistant Minister, Office of the Deputy Prime Minister and
Ministry of Finance (Dr. Oburu) on 17.11.2009)*

(Resumption of Debate interrupted on 17.11.2009)

The Assistant Minister, Office of the Deputy Prime Minister and Minister for Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, this is a continuation of the moving of the Competition Bill---

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Could you confirm that you have vacated your original order against this Assistant Minister?

Mr. Deputy Speaker: Indeed, yes! The Chair did vacate those orders. The Assistant Minister gave a satisfactory answer for the absence of both the Minister and the Assistant Minister. Under the circumstances, he can continue and transact business on the floor.

Dr. Khalwale: In that case, Mr. Deputy Speaker, Sir, could you also direct that my Question which prompted that Order to be put in force be put on the Order Paper on Tuesday? It was in respect of---

Mr. Deputy Speaker: Was it a Question by Private Notice?

Dr. Khalwale: Yes, Mr. Deputy Speaker, Sir, on De la Rue.

Mr. Deputy Speaker: Under the circumstances, the Chair directs that, that Question by Private Notice appears on the Order Paper on Tuesday afternoon, next week.

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

Mr. Deputy Speaker: What is your point of Order? All the Questions by Private Notice will take precedence over the other Questions.

Mr. Olago: Mr. Deputy Speaker, Sir, you recall yesterday afternoon, the hon. Assistant Minister was ordered not to answer my Question on Public Procurement Oversight Authority. Could we have the same on the Order Paper as Dr. Khalwale's?

Mr. Deputy Speaker: Fair enough! The Chair directs that your Question also appears on the Order Paper next week.

Proceed Dr. Oburu.

The Assistant Minister, Office of the Deputy Prime Minister and Minister for Finance (Dr. Oburu): Thank you, Mr. Deputy Speaker, Sir. Both the answers are ready. So, we will be ready to answer them next week.

This is a continuation of the moving of this Motion. As I stated, this is a very important Bill. At that stage when I was interrupted because of lack of quorum, I was on Part IV of the Bill which talks about mergers. Clause 41 provides for the mergers' definition which occurs when one or more undertaking, directly or indirectly acquired or establishes direct or indirect control over the whole or part of another business. The Bill proposes regulation of all mergers, horizontal, vertical, and conglomerate. It goes further to define control as *inter alia* owning more than 50 per cent of the issued share capital.

It goes further in Clause 42 to give provisions for the Authority to set thresholds for mergers that may require authorization. Thresholds will be given in the regulations. It shall be a criminal offence for an undertaking to consummate a merger without authorization. This would attract a five year jail term, or a fine of up to Kshs1 million.

The Authority can also impose a penalty in addition to the above. This penalty is due to the reasons that mergers can have a lot of inimical effects on competition.

To create predictability and accountability in merger analysis, Clause 44 sets time limit for the Authority to issue a merger authorization order.

Clause 45 provides for the Authority to call for a conference to get views on a proposed merger.

Clause 46 gives the Authority power to approve or decline to approve or approve with conditions. The clause also sets the criteria for merger determination which shall include lessening of competition, creation of dominance, increases in efficiency.

Clause 47 provides for the revocation of mergers authorized on misleading information and to enhance transparency, it is compelled---

Mr. Ruto: On a point of Order. The hon. Member is reading a speech. I thought he should be referring to talking points. I thought it is against the Standing Orders to do that. He is reading a speech directly. He is not contributing or enlightening us on the Bill.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, Government Ministers are allowed to read speeches unless the hon. Member, I thought he is an old Member of this House--- Yes, I am reading a speech. And you were a Minister, I do not know whether you never read anything.

Clause 47 provides for revocation of mergers authorized on misleading information and to enhance transparency. It compels the Authority to publish reasons for all its decisions in relation to merger decisions.

Mr. Deputy Speaker, Sir, Clause 48 provides for appeals to the Tribunal. Also, the Tribunal has a time limit of four months to determine the appeals. The Tribunal is also required to issue written notices and reasons for its decisions.

Mr. Deputy Speaker, Sir, Part V talks about control of unwarranted concentration of economic power. This particular section provides for the Authority to be checking the concentration of economic power in relation to production and distribution of goods and services. Unwarranted concentration will be deemed to be prejudicial if it increases costs, price, profits; lessens competition and quality of goods and services in the economy.

Mr. Deputy Speaker, Sir, Clause 51 provides for the Authority to get submissions from the undertaking being investigated. Clause 52 empowers the Authority to order any undertaking to dispose of such portion of interests in production, distribution or supply of services which may be causing unwarranted concentration. Nevertheless, the order should not create units---

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. I did not get a direction from the Chair. I am referring to Standing Order No.72.

Mr. Deputy Speaker: Have you read Standing Order No.72 and understood it very well?

Mr. Ruto: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Do you still insist on saying that your authority is based on Standing Order No.72? Standing Order No.72 says:

“No Member shall read a speech but a Member may read short extracts from written and printed papers in support of an argument and may refresh memory by reference to notes:

Provided that the Speaker may allow a Member to read a speech in particular cases where the Speaker is satisfied that this is necessary for precision in statement of facts.”

When Ministers are moving Government Bills, they are allowed to do that. Otherwise, would you expect the Minister for Finance to read the whole Budget off this head without reading a text that he comes with?

Proceed, hon. Assistant Minister!

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Thank you, Mr. Deputy Speaker, Sir. I do not know what is itching my good friend.

Mr. Deputy Speaker: “Itching” is not parliamentary language!

Proceed!

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, I withdraw the word.

Mr. Deputy Speaker, Sir, Clause 54 sets offences and penalties and the procedures for appeal.

Part VI is a very important section. It refers to consumer protection and relates to consumer welfare.

Clause 55 prohibits false or misleading representation of goods in regard to standard, quality, value, sponsorship, approval, performance characteristics, origin and after-sale service.

Mr. Deputy Speaker, Sir, Clause 56 prohibits unquestionable conduct. Unquestionable conduct will be perceived in relation to *inter alia*, relative strength of the person and consumer; understanding of the consumer in regard to the nature of transaction or contract and whether there was any undue influence exerted. Unquestionable conduct shall also be construed in relation to banking, microfinance, insurance and other services if fees are imposed without informing the consumer.

Mr. Deputy Speaker, Sir, Clause 57 prohibits unquestionable conduct in regard to business transactions, that is, a consumer who is buying for resale or a business consumer. When analyzing infringement of this Clause, the Authority shall have due regard to *inter alia*, strengths of the business consumer; whether undue influence was exerted or identical services or goods would have been acquired elsewhere at a cheaper rate and there was discrimination.

Mr. Deputy Speaker, Sir, Clause 58 provides for the Authority to publish a warning to the public in regard to risks involved in the use of goods specified in a notice. The Authority is required to publish the findings of its investigations in regard to safety of goods.

Mr. Deputy Speaker, Sir, Clause 59 provides for the prosecution of any supplier who supplies substandard and unsafe goods.

Clause 60 provides for consumers to be provided with product information standards relating to performance, composition, contents, method of manufacture or processing, design, consumption and finish or packaging of the goods. Goods for export are not included.

Mr. Deputy Speaker, Sir, Clause 61 requires suppliers to recall defective goods and also warn consumers of the defect of the goods and procedures for disposing of the goods specified in the notice. The supplier will be given a chance to show why that notice should not be published.

Mr. Deputy Speaker, Sir, Part VII of the Bill talks about establishment of powers of the Tribunal. Clause 71 establishes an independent Tribunal to deal with all the appeals in regard to the decisions of the Authority. The decisions of the Tribunal are appealable in the High Court.

Mr. Deputy Speaker, Sir, the financial provisions in Part VIII provide for the source of funds of the Authority, which shall include grants, donations, funds allocated by Parliament, fees and penalties it collects and other payments. The Authority shall disclose details of the sources of its funds.

Mr. Deputy Speaker, Sir, there is a Schedule to the Bill. It provides for the tenure of office for the board members and provisions for them ceasing to be members. It also provides for convening of board meetings and how to handle conflicts of interest. Under the Schedule also, the Authority is required to establish a code of conduct prescribing standards of behaviour to be observed by the Authority members and staff in the performance of their duties.

Mr. Deputy Speaker, Sir, to conclude, I wish to urge hon. Members to support this Bill because it seeks to provide for effective regulation of market structures and conduct with necessary institutional arrangement. This will:-

(i) guarantee consumers and producers of goods and services, considerable freedom of choice and action. This is the liberating function;

(ii) force producers to adjust their supply and use of production factors to change in the demand of customers. This switching of resources due to positive and negative indicators is what qualifies competition to have an adjustment and allocation of functions;

(iii) accelerate economic growth and thus, increase the prosperity of society because it provides stimulus for economic progress. Where competition exists, there is an ongoing process of search for new and better products and services. Thus, competition provides the basis for more, better and cheaper products. This is what represents the progress function of the Competition Bill; and,

(iv) contribute to fair distribution of incomes because it prevents income that is not based on performance from being generated. This is the distribution function. In monopoly situations, for example, where access to market is blocked, excessively high profits that are not based on performance can be achieved.

Mr. Deputy Speaker, Sir, with those remarks, I beg to move and invite hon. Nguyai to second the Bill.

[Mr. Deputy Speaker left the Chair]

*[The Temporary Deputy Speaker
(Prof. Kamar) took the Chair]*

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Thank you, Madam Temporary Deputy Speaker for giving me this opportunity. I beg to second the Bill.

First, let me congratulate the Office of the Deputy Prime Minister and Ministry of Finance for coming up with this very important Bill. The important thing to understand is a fact that the world is becoming a global village; with all the inter-connectivities, we are moving into an open market. As we move into an open market, even within the Kenyan boundaries, we need to define ourselves in a way that we are able to invite fair competition and also protect ourselves from what we will call being over-ridden by dominant market players through monopolies, oligopolies or duopolies. Even in the most capitalistic societies, we have found the need to control those dominant positions and, we are very familiar with the fact that, even the largest corporations such as Microsoft, have been under scrutiny for taking advantage of competition. Money markets or equity markets are now developed and we moved from a position of price controls and now we have deregulation, decontrol and we have privatization.

Competition as defined is the rivalry between businesses. It is the best scenario where forces of markets come into play in terms of demand and supply and the consumer is able to get the best price and the best service. However, if one position of advantage in competition happens to emerge, we can get ourselves into problems. For example, there might be a scenario where, with this new technology, like the mobile phone technology--- Can you imagine a situation where you will find the three or four players in the market deciding to come together? If they did that, there will be the absence of price control and consumer protection. In the end, services will deteriorate and even competition will cease. This will lead to the consumer being taken advantage of. In the end, it will be a market where we cease to be competitive, not only in the local market, but also in the global market.

Madam Temporary Deputy Speaker, if we were to talk about the process of privatization; we have moved from privatizing quite a number of monopolies and now those monopolies are within the market; and they are private entities. It will be very dangerous to have private monopolies in comparison to public monopolies. So, if you look at the Competition Bill, you will find that its aim is to create effective market-oriented economic forces that encourage competition and thus increasing the level of efficiency and innovation. That can only be to the benefit of the consumer. When the consumer benefits, the economy then becomes more vibrant, we are also able to attract more players within the market. A better and competitive climate, obviously, is able to, not only attract and encourage local investors but also attract foreign investors.

Madam Temporary Deputy Speaker, if we were to look at the objects of this Bill; the objects of the Bill are:

(i) To repeal the Restrictive Trade Practices, Monopolies and Prices Control Act of Cap.504 of the Laws of Kenya.

(ii) To provide for the establishment of an effective regulatory framework both legal and institutional, premised on best international practices, while respecting our own nation's needs for the regulation of competition and liberalized market.

(iii) The Bill provides consumer protection which I have elaborated quite a little.

So, this Bill will, in effect, bring force by establishment of an authority that will be monitoring and evaluating the market players and looking at who the dominant players are and ensuring that they are well regulated and ensuring that they are practicing the best practices and not taking advantage of either the market or the consumers and thus protecting every single citizen. So, it is important to ensure that we have a Bill that can

actually bring about good competition, accelerates economic growth, enhance competition and attract foreign investments.

With the foregoing, I believe that ensuring competition by ensuring that market forces are in place will encourage better distribution of the resources of this country and far better distribute the incomes of the big players within the market and ensure that we have better and more efficient industries.

With these few remarks, I beg to second.

Thank you.

(Question proposed)

The Assistant Minister for Planning, National Development and Vision 2030

(Mr. Kenneth): Thank you very much, Madam Temporary Deputy Speaker. I wish to support this Bill which is an amendment to the existing Cap.504 of the Laws of Kenya, on the Restrictive Trade Practices, Monopolies and Prices Control Act, into a competition Bill redefining various sections in the old Bill. But I have one or two things that I would like to appeal to the Ministry to look at.

In the interpretation section, I think it would have been important to define the word “control” although it is defined later. I think when we talk about “economic control” and in matters that will require interpretation, “the economic control”, it is very important that it is well interpreted within Section Two; “Interpretation Section.”

Madam Temporary Deputy Speaker, I also have issues of the interpretation of the word “trade” under Interpretation Section, and I want to appeal to my colleague in the Ministry. It has only been defined as “commerce”. But we know that some of the bigger mergers in the corporate world are about audit firms and legal practices. It is about business! When we just interpret it as “commerce”, we then have issues that might not be very clear when it come to interpretation.

Under Section 4, on dominant position, on the interpretation of various undertakings coming together, I think it is important we define in a clearer manner, what a dominant position is. This is because when you are talking about competition, and when you want to restrict so that, that competition does not ensure that there is a monopolistic angle of a business venture; it is important that we are very clear on what the definition of a dominant position is. Although I know that in most parts of the Bill, there is always a clause that says: “A board of an authority should borrow money.” I did not understand the rationale under Section 7, on why this particular board would have powers to borrow money, because this is a board purely to determine and define whether there is competition or whether that competition is good. I did not understand why it required certain power to borrow money, because it is not in a position to trade or to even borrow money. It is a state funded corporation.

Madam Temporary Deputy Speaker, I am also uncomfortable with Section 15 which talks about delegation of the board. That it can actually delegate to one person; to any member. I want to appeal to the Treasury that, when it comes to delegation by the board, it should be to, at least, be three members. If we leave it as it is drafted or crafted in this Bill, that the delegation can be to any person, I think we are leaving some space that requires some clarity.

Madam Temporary Deputy Speaker, the punitive measures proposed under this Bill include a jail term. When we are talking about competition, we are speaking about corporate bodies. I do not know how we can jail a corporate body. I want to appeal, again, that as we define what the punitive measures are, it is important, that we realize that we are dealing with big firms, corporate bodies, and you cannot jail them.

On mergers, looking at the Bill, although I have heard my colleagues say that using the regulations, they will come up with the thresholds, I think it would have been important to put the real thresholds in the main Bill. Mergers are about big companies; corporate bodies, that want to kill competition and big bodies that want to make profit from consumers. I was of the view that we should have defined the threshold within the main Bill. As we read it, if two kiosks within the same street were to merge and they refer to this Bill, they would qualify under this Bill. It would have been important for us to, perhaps, have defined under a merger, what a dominant undertaking would be and, perhaps, qualify the amount that such dominant undertaking would have in terms of assets and revenue. I, therefore, think that we need to open up a little, so that companies that are merging, and are not dominant, are not subjected to this Act. It is important that we allow mergers of small institutions, which are not subject to it. If we leave it open like this and someone plays a trick, they would make them subject to this Bill under the merger clause.

On the tribunal, I am not sure--- I will be proposing that we have a tribunal. Under Cap 504, to the best of my knowledge over the past 21 years, there has only been one appeal. So, I am not sure whether we want to operationalize a defunct body that might just be there by way of a competition tribunal. Perhaps, we should allow that if there is an appeal, one can go directly to the High Court, rather than have a body that will not have any work designed for it.

Finally, I want to appeal to my colleagues here. We have spoken, under Clause 62 about consumer welfare. I also realize that the Kenya Bureau of Standards (KEBS) has been dealing with consumer welfare in terms of standards of the goods that are supposed to be supplied or applied to this country. Two, I am aware that there is a Bill that is supposed to be brought before this House on consumer protection. I do not know whether it is wise to have three Bills that are talking about the same thing, because they would subject consumers to duplication by three particular sets of Acts. There is the particular clause of the proposed Bill, the section in the KEBS and, of course, the clause in the Consumer Protection Bill, which is coming before this House. I support this Bill. It is very good to ensure that we do not have unnecessary monopolistic companies that will take advantage of consumers. We also need to be alive to the fact that there is a Consumer Protection Bill coming up, and the KEBS also does some protection. We should not have three Acts that deal with consumers.

With those few remarks, I support.

Mr. Shakeel: Madam Temporary Deputy Speaker, I represent the Departmental Committee on Finance, Planning and Trade. We have gone through this Bill very carefully. In essence, this is a very good Bill. There are some elements which have been raised by hon. Kenneth that we have already touched on. I urge the Assistant Minister to deal with those couple of issues, especially the issue of thresholds, because they will be used by the overzealous officer to frustrate the system. Threshold is very important. Threshold also means that what you are looking at--- Are you looking at one street or one

market. When you are looking at the market, are you looking at the Kenyan market, the East African market or the African market or Western Kenya. Therefore, we need to be very clear on what threshold we are talking about. I think that our threshold, and our limit, exists in Kenya; full stop.

However, there are a number of issues that we need to look at in that aspect. The issue of delegation to one member has also raised a concern; I think that is a small issue that needs to be sorted out. I do not see any reason why delegation should be to one particular member. That member would be under pressure. As you know, dominant players in the market have ways and means to frustrate and, perhaps, cajole others to their way of thinking. This Bill must be looked at together with the Anti-Money Laundering Bill, the Counterfeit Bill and the Consumer Protection Bill. One thing that we have not done is to improve the Companies Act and Registrar of Companies. There will be many times when companies will hide under pseudo-names when, in fact, they are the same. So, they might even be set up as alternative groupings in an attempt to overcome competition, and you will not know that they are the same. I want to quote one such company. Nakumatt and Tuskys supermarkets are just one company. However, to the public, they are two public entities. They even go ahead and compete against each other. However, that is not true competition. So, these are the issues that we want to deal with. That is where the threshold will come in. That is where we need to concentrate on.

The other issue we want to bring forth is implementation, not only by the various authorities but also by the KEBS. We want to make sure that the Competition Bill is not taken advantage of, and we end up with goods of low quality under the guise of competition. That is where the KEBS will have to come in and make sure that certain standards are maintained. Of course, that is where the other Bills will have to play a role.

The things we are looking at should not discourage vertical integration of an industry. Vertical integration is by way of competition to reduce the cost of particular goods by vertically integrating and going backwards. I want to give you an example. For argument's sake, if a company that does baking is the same company that supplies flour and does clearing and forwarding--- If we were to allow competition in that case, we would not give the job to one company, as is the case currently, and reduce the costs.

Madam Temporary Deputy Speaker, I want to clearly bring out the issue of sugar and cement. This is a clear example of why the Competition Bill should be there. In spirit, there is competition but two of the largest players are owned by the same party, and the other two of the major players work in conjunction with the two largest players. So, cement business is an oligopoly; we have to break that down. The cement and other industries that require massive investment will, in essence, want to remain oligopolies, monopolies or try to reduce competition. That is where this Act must be very clear. The overall position, and the overall essence of the Competition of the Bill is to ensure competition. Why do you need competition? We need competition to reduce prices, improve the quality of products and make sure that there is more variety of the same product.

Madam Temporary Deputy Speaker, I cannot sit down before mentioning the oligopoly, or lack of competition, in the supply of drugs. That obviously is covered by another Act, but I think the Competition Bill should touch on this. We cannot, and must not, allow one company or two companies to supply the Government with certain drugs.

There must be pre-qualification by all means. The pre-qualification must allow for competition.

As we said, in essence, this is a very good Bill; we want to make sure that the sort of experience we have had in the mobile telephone industry, and other industries that have allowed growth like beer, cigarette manufacturing and soft drinks companies that actually allow competition is replicated elsewhere.

Madam Temporary Deputy Speaker, it is essential that industries work hand in hand with the Customs and Excise Department to ensure that it is not used to create discriminating prices. We do not want price discrimination on the issue because we want to kill off competition. In this country, we are suffering very badly from the supply of sugar and grains. It appears that it is only a couple of people who are allowed to import and supply sugar, fertilizer and other vital foodstuffs. Bearing in mind that the need of this Bill is to make sure that we have competition which results in lower prices and better products and services to the customer, we as a Committee, were very happy to see it that--

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We congratulated the Ministry for putting this Bill forward. We strongly recommend that, subject to consideration of the comments that have come up here and reservations that we have already expressed, this Bill be approved.

Mr. Imanyara: Madam Temporary Deputy Speaker, let me also take this opportunity to support this Bill, and in doing so, echo the contribution made by Mr. Kenneth, who raised very substantive matters that ought to be addressed by the Minister, or department concerned, with regard to issues of competition. There can be no doubt that we do not have competition law in place. The law that this Bill seeks to update and repeal is outdated. What I find amazing is that some of the provisions that are in the laws that we are trying to update have been put into this new Bill without any changes. If the real object of this Bill is to enhance the welfare of the people of Kenya by promoting and protecting effective competition in market, and preventing unfair and misleading markets in Kenya, then we would have expected very comprehensive provisions with regard to bringing into existence, international practices, particularly the issue of dumping of foreign products in this country and agricultural products. This being an agricultural country, with regard to fruit and fruit juices where we find our country is swamped by products from the southern part of Africa--- If you are a visitor, as I am a regular visitor to South Africa, where I attend the Pan-African Parliament (PAP) meetings, you will find that their law regarding competition is very protective of the South African products, companies and undertakings registered in South Africa. But when you look at this Bill, you find that there is no protection for Kenyans. The Bill does not even make distinctions, apart from in Section 3, where it states that it is for the welfare of the people of Kenya. It does not contain any provision showing how it seeks to protect the people of Kenya against unfair competition. I would have imagined that the Government, having had a long experience in matters relating to restrictive practices and unfair competition and dumping of products in this market to the extent of killing Kenyan industries, would have gone to a large extent in addressing the relevant issues.

Madam Temporary Deputy Speaker, I have had occasion, as a practicing lawyer, to appear with the Minister for Lands in matters relating to Kenyan companies which have been subjected to a great deal of harassment by multinationals, dealing in beverages, some of them of alcoholic nature. Kenyan enterprises have been put to disadvantage by

virtue of unfair competition from foreign-controlled companies. We have had to go to court as instructed by, for example Keroche Industries, which is a local industry that has struggled and employs large numbers of Kenyan people; competition law does not protect such companies. Such companies are completely locally owned by Kenyan shareholders. I would have expected this Bill to address issues which are bothersome. The Attorney-General's office will tell you of issues that have been brought up by Kenyan companies in Kenyan courts regarding unfair competition and dumping by companies that have a lot of money, and that are given special exemptions to operate in Kenya to the detriment of the Kenyan people. When this Bill goes to the technocrats, I would imagine that they will look at the issues that are being raised in this House and come up with amendments that will take care of such matters.

Madam Temporary Deputy Speaker, having said that, I just want to look at Section 7(2) which states:-

“The authority shall be independent and shall perform its functions and exercise its powers independently and impartially without fear or favour.”

But how can such an authority be fully independent when it is wholly Government controlled? Section 10, says:-

“The Authority shall consist of the following members:

- (a) a non-executive Chairman appointed by the Minister;
- (b) the Permanent Secretary in the Ministry for the time being responsible for finance or his representative,
- (c) the Permanent Secretary in the Ministry for time being responsible for trade or his representative;
- (d) the Attorney-General or his representative;
- (e) the Director-General appointed under Section 12; and
- (f) five other members appointed by the Minister from among persons experienced in competition and consumer welfare matters, one of whom shall be experienced in consumer welfare matters.

In these circumstances, it does not make sense to talk about the Authority having independence when it is just another Government department. In fact, I dare say that if we are going to pass this legislation in the form that it is, and this is the composition of the Authority, then we might as well forget it and say, let it be a Government department as it has always been, where the Government technocrats and civil servants are in total control. Where is the key players' representation in this board? I urge the Minister to go back and seek contributions from those people, who are the potential victims of unfair practices and select a category that will ensure that the Authority can operate independently.

[The Temporary Deputy Speaker (Prof. Kamar) left the Char]

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

Mr. Temporary Deputy Speaker, Sir, I am also concerned about the powers that are given to the Authority with regard to investigation and seizure, which, in fact, are far more extensive than the powers of a police officer in recording evidence. For example, Section 32 provides that the Authority may enter any premises and may take and

confiscate documents without any provisions protecting the person who is being investigated. We are giving this proposed Authority powers of the police to seize property and collect evidence when there is no protection at all for the person being investigated. This creates an opportunity for abuse of office. Unless there is a requirement that police officers be attached to the Authority for purposes of investigation, I think it will be very wrong to allow the Authority to exercise police powers without any form of experience in matters relating to collection of evidence, preservation of evidence and prosecution of offences.

Mr. Temporary Deputy Speaker, Sir, although this Bill has good intentions, I do seriously believe that we need to look at it afresh and see that it does protect the welfare of the Kenyan citizens. For example, if you look at Section 50, it simply says:-

“The Authority shall keep the structure of production and distribution of goods and services in Kenya under review to determine where concentrations of economic power exist, whose detrimental impact on the economy outweighs the efficiency advantages.”

This is very well meaning. However, if you look at the composition, functions and structure of the Authority, how does it do this? Is it through recruitment of consultants? If that is the case, why can the Minister or any other person without use of public funds pay a whole authority to do it? There is no provision of how the structure of production and distribution will make this assessment. For example, we do need a relationship between the Authority and the institutions of higher learning, that are conversant with matters of competition to be represented, so that they can offer advice to the Authority on areas where foreign production is detrimental to the economy of Kenya. As it is now, apart from the good wording in the Bill, there is total lack of specifics on how to operationalise this Bill in a way that will enhance the welfare of the Kenya people who want to maintain regional dominance as we do in this part of the world. So, I am pointing out this because it has been pointed out by people in Government themselves such as hon. Kenneth, that by the time we go to the next stage, it will not be necessary for us to introduce amendments. But the Minister, through the departmental committee will see the need to address these issues so that we can come up with a Bill that indeed, does protect the welfare of the Kenyan economy and people.

With those few comments, I beg to support.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, thank you for the opportunity once again to contribute to this very timely Bill. Let me also take the opportunity to thank the Assistant Minister for the manner he has presented this Bill in this House.

If this Bill is passed, it will address various issues that will create job opportunities in this country. First of all, the local market will be satisfied with the production of goods and services through these mechanisms.

One thing that I need to note is the decentralisation of factories in this nation. Factories and industries have been established in the urban areas, whereas in areas where we have most of the people; they have not been started there. I hope that the Authority will address this issue to the conclusion.

Another area which I think the Authority should address is the threat that is really noted in the market. For example, the threat that we have noted directed at Keroche Industries. We all know what happened to South African Breweries that started a factory in Thika sometimes back. It had created job opportunities for our people, but because of bitter wars between competing factories, it had to be closed. You also note that the Bill boards fixed by Keroche Industries are being destroyed. So, this is another area the incoming Authority will address.

There is also the issue of taxation. Some companies are being heavily taxed, thus denying them the chance to make maximum profits. This should also be addressed.

We have also seen some micro-finance entities emerging in this nation in the name of pyramid schemes. This should not be allowed because we have seen that a good number of people hang themselves because of this unnecessary competition by way of making illicit incomes.

On goods; counterfeit goods have been allowed into this nation because some industries are not able to make qualitative products. Torch batteries have been imported from neighbouring countries thus denying the local industries market and competition. The Kenya Bureau of Standards must be a very effective tool by making sure that the border points are not allowed to be entry points for illicit products.

The Bill will also address the banking industry where we have seen well established banks closing their branches in the rural areas and coming to invest in urban areas. For instance, the Barclays Bank of Kenya and the Standard Bank closed their branches in rural areas. They left huge population in the rural areas without banking facility. You saw the competition brought in by Equity Bank and the Family Bank. These two institutions have injected new spirit of competition. They have really come up with good products that are assisting our people. Our giant banks such as the Kenya Commercial Bank and the National Bank of Kenya have woken up and are now facing the challenges. So, the Competition Bill will also deal with these issues.

The other observation is about those people to be appointed as members of this Authority. They should be people of impeccable character and qualified. They should not be appointed to these positions on ethnic inclination.

Finally, the Competition will create the necessary environment for better services and job creation.

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

The Assistant Minister for Youth Affairs and Sports (Mr. Kabando wa Kabando): Thank you, Mr. Temporary Deputy Speaker, Sir, for the chance to support this Bill. I will just address three points. Number one is the need, as we introduce the Competition Bill, to also clearly focus on other contracts or engagements that we have, particularly at the international level. Our trade with Europe is very heavy and to date, one of the most agonizing engagements with the European markets is the Economic Partnership Agreements (EPAs) which heavily disfavors the African, Caribbean and Pacific (ACP) region particularly in the area of processed goods. The example of coffee and tea where commodities really do not give the dividends as would be expected to the

producers is just evidence of how we need, as a Government and as a region even in conjunction with those other regions – the ACP – to focus on creating mechanisms that will allow our commodities to be in good league with the European market. Many of our products go to fetch very huge profits for non-producers just because they can add value and just because the value chain is tilted in their favor. Therefore, the ultimate result is a country like Kenya that continues to provide labour, land and the product but the testimony of the producer is a farmer who walks barefoot and who can barely meet the minimum expected for survival.

Therefore, Mr. Temporary Deputy Speaker, Sir, in line with this effort to bring this Bill, in order to focus on price controls and in order to ventilate and interrogate traders, it will be important for us, in view of the significance of the international markets, the goods that are in our supermarkets and in the malls are not restricted to our region or to our continent. Therefore, we need to expand the picture beyond this and I look forward to getting the Ministry of Trade in conjunction with the Ministry of Finance and the Treasury addressing this matter of Economic Partnership Agreements (EPAs), because it has agonized every joint assembly with the European Union (EU) but without any positive results to produce a system or a regime that will make Africa and particularly Kenya - the producer of some of the most precious commodities for the international markets and specifically the European markets – get its value for its produce.

Secondly, Mr. Temporary Deputy Speaker, Sir, the section in this bill on the creation of the Authority is good. But as we are moving towards a new Constitution, it is important for us to reflect on what we need to do in order to create good governance in the State corporations in line with the demand for basic corporate governance; with the need for us to create systems or rules that will allow the board of directors and the management to meet the targets that are being set by the line Ministries. We need to think through the criteria of appointments of members to these corporations.

Mr. Temporary Deputy Speaker, Sir, the Authority consists of the Chairman, appointed by a Minister, which is okay because there will be consultations; the Permanent Secretary responsible for Finance; the Permanent Secretary for the time being responsible for Trade; the Attorney-General in order to provide the legal advice and the Director-General appointed by the Authority and five other persons to be appointed by the Minister, who shall be people who are experienced in consumer welfare matters. Given the experience that we have in various Ministries where Ministers are just appointing their cronies, sycophants and tribesmen or tribeswomen, it is important that this Bill does consider the gazettelement of the rules. These rules should apply to all other Bills that will provide for the creation of authorities for implementation of that subsidiary legislation so that the individuals so appointed to these agencies are individuals who can be interrogated by the nominating authorities.

An example, Mr. Temporary Deputy Speaker, Sir, is the Water Sector Reforms Programme (WSRP) initiated in 2003. The WSRP did invite the participation of various stakeholders who added value and who had unique capacities; who widened the area of harvesting of skills and the participation of stakeholders in the leadership of the water boards. For instance, in the Nairobi Water Company, we have the tourism sector that, by a regulation, was so created. We have the African Medical Research Foundation (AMREF) Kenya for sanitation focus; we have PLAN International with their branch,

PLAN Kenya represented in the board. We have the accountants association, ICPAK, on board and then we have the NGO Council also represented in addition to the directors who were nominated by the owner or the shareholder - the City Council of Nairobi.

That, Mr. Temporary Deputy Speaker, Sir, allows these institutions to nominate individuals who, somewhat, are beyond reproach; individuals who are accountable to the nominating authority rather than where you have a singular nominating authority. And as we have seen, like now we have more than six Ministries currently bedeviled by appointments, because they are even abrogating procedure to the extent of even dismissing a process that has competitively sought personnel within the country, even Kenyans living in the Diaspora to participate in that recruitment process so that they can fill up these organizations. We are talking about competition here! We have seen Ministers who have gone ahead and scrapped or ignored the submitted names and ended up going to their villages to pick up their campaigners, kin or clansmen to be members.

Therefore, Mr. Temporary Deputy Speaker, Sir, I am saying this because it is important in order to improve corporate governance within State Corporations. It is very important, otherwise we will continue having problems not because the appointing authorities so desire, but because we can easily be captives of our own networks.

The third point, Mr. Temporary Deputy Speaker, Sir, is the need to also harvest from the critical mass of professionals. If you go to the financial sector or to the civil society – the third sector; if you go to the faiths sector or the religious sector, you will find a lot of charismatic, educated, energetic and vibrant young people. In this Bill, it provides for the Minister to appoint those other five individuals. It does not say two things; number one, I have not seen where it says – and if it does, I will be corrected – that amongst those individuals, there will be adherence to the presidential directives, and the very expectations of good governance campaigners – that there will be gender balance in that board. So you may end up having Permanent Secretaries (PSs) from the two Ministries who are male. You may also end up having an Attorney-General who is male. The winner of the Director-General; position may also be male - those are already four seats. Now, for the five remaining seats, you could have a Minister who is not very gender sensitive and focused and he or she may end up appointing five males to sit on that Board. Although it might be impossible to go to the nitty gritty, it does no harm to have those criteria considered ahead. That way, the vulnerability of such appointments will not be experienced and the appointing authority will not get tempted.

Mr. Temporary Deputy Speaker, Sir, with regard to the question of the youth, we do not want a Board that has nine individuals and amongst them or all of them are 70 years and above. Such a Board would be unable to represent the youthful managers in our crucial sectors. It is important for all those criteria, however basic they may sound, to be factored so that we promote the good work the Government is doing. We need to carry along the goodwill and the support so that whatever we pass in this House and whatever is implemented by the Ministries is also replicated out there.

One fact which is a truism is that this Government is doing a lot of good work, but the area of connecting with the stakeholder may be a challenge. We need to consider our PR and communications; initiatives such as the Bills that we pass here, the quality of contributions, and the assent to Bills by the President. Those matters should be thought about seriously if we have to go forward. The reality of this Bill, which creates a number

of agencies, alongside our perceptions also shares equal--- It is a perception of what we do here.

I beg to support this Bill.

Mr. Muthama: Thank you, Mr. Deputy Speaker, Sir, for this opportunity to make my contribution on this Competition Bill. I have some reservations on the way issues have been arranged here. There is this Authority that has been mentioned. Clause 10(a) states that a non-executive Chairman shall be appointed by the Minister. It also states that the Permanent Secretary in the Ministry for the time being responsible for finance or his representative; the Permanent Secretary in the Ministry for the time being responsible for trade or his representative; and the Attorney-General or his representative will comprise the Authority.

I have reservations because this Authority will be working for the country. Clause 11(1) states that the members of the Authority shall be paid such remunerations, fees allowances, disbursements for the expenses as may be approved by the Minister. When you look at the set up of the Authority, it comprises of people who already have jobs. We expect to have checks and balances in this Authority. If the Permanent Secretaries, who are supposed to be the implementing persons in their Ministries are the same people being charged with the responsibility to oversee the functions of this Authority--- It is the same team that is being asked to arrest and prosecute themselves!

Today, we know that Permanent Secretaries are ever busy. They are ever attending meetings and functions. Adding them other jobs and yet we have educated Kenyans who are tarmacking and languishing out there, does not go well with the expectations of Kenyans. We must be careful, as Members of Parliament, in everything that we do here. I want to urge my colleagues to suggest changes in this Bill. Please, let us not overload a few Kenyans with jobs and increase their incomes when there are other Kenyans out there who are looking for the same jobs. My kind request is that we get people from the private sector to manage this Authority so that the allowances paid can be given to those people without jobs.

Mr. Temporary Deputy Speaker, Sir, we have problems of hiring workers in this country. If, today, there is a vacancy in any Ministry in this country, the competition is always based on tribal issues. People canvass for those jobs. Others will approach you to tell you that if you do not appoint them, then their community will feel bad. In fact, they will say, "We are being finished." There must be a special committee to appoint persons to this Authority. This is a very sensitive Authority which will deal with influential matters and more so prices. We know very well that the matter of prices of commodities is a problem to our people.

Let these jobs be given to those who do not have jobs. Ministers and Permanent Secretaries should sit in their offices and wait for discussions and issues raised by the Authority. Their work will be to examine those matters and come up with a solution to

what has been discussed outside their offices. If they are the ones who are going to take care of this Authority, then there will be no fairness to Kenyans.

With those few remarks, I beg to support.

The Assistant Minister for Trade (Mr. Omingo): Thank you, Mr. Temporary Deputy Speaker, Sir, for this opportunity. I rise to support this Bill for the simple reason that the object of the Bill is to do away with archaic way of doing things. We are now living in a liberalized economy. Indeed, we need to live with the current times.

As much as we want to delegate our responsibilities and authority to this Authority, consumers and traders need to be protected. It is true that we must be alive to the fact that we are getting into the global economy. We started with trading blocs in our region such as the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC). Various issues require harmonization. It is true that by thinking outside the box, we will be able to grow as a nation and compete with the community of nations as far as trade is concerned.

However, it is important to note that even as we liberalize, we must also entrust this body that is being created to run the show and at the same time allow it to protect the indigenous small traders. For example, it is foolhardy to imagine that we are going to float an international tender of Kshs50,000. That is not worthwhile in terms of economics. There is no way the small people are going to access business if they have to expose themselves to serious competition internationally. What we require to do is to form bodies that will deliver this mandate to Kenyans.

We have seen bodies formed such as the acrimonious Kenya Anti-Corruption Commission (KACC)--- If Parliament is going to create institutions that are not going to live to the expectations of Kenyans, then I think it is high time the Committee on Implementation, of this House, interrogated such bodies to ensure that we get value for our money.

Mr. Temporary Deputy Speaker, Sir, as soon as these bodies come into force, we need to give them some time-frame and be able to evaluate them in Parliament. Thank God, we are seeing some light at the end of the tunnel, in terms of coming up with a new constitutional dispensation for this country, where the Executive will be put to account. This House is going to be vested with the responsibility of even vetting people who will be joining Government service at senior levels.

I also want to join hands with my colleague who said that as much as we create jobs, we should also ensure that we spread them wide to include the youth of this country, who have always been told that they would be leaders of tomorrow, but for whom tomorrow has never come. It is important that during the final stages of the formation of these bodies – when we will have people serving in them – equity, in terms of gender balance, age and geographical representation, is factored in, so that we can reduce the tension that this country has gone through due to the kind of nepotism that we have witnessed over the years.

Mr. Temporary Deputy Speaker, Sir, it is also important that the body that is being formed works hand-in-hand with the parent Ministry, so that it can grow our businesses. As the Prime Minister said here yesterday, the only way to run away from

poverty is to create wealth. My Ministry is in charge of the business of improving trade and investment in this country. The only way to grow this country's economy is to encourage people to do business freely in a well managed environment. I believe that when this body becomes operational, it will enable disadvantaged Kenyans to access information for purposes of making proper investment decisions.

About three years ago, we realised, when Uchumi Supermarket was floating its shares, that there were people who were being fleeced of their lifetime investments, courtesy of disinformation. So, availability of information and lack of the restrictive nature of the trading environment will enable Kenyans to conduct their businesses in a transparent manner.

Mr. Temporary Deputy Speaker, Sir, it is also important that people who are involved in compromise or tailored trade links are brought to book. I believe that this body will address the matter of fairness in terms of the trading environment.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, I can see that there is nobody else who is interested in speaking on this Bill.

Mr. Shakeel: On a point of information, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): Who do you want to inform?

(Mr. Shakeel stood up to speak)

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Shakeel! I have not given you the Floor. There is nobody for you to inform, in the first instance.

Mr. Assistant Minister, have you responded to this debate?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): No, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): Do you want to respond now?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Yes, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): Very well! Proceed!

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Temporary Deputy Speaker, Sir, I want to take this opportunity to thank the hon. Members who have contributed to this debate. Their contributions have been very constructive. We have noted all the points they have raised on this Bill.

Secondly, I want to thank the Departmental Committee on Finance for having been very co-operative. The Committee discussed this Bill with our Ministry, and we agreed on most of the issues. However, this is not the end of it. They can still make any improvements they feel necessary in the Bill before we go to the Committee Stage.

Mr. Temporary Deputy Speaker, Sir, we have noted the concerns of one of the hon. Members, who talked about the proper definition of "controls" and "dominance". We are going to consider recommending some amendments during the Committee Stage to give clearer definitions of these terms.

With regard to the issue of operationalisation of the Tribunal, we expect that with an empowered Authority, there will be more cases to be handled by the Tribunal. Therefore, I believe, the Tribunal will be very busy.

Mr. Temporary Deputy Speaker, Sir, several hon. Members raised the issue of thresholds. Particularly, concern was raised about including the thresholds in the main body of the Bill. The reason as to why we did not include thresholds in the main body of the Bill is the dynamism of economic growth in this country.

As the economy grows, the sizes of the industries also change. Therefore, when we talk about thresholds, we do not want to bring every small industry into the thresholds of being regularised in terms of mergers and so on. Therefore, we are proposing that we put this in a subsidiary legislation because of the dynamism of the economic growth of the country.

Mr. Temporary Deputy Speaker, Sir, as far as the Competition Bill is concerned, there was concern expressed by hon. Members here; that the Bill has not addressed the issue of dumping. I want to clarify that this Bill does not deal with issues of dumping. It only deals with generic issues, which are issues relating to mergers, take-overs, abuse of dominance, restraint in trade, and consumer protection. These are the issues that are mainly covered by this Bill. Issues relating to dumping are sufficiently covered by the Act on counterfeits and dumping, which is in operation.

The appointment of the Board Members will be based on a certain criteria. You have heard several hon. Members express concern about the composition of the Board. The concern of hon. Members was that most Board Members are either Permanent Secretaries or five persons appointed by the Minister; and that a Minister might just appoint their friends or cronies or relatives and so on.

Mr. Temporary Deputy Speaker, Sir, in this case, a criteria for appointment has been given, which includes expertise in competition. Perhaps the Minister might not have relatives or friends who have some competence in competition, or some experience in law. However, hon. Members are free to make their proposals. We will look into them but that is the rationale behind making this provision.

With regard to research, the Bill accords the Authority powers to hire specialists. Not everybody in the Authority will be a specialist. So, this will be a very sparingly used provision. It is not something that is widespread such that we shall only be there to hire specialists and consultants. Therefore, the Authority is not meant to be a hirer of specialists.

Mr. Temporary Deputy Speaker, Sir, in regard to SMEs again, Mr. Shakeel talked about kiosks and so on. These are not going to be affected. There is a specific clause talking about SMEs. We want to develop our industries and protect them from certain provisions which might expose them to competition from international companies. There is that that exemption clause that is given which will cover some of these companies we are concerned about.

With regard to borrowing, we are going to look into this provision. It was borrowed from other statutes from other countries where similar bodies have been formed. In view of the concern expressed by Members, we are going to relook into this.

Mr. Temporary Deputy Speaker, Sir, there was also concern about the company being jailed. There were concerns that these are corporations. Members were asking how you can jail a company. I am not a lawyer but the information we have been given is that a company is a body corporate and it means it is an independent body which can be subjected to anything. I think I have seen it in practice where Managing Directors of

companies are actually jailed. I, therefore, do not think that clause is misplaced even though I am not a lawyer.

Mr. Temporary Deputy Speaker, Sir, I want to assure the House that all the concerns which were expressed here have been noted very carefully by us and we are going to bring the necessary amendments taking into consideration Members' concerns when the Bill comes to the Third Reading. I want to thank hon. Members for their contributions.

I beg to move.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House to tomorrow)

The Temporary Deputy Speaker (Mr. Ethuro): Next Order!

MOTIONS

ADOPTION OF SESSIONAL PAPER NO.3 OF 2009 ON NATIONAL LAND POLICY

THAT, this House adopts Sessional Paper No.3 of 2009 on National Land Policy laid on the Table of the House on Wednesday 18th November, 2009.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, it has been brought to the attention of the Chair by the Committee of the House and the Minister for Lands, that this Motion will need to be deferred in order for the relevant Committee to continue discussing it with the Minister. Therefore, it is so ordered and we will move to the next order!

(Motion deferred)

ADOPTION OF REPORT ON NOMINATION OF IICDRC JUDGES

The Assistant Minister for Trade (Mr. Omingo): Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, this House adopts the Report of the Parliamentary Select Committee on Review of the Constitution on the Nomination of Judges of the Interim Independent Constitutional Dispute Resolution Court laid on the Table of the House on Wednesday 18th November, 2009.

Mr. Temporary Deputy Speaker, Sir, the Interim Independent Constitutional Dispute Resolution Court (IICDRC) is established pursuant to the provisions of Section 60(A) of the Constitution introduced following the enactment of the Constitution of Kenya (Amendment) Act No.10 of ---

QUORUM

Mr. Shakeel: On a point of order Mr. Temporary Deputy Speaker, Sir. With due respect, I want to bring to the attention of the Chair that we do not have a quorum in the House.

The Temporary Deputy Speaker (Mr. Ethuro): That is correct! May the Division Bell be rung!

(The Division Bell was rung)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, there being no quorum, the House is, therefore, adjourned until Tuesday, 24th November, 2009 at 2.30 p.m.

The House rose at 5.25 p.m.0