

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 5th December, 2000

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

NOTICE OF MOTION

LEAVE TO INTRODUCE STATE CORPORATIONS AND
PUBLIC ASSETS REFORM AND DIVESTITURE BILL

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, I beg to give notice of the following Motion:-
THAT, this House do grant leave to introduce a Bill entitled the State Corporations and Public Assets Reform and Divestiture Bill, to create a legal framework that brings about the transfer of ownership in assets, organisations, commercial enterprises, institutions or bodies corporate, presently vested wholly or partially in the sovereign State of Kenya.

COMMUNICATION FROM THE CHAIR

CHANGE IN THE ORDER OF BUSINESS

Mr. Speaker: Well, hon. Members, last time I said that, today, I will do a different thing. Because of the various postponements of Questions by Private Notice, I said I will begin with Questions by Private Notice today. I hope the hon. Members under whose names those Questions are listed are in the House.

QUESTIONS BY PRIVATE NOTICE

DISAPPEARANCE OF GUNNY BAGS

(Mr. Wanjala) to ask the Minister of State, Office of the President:-

- (a) Is the Minister aware that some empty gunny bags donated by Action Aid and kept under the custody of the District Officer, Budalang'i, for the rehabilitation of Nzoia dykes, have disappeared?
- (b) What urgent measures is

the Minister taking to apprehend the people concerned?

Mr. Speaker: Mr. Wanjala not here?

An. hon. Member: Not here yet!

Mr. Speaker: Next Question by hon. Joe

Donde!

CONTRACT AWARD TO INTERTEK TESTING SERVICES

Mr. Donde: Mr. Speaker, I beg to ask the Minister for Finance following Question by Private Notice:-

(a) Is the Minister aware that a company known as Intertek Testing Services, which was recently allegedly involved in one of the biggest laboratory testing frauds in the United States of America regarding radioactive material, is about to be awarded a contract to do business with the Government of Kenya?

- (b) In view of this adverse report on the company, could the Minister shelve this contract?

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

(a) It is indeed, true that we have received complaints about various PSI companies that have tendered to get the contract for the PSI works.

(b) As a result of those complaints, we have instituted investigations which are on-going. When the investigations are completed, then we will submit the findings to the Central Tender Board (CTB) who will look at them and make a decision.

Mr. Donde: Mr. Speaker, Sir, I have no quarrel with that answer. However, I request the Minister to also inform the Departmental Committee on Finance about the findings of those investigations so that the House can have access to that report.

Mr. Okemo: Mr. Speaker, Sir, I have no problem with giving information about investigations, even to other Members of Parliament, except that because of the procurement rules, since a decision has not been made on the award of this particular tender, we cannot make information on those investigations available prior to the award of the tender.

Mr. Gatabaki: Mr. Speaker, Sir, I saw the document tabled by hon. Donde regarding this particular company and it is very frightening. However, the Minister should inform the House about the other companies that do pre-shipment inspection, whether they also have similar dockets and closets, so as to know whether they are also qualified. The time has come for us to study each and every one of these pre-shipment companies, as we did with SWIPCO, in order to establish their credibility in Kenya and elsewhere in the world. Could the Minister provide this House with documents regarding the other pre-shipment companies so that we can also discuss their conditions?

Mr. Okemo: Mr. Speaker, Sir, as I just said, in fact, the Central Tender Board (CTB) is not answerable to the Ministry of Finance. It is an independent body and members of the Government sit in that Board. It is chaired by a private sector Chairman and the majority of its members comprise private sector members. Therefore, the decisions of the CTB can only be challenged by the Appeals Board which has been constituted to deal with any cases where tender awards are challenged. So, it is not the Ministry of Finance and Planning that can deal with the question of unsatisfactory award of the tenders. This is the work of the Appeals Board, which has been constituted for that purpose.

Col. Kiluta: Thank you very much, Mr. Speaker, Sir. The Central Tender Board Select Committee (CTBSC) was set up to investigate this case and come up with recommendations. The Kenya Revenue Authority (KRA) also came up with their recommendations on who should be awarded this tender and who should not be allowed to be participate. Could the Minister tell this House why they ignored the recommendations given by those two committees?

Mr. Okemo: Mr. Speaker, Sir, it is not accurate to say that the CTB ignored the recommendations of the CTB Select Committee and the KRA. In fact, what did happen is that, after consultants had been appointed through international competitive bidding, they were then given a task of procuring PSI companies. So, they went through a process and they were given terms of reference, and as part of the input to selection, they were given recommendations by the KRA and the Select Committee of Parliament, as the hon. Member said. These were then passed on to the Ministerial Tender Board (MTB) which looked at the consultants' report that had already incorporated these recommendations. What then happened was that, the MTB came up with its report and recommendations which were then passed on to the CTB, and the CTB looked at all the evidence that was available before it. They did not make a decision because, in the intervening period, a lot of information again began to flow in; that there were problems with some of the PSI companies. But let me add that if we were to look into issues of transgression, some of which I have already seen in some reports, each one of the four procurement companies has been involved in one transgression or another. So, if we were to use that criterion, then we would disqualify all the four!

(Laughter)

Mr. Speaker: Mr. Minister, that is a very popular saying. I will recognise one more hon. Member and then we will go to Mr. Donde before we go to the next Question.

Dr. Kituyi, you have been on this for too long!

Dr. Kituyi: Mr. Speaker, Sir, considering that the excessive fraud in which leaders of Intertek Testing Services were involved, particularly on the dump sites in the United States before the environmental report was provided, which led to 13 key leaders of Intertek being charged with fraud in the US and Uganda; given that it was splashed in the British Media, between the 20th and 22nd of September, before the Ministerial Tender Committee made its recommendations to the Central Tender Board (CTB); how can the Minister explain to the House that such blatant mistakes by this company, which were in the public domain, did not influence the recommendations that this

company, to be among the shortlisted four that they recommended to the CTB?

Mr. Okemo: Mr. Speaker, Sir, as I said, these complaints actually came in between the decision of the Ministerial Tender Board and that of the CTB. As I said earlier in my answer, we have instituted investigations which are going on right now and it is on the basis of those investigations that we shall be able to decide on the award of the tender.

Mr. Maore: Mr. Speaker, Sir, with the details being given by the Minister, this country has suffered greatly under the SGS, Cotecna and Bureau Veritas. Could he, while considering the problems with Intertek, sort out the problems that SGS was causing to the former Prime Minister of Pakistan, where the issue of scandals and bribes were involved? This is because in this country, bribes do not influence the public officers to resign. Could he scrutinise SGS, Bureau Veritas and Cotecna, while in the same breath investigating this Intertek, all of them, with either accepting the most appropriate one or scrapping all of them?

Mr. Okemo: Mr. Speaker, Sir, in fact, that is precisely what we are doing at the moment. I will try and say a little more in the sense that in the evaluation process, we have technical criteria which are used and we have financial criteria and probably in the light of this exercise, which is on-going, we will have, maybe, a scoring on the basis of transgressions. Now, since all of them have had transgressions as I said, it is a question of who has had more transgressions than the other and that will have a score against which all the four will be measured.

Mr. Donde: Mr. Speaker, Sir, I am quite comfortable with the Minister's reply that there are transgressions in each company, which is very normal in human life. However, here we are talking of the magnitude and I am glad he has touched on that issue. So, could the Minister assure this House that, because of the scale and magnitude of the problem of Intertek, which is more than any of the other companies, assure this House that while making that decision, the magnitude and scale of this problem will be taken as a first priority in checking which company should be dropped first?

Mr. Okemo: Mr. Speaker, Sir, I wish to assure this House that every aspect of the outcome of the investigation will be taken into account in arriving at a decision as to which of the four procurement companies is given the tenders. After that has happened, I even want to go as far as telling this House that we can make that report available to this House, but after the awards, in line with the procurement procedures.

Mr. Speaker: Next Question. Mr. Mugeke. We have given this Question undue airtime which is indeed very generous.

Mr. Mugeke: Mr. Speaker, Sir, this Question has come up four times, today being the fourth day. I hope the Minister has the answer!

AWARDING OF JOGOO ROAD CONTRACT

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

(a) Could the Minister inform the House how the contract to construct the 1.5-kilometre of the Jogoo Road section connecting Outer Ring Road was awarded and who is the contractor?

(b) How much is the contracted sum and what was the completion date of this road?

The Minister for Local Government (Mr. Kamotho): Mr. Speaker, Sir, you are right and so is the Questioner. This Question has been on the Order Paper for the last four weeks. So, I do not know what is so complicated about it!

However, I beg to reply.

(a) The contract to construct the 1.5-kilometre Jogoo Road section connecting Outer Ring Road was awarded in accordance with the international competitive bidding procedures as provided for under the World Bank and Government of Kenya procurement regulations. It was awarded to Messrs Krishan Behal and Sons.

(b) The contract sum was Kshs269,551,103.65 and the work was initially scheduled for completion on 15th July, 2000. The work was not completed in time, due to certain difficulties which have now been overcome and an agreement has been reached to ensure that the road is completed by March next year. All the technical details which the House may want to know--- I do not know whether they were tabled last week.

Mr. Speaker: They were tabled!

The Minister for Local Government (Mr. Kamotho): Mr. Speaker, Sir, I have come with extra documents about the whole project which are all contained in the report.

Mr. Mugeke: Mr. Speaker, Sir, this road was to be done during one year. It has taken over one year and the Minister should tell the House the problem facing its completion. This is because it has been done very poorly. The bridge which, stalled about six months ago, does not meet the required specifications. It has been condemned. The consultant has recommended that it be pulled down. I have been there and the contractor started redoing that bridge which is condemned. Why has he taken that long and why can he not be forced to comply with the specifications of the

bridge?

Mr. Kamotho: Mr. Speaker, Sir, as I said, the problem facing that particular contract has now more or less been overcome and this is the consultant's report which confirms the need to strengthen that particular bridge and this has now been complied with and agreed upon between the consultant, our engineers and the contractor and the work is expected to be completed by March next year.

Mr. Muchiri: Mr. Speaker, Sir, that road was supposed to have been finished by 15th July 2000. We are now in December and it is more than obvious that the contractor did not do his job within the specified time. Why have you not terminated his contract and how much are you charging per day due to his failure to meet the time limit?

Mr. Kamotho: Mr. Speaker, Sir, as I said, the problems which caused the delay have been adequately addressed.

Hon. Members: What are the problems?

Mr. Kamotho: Mr. Speaker, Sir, let me explain what the problems are. May I proceed, Mr. Speaker, Sir?

Hon. Members: Yes! Yes!

Mr. Speaker: Order! Hon. Members, give the Minister a chance to finish!

Mr. Kamotho: Mr. Speaker, Sir, may I explain?

Hon. Members: Yes!

Mr. Kamotho: Mr. Speaker, Sir, the following problems were encountered:

(a) Insuring the structure to protect the railway line prior to excavation of the foundations.

(b) There were delays in relocating or rerouting services such as power lines, water main pipeline, telephone lines and sewer lines.

(c) There was delay in securing rails from the Kenya Railways for the construction of the bridge and temporary deviation.

However, these problems have now been overcome and that is why it has been agreed to complete the road by March next year.

Mr. Wamae: Mr. Speaker, Sir, Krishan Behal is known to be a very corrupt contractor and we have made complaints in this House many times. What will the Minister do to ensure that we get quality work from this contractor on this bridge?

Mr. Kamotho: Mr. Speaker, Sir, the hon. Member has said that the contractor is well known. I do not know who knows him! This contract was awarded before I was appointed the Minister for Local Government.

Mr. Wamalwa: On a point of order, Mr. Speaker, Sir. I wonder why the Minister has chosen to show his ignorance in this House this afternoon. Many Public Accounts Committee reports have pointed out Krishan Behal and Sons as one company that has been grossly corrupt. Many reports have recommended that this company be blacklisted. So, could the Minister justify whether he is in order to claim that he knows nothing and whether the Ministry was right in awarding this contract to a firm well known to be corrupt?

Mr. Kamotho: Mr. Speaker, Sir, this contract was awarded by the Central Tender Board, with the concurrence of the World Bank, according to my records.

Mr. Raila: On a point of order, Mr. Speaker, Sir. The Jogoo Road project is just one of the projects in Nairobi that have been abandoned by contractors. There are others in Eastleigh. Langata Road is another one where the contractor has actually terminated the contract because of a disagreement with the World Bank.

Could the Minister tell this House the reason why the World Bank, as the financier of the construction of these roads in the City, has delayed payment to these contractors which has resulted in most of them abandoning the projects?

Mr. Kamotho: Mr. Speaker, Sir, I do not know how I can give a reason as to why the World Bank has delayed the payment. This is because I have no control over the World Bank. Payments for most of these projects are made directly to the contractors through the Central Bank of Kenya.

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. Is the Minister in order to tell us that this Government has abrogated its duty to the World Bank and the IMF?

Mr. Speaker: Order! That is not a point of order!

Mr. Mugeke: Mr. Speaker, Sir, I have just come from the site and I left a delegation from Embakasi and Buru Buru, organising to demonstrate and pull down that bridge because the contractor has started working on it when they know too well it does not meet the specifications. In fact, it will be a tragedy because the railway line passes through there, and the contractor has ignored the recommendations from the consultant to pull down that bridge.

Mr. Speaker: Will you put the question now?

Mr. Mugeke: Mr. Speaker, Sir, I would like the Minister to tell us why the contractor is ignoring the recommendations by the consultant. At the same time, could he state the problem which is causing this delay? This contract was awarded through the influence of the "Royal Family". However, the "Royal Family" has disagreed and that has caused all these delays!

Mr. Kamotho: Mr. Speaker, Sir, first of all, we have no royal families in this country. So, I do not know

which royal family he is talking about. I would also like to advise hon. Mugeke that the way to getting a solution to this kind of problem is not by organising demonstrations and then come here and say there are demonstrations on the road.

Mr. Speaker: Next Question, Mr. Joshua Toro.

(Mr. Ojode stood up in his place)

Order! Mr. Ojode, are you called Joshua Toro?

Mr. Ojode: No, Mr. Speaker, Sir.

Mr. Speaker: I apologise, Mr. Ojode. I called Mr. Joshua Toro. But you should listen to me; when I call Mr. Joshua Toro, stay put and let Mr. Joshua Toro say he is not the one!

Yes, Mr. Ojode!

(Laughter)

Mr. Ojode: Mr. Speaker, Sir, I will accept your apology for the first time.

Mr. Speaker: Order! Take care, Bwana!

REGULATORY BODY TO OVERSEE PRICES OF PETROLEUM PRODUCTS

Mr. Ojode: Mr. Speaker, Sir, I beg to ask the Minister for Petroleum Energy the following Question by Private Notice.

(a) Is the Minister aware that the increases in the price of petroleum products have adversely affected the consumers and that most Kenyans will not afford basic needs?

(b) What necessitated the increases when the price of crude oil is going down in the world market?

(c) What urgent steps is the Minister taking to introduce a regulatory body to oversee importation, distribution and pricing of oil products in this country?

The Minister for Petroleum Energy (Mr. Masakhalia): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware.

(b) The increases in petroleum products pump prices are not in keeping with the latest trend of crude oil prices in the world market. Investigations by the Ministry are underway, on the factors that have necessitated oil companies in the country to raise prices.

(c) Following the deregulation of the petroleum sector, the Ministry established the Petroleum Monitoring Unit, to monitor the performance of the sector. First, a new Petroleum Bill has been drafted and will soon be laid on the Table of this august House providing for the establishment of the office of Commissioner of Petroleum which will enhance the administration and management of the sector.

Mr. Ojode: Mr. Speaker, Sir, the Minister has not answered part "b" of my Question. In October, super oil was selling at Kshs53.20 and regular oil was selling at Kshs52.20. During that particular month, crude oil per barrel was selling at US\$32.15. Last month, super oil was selling at Kshs56.20 per litre. That shows there was an increase of Kshs3 per litre.

Mr. Speaker: Are you debating today?

Mr. Ojode: During that month, crude oil was being sold for US\$30.82. What factors necessitated the increase of fuel prices despite the fact that the price of crude oil was going down on a monthly basis?

Dr. Masakhalia: Mr. Speaker, Sir, in my answer I conceded that international trends in crude oil prices do not bear out the recent increases by local oil companies in their products pump prices. We also have a formula for monitoring this process. From October to November, crude oil prices in the international market did decline from US\$32 to US\$30.82. We also know that the Kenya Shilling has been appreciating. So, if we take those two factors into account, there should have been a decline. If you only confine yourself to those two factors, the international crude oil prices, trends in the international market and the appreciation of the Kenya Shilling, we have computed data based on those trends and we know that it should have declined by 75 cents between October and November. But this is a deregulated area. We stopped price controls in 1994, so prices are determined by the market forces. There must have been reasons why, contrary to international trends in crude oil prices, there was a rise in the retail prices of petroleum products.

Mr. Sambu: Mr. Speaker, Sir, the Minister has conceded that they are unable to control the spiralling fuel prices because of deregulation. Is he satisfied that we should allow this situation, where prices are going up by Kshs2 to Kshs3 per litre every month? If he is not satisfied, will the Government allow this House to control the oil prices with immediate effect?

Dr. Masakhalia: Considering the welfare of the Kenyan people, I am not satisfied that prices should have

risen. But, as I indicated, there are measures being put in place that should avert that kind of development. I did refer to the Petroleum Bill but there are other measures.

Mr. Muite: Mr. Speaker, Sir, I am sure that sooner than later, this House will assist the Minister by bringing the necessary legislation to regulate the oil prices. However, the Minister knows that a very high percentage of the cost of fuel in this country goes to the Government in the form of taxes. Out of Kshs1,000 that a Kenyan pays at the petrol station, Kshs600 goes to the Government. If there was no tax, petrol costing Kshs1,000 would be costing Kshs400. In order to cushion Kenyans and the economy until such time as we regulate the cost of oil, is the Minister prepared to reduce taxation on petrol?

Dr. Masakhalia: I will only respond to that from collective responsibility because this matter lies squarely with the Ministry of Finance. It is a fiscal measure. But I would, for now, say that we adopted the Finance Bill which spelt out the taxation measures, which were approved by this House. So, until the Finance Bill is revised, there is no room for altering the levels of taxation on petroleum products.

Mr. Ojode: Thank you, Mr. Speaker, Sir. In the USA, petrol is being sold for US\$1.45 per gallon, whereas in Kenya, the same petrol is being sold for US\$5 per gallon. What is the justification? In his response to "c", the Minister said that he is preparing a Bill to be tabled before this House. The Minister wants to create a Commissioner of Petroleum products for administration and management purposes, and not to regulate the prices. What is he doing to create a regulatory board to regulate the prices of oil products?

Dr. Masakhalia: We are taking measures that will increase competition in the sector. Regulation is not a panacea. We cannot resort to regulation to solve all our problems. This is an area where keen competition will bring down prices. To increase competition, we are not only licensing--

Mr. Ndilinge: On a point of order, Mr. Speaker, Sir. I am seeking guidance from the Chair. This Question concerns every *mwana* because, when prices for petroleum products are hiked, they affect them. Could the Minister tell the House whether he will take action to reduce these prices?

Mr. Speaker: Order! Sit down! You will be very lucky today, Mr. Ndilinge, because you have risen on a frivolous point of order just to get a chance to ask a supplementary question! Next time you attempt that, you will face the consequences!

Mr. Murathe: On a point of order, Mr. Speaker, Sir. The Minister is misleading this House by alleging that the measures he is undertaking will create competition. Is it a coincidence that this cartel of petroleum dealers; that is, Agip, Kenol and Caltex, collude to fix prices? Where do they meet to fix the same prices?

Mr. Speaker: Order! That is a very good supplementary question! You are out of order!

Mr. Raila: On a point of order, Mr. Speaker, Sir. Is the Minister in order to mislead the House that competition within the oil industry will bring down the prices when the market is liberalised and the prices keep on increasing? There is no competition; there is a monopsony!

(Dr. Masakhalia stood up in his place)

Mr. Speaker: Very good! That is not a point of order either. Sit down, Mr. Minister! It is about time I put my foot down and I am doing it now!

Next Question, Mr. Anyona!

ALLOCATION OF JUA KALI INDUSTRIAL DEVELOPMENT LAND

Mr. Anyona: Mr. Speaker, Sir, I beg to ask the Minister for Lands and Settlement the following Question by Private Notice.

(a) Is the Minister aware that part of the land allocated to Jua Kali Industrial Development, Plot No.2787/G/Zone 019, 0.80 hectares, Nanyuki, in 1986, has been illegally acquired from the Nanyuki Municipality Jua Kali Association?

(b) Who is/are the new allottee(s) and who authorised the allotment of the land?

(c) Could the Minister cancel the irregular allotment of the land in favour of the Nanyuki Municipality Jua Kali Association?

The Minister for Lands and Settlement (Mr. J. Nyagah): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that a piece of land, which was planned as the Jua Kali site in Nanyuki Municipality, was allocated to Nanyuki General Engineering Jua Kali Association in April, 1993, but the allocation was later cancelled by my Ministry.

(b) The allocation was cancelled in April, 1996, in line with the Government policy of allocation of all Jua Kali plots to the Permanent Secretary of the Ministry in charge of Jua Kali Association matters as the trustee to protect the interests and rights of Jua Kali Association members. The Association was allocated an alternative plot on 10th

September, 1989, as per allotment letter, Ref. No.155445/48.

(c) The re-allocation of the said plot is not irregular. The members of Nanyuki Municipality Jua Kali Association are free to use the plot for the Association's purposes. The Permanent Secretary is just a trustee, who is supposed to protect the interests of the Association's members. The plot is still being used for the purposes it was planned and allocated.

Mr. Anyona: Mr. Speaker, Sir, this Question arises from a memorandum by Nanyuki Municipality Jua Kali Association. The memorandum is dated 16th October, 2000. It is, in fact, addressed to the Kenya Anti-Corruption Authority (KACA) and copied to all political party leaders. Those people are complaining. So, could the Minister explain how many Jua Kali associations are there, and how many plots are involved? This aspect has not come out clearly in his answer.

Mr. J. Nyagah: Mr. Speaker, Sir, there are several Jua Kali associations based in Nanyuki; I do not know the exact number. We have set aside one large plot, so that they can all share it. I am not sure how many associations fall under Nanyuki Jua Kali Association, but I know that there are several of them, one of which is the Engineering Jua Kali Association.

Mr. Raila: Mr. Speaker, Sir, I also received a copy of the memorandum referred to by hon. Anyona. The Minister's answer is not clear. On the one hand, he says that the allocation of the plot to Nanyuki Jua Kali Association was cancelled and then re-allocated in the name of the Permanent Secretary for the Ministry in charge of Jua Kali associations matters. At the same time, the Minister says that Jua Kali artisans were relocated to another plot. He further says that the original plot is also available for occupation by the same Jua Kali artisans, which is a contraction of some kind. Why can the Ministry not issue a title deed for such land in the name of Jua Kali associations? Why does it see it necessary to issue the title deeds in the name of the Permanent Secretary?

Mr. J. Nyagah: Mr. Speaker, Sir, due to grabbing by various members of Jua Kali associations, it was found necessary to bring land that was being used by Jua Kali associations under the trusteeship of the Permanent Secretary. This move was taken to protect Jua Kali artisans because many of the officials of Jua Kali associations became thieves; they started grabbing plots.

Mr. Speaker: That is the wrong language, Mr. Minister! Could you withdraw the word "thieves" and continue?

Mr. J. Nyagah: Mr. Speaker, Sir, I withdraw the word "thieves." What happened is that, officials of some Jua Kali associations started dishing out the land allocated to them to some individuals, and this led to some fights. In this particular case, the Association even took us to court and lost the case. They wanted to control the management of land allocated to them. I assure the hon. Member that the said piece of land is safe under the trusteeship of the Permanent Secretary.

Mr. Anyona: Mr. Speaker, Sir, here is a dispute, apparently, among Jua Kali artisans and associations, involving more than one piece of land. That is what we asked the Minister to resolve, but he comes here and says - and I like his honesty - that he does not know how many such associations are involved. Could the Minister go back and find out how many associations and land parcels are involved? I have a map plan here; the pieces of land involved appear to be several.

Mr. Speaker, Sir, I would like to lay this map plan on the Table, so that it can help him resolve the disputes. This Parliament is interested in resolving disputes that create disharmony in society.

(Mr. Anyona laid the map on the Table)

Mr. J. Nyagah: Mr. Speaker, Sir, I am happy to receive that extra information from the hon. Member. I am sure that this will help us.

DISAPPEARANCE OF GUNNY BAGS

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

(a) Is the Minister aware that some empty gunny bags donated by Action-Aid and kept under the custody of the District Officer, Budalangi, for the rehabilitation of Nzoia dykes, have disappeared?

(b) What urgent measures is the Minister taking to apprehend the people concerned?

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

(a) I am aware that some empty gunny bags donated by Action-Aid and kept under the custody of the District Officer (DO), Budalang'i, for the rehabilitation of Nzoia dykes, have disappeared.

(b) The police are investigating the case. Whatever action we will take will be dependent on the findings of the police investigations.

Mr. Wanjala: Mr. Speaker, Sir, we are talking about 5,000 bags which disappeared. The truth is that those bags were stolen by the DO, Budalang'i. He loaded them onto a Government Land Rover, transported them to some place and sold them. Action-Aid officials have complained to the area District Commissioner (DC) and the police, but nothing has been done. How does investigation take three months when the DO has stolen 5,000 gunny bags from his own office during the day?

Maj. Madoka: Mr. Speaker, Sir, as I said, we received this information. We have instituted investigations into the matter and until they are completed, I cannot say anything further.

Mr. Muchiri: Mr. Speaker, Sir, this case is very simple for the Minister to investigate. Could he assure this House that the said DO will be taken to court tomorrow, not later than 9.00 a.m.?

Maj. Madoka: Mr. Speaker, Sir, I do not know what evidence the hon. Member has to prove that the said DO actually took those bags away from the office. We will only take him to court when we have proof that he actually took the bags away from the office.

Mr. Wanjala: Mr. Speaker, Sir, it has been proved, beyond reasonable doubt that the DO snatched the keys to the store from the administration policeman (AP) who was keeping them and loaded the bags onto a Government Land Rover, transported them to some place and sold them. The DC wrote the DO a letter, directing him to record a statement at the area police station, but he refused to do so. Even yesterday, I checked with the police and found that the DO has not recorded a statement. Who is that DO? Is he above the law?

Maj. Madoka: Mr. Speaker, Sir, I am aware that the said DO is being investigated. Until the investigations are concluded, I cannot say anything further.

Dr. Kulundu: Mr. Speaker, Sir, could the Minister assure this House that the said DO will be or has been suspended from duty to facilitate independent investigations?

Mr. Muiruri: On a point of order, Mr. Speaker, Sir. In order to get rid of this kind of thing, could the Minister tell us the name of the DO? Who is this DO who is highly protected?

Mr. Speaker: Order, Mr. Muiruri! Maj. Madoka, have you finished?

Maj. Madoka: Yes, Mr. Speaker, Sir!

Mr. Speaker: Very well. Let us now go back to the ordinary Questions.

Dr. Kulundu: On a point of order, Mr. Speaker, Sir. The Minister has not answered my question!

Mr. Speaker: Maj. Madoka, have you answered Dr. Kulundu's question? Ignore the hon. Member called Mr. Muiruri!

Maj. Madoka: Mr. Speaker, Sir, the DO has not yet been suspended.

Mr. Wanjala: Mr. Speaker, Sir, one last question!

Mr. Speaker: Order, Mr. Wanjala! I am sorry. Look at the time.

Let us now go back to Questions by Ordinary Notice! Maybe, we will answer only one of them.

ORAL ANSWERS TO QUESTIONS

Question No.686

NAMES/STATIONS OF OCPDS COUNTRYWIDE

Eng. Toro asked the Minister of State, Office of the President, whether he could table the names and stations of all the Officers Commanding Police Divisions (OCPDs) in the country.

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, I have the list of all the OCPDs, but for security reasons, we feel that we cannot give the actual deployment of all those officers in each station.

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. Since the subsequent questions are going to be dependent on the contents of that list, would it not be in order for the Minister to table the list before subsequent questions are asked?

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, by tabling the names, I will be giving the actual position of the deployment of the officers, and for security reasons we are not prepared to do so.

Dr. Kituyi: Mr. Speaker, Sir, an OCPD is a public officer in the Republic of Kenya. His or her name is always quoted in the newspapers when he or she is involved in any activity. What is so secret about the names of the

OCPDs, except for wanting to disguise the fact that most of them come from one community?

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, we feel that it is not fair to these individuals when we give their details.

Eng. Toro: Mr. Speaker, Sir, I asked a specific Question, and I know that the supplementary questions are subject to the list to be provided to me. It is naive for the "Insecurity Minister" to say that he cannot table the list. I know the OCPD in my district; he is called Mr. Kimani. All OCPDs are known. When they are promoted, this is published in the *Kenya Gazette*. So, could you order the Minister to table the list, so that we can ask supplementary questions?

Mr. Speaker: Order! May I get it right from the Minister? What is dangerous; is it the names of the OCPDs or is it their numbers?

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, their number is not a problem. As I said, they are 77, but we feel that their actual locations should not be given.

Mr. Munyao: Mr. Speaker, Sir, my point of order is to the Chair. This Question was addressed to the Chair and you looked at it and found out it was not dangerous, and that it was not against the Constitution of Kenya. It is neither a breach of security.

Is the Minister in order to refuse to answer a Question which has been approved by the Speaker?

Mr. Speaker: I do not think it will endanger State security for us to know the names of all our OCPDs!

(Applause)

Maj. Madoka: Mr. Speaker, Sir, with that preamble, I hereby table the list.

(Maj. Madoka laid the list on the Table)

(Laughter)

Eng. Toro: Mr. Speaker, Sir, I request that this Question be deferred because, when I approached the Minister, he refused to give me the list. Therefore, I am not able to ask any supplementary questions.

Mr. Speaker, Sir, could I request the Chair to defer this Question to enable me study the list and later on ask supplementary questions?

Mr. Speaker: I defer the Question generally.

(Question deferred)

Question No.660

CONSTRUCTION OF KAFOCA
CANTEEN IN NYANZA

Mr. Otula asked the Minister of State, Office of the President, when the Kenya Armed Forces Old Comrades Association canteen will be built in Nyanza Province.

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

The Kenya Armed Forces Old Comrades Association (KAFOCA) has a hostel in Town, built in 1946, which is being renovated to serve as a canteen to its members in Nyanza Province. However, there is a court injunction obtained by the widow of the late Captain Lenya to whom the facility was rented. KAFOCA has engaged the services of a lawyer in a bid to lift the court injunction and restore the hostel to its status.

Mr. Otula: Mr. Speaker, Sir, you have heard the Assistant Minister say that the canteen was built in 1946, when most hon. Members here were not born. Could he tell this House in whose name the land, where the canteen is built, is registered?

Mr. Gumo: Mr. Speaker, Sir, that question should be referred to the Ministry of Lands and Settlement.

Mr. Speaker: What was the question? Mr. Otula, could you repeat your question, so that can I follow it?

Mr. Otula: Mr. Speaker, Sir, since the canteen was built in 1946, could he tell this House in whose name the land is registered because the widow of Capt. Lenya filed an injunction and they have hired a lawyer to fight it out and make sure that the canteen is renovated?

Mr. Gumo: Mr. Speaker, Sir, it is on Government land!

(Laughter)

Mr. Otula: Mr. Speaker, Sir, could the Assistant Minister tell us the number of that particular piece of land?

Mr. Gumo: Mr. Speaker, Sir, as far as I know, it is Government land. If the land belongs to somebody else, and you know it, then, let us know.

Mr. Speaker: By the way, as a matter of interest, Mr. Otula, the way your Question is framed suggests that the canteen does not exist but you are now talking of an actuality.

Mr. Otula: Mr. Speaker, Sir, as far as I am concerned, there is no canteen which is existing. The Government is claiming somebody's land to be the canteen which is built for the KAFOCA. Why can the Ministry not consider putting up a canteen for the ex-army people in Nyanza?

Mr. Gumo: Mr. Speaker, Sir, this canteen is there and it was built in 1946, as I have said. It is old enough, and that is why it is being renovated for the old army people to use.

Mr. Otula: Mr. Speaker, Sir---

Mr. Speaker: Order! Time up! It is time for points of order and those seeking Ministerial Statements.

Question No.698

BREAKDOWN OF EXPENDITURE ON
NAIROBI *EL NINO* PROJECTS

(Question deferred)

Question No.359

EVICITION OF MR. BUTHUI

(Question deferred)

Question No.695

ISSUANCE OF DEGREE CERTIFICATE
TO MISS MWENJE

(Question deferred)

Question No.386

MEASURES TO ERADICATE FOOD
SHORTAGES IN ASAL AREAS

(Question deferred)

Question No.465

SUPPLY OF LIGHTNING
ARRESTORS TO SCHOOLS

(Question deferred)

Question No.649

RELEASE OF COMPENSATION
TO MR. TONU'I'S FAMILY

(Question deferred)

POINTS OF ORDERSALE OF PROPERTIES OF KENYA
CIVIL SERVANTS WELFARE ASSOCIATION

Mr. Muchiri: Mr. Speaker, Sir, I rise to request for a Ministerial Statement from the Minister of State, Office of the President, in relation to the sale of moveable and immoveable properties of the Kenya Civil Servants Welfare Association by three former trustees of the association.

Mr. Speaker, Sir, what action is the Government taking to ensure that the sale proceeds are safeguarded before they are misused?

SALE OF COTTON

Dr. Ochuodho: Mr. Speaker, Sir, I stand on a point of order to seek a Ministerial Statement from the Minister for Agriculture, with regard to the auctioning of two cotton ginneries in South Nyanza. One is in Homa Bay Town, and the other one in Kendu Bay Town and they were auctioned last week. These two ginneries were leased out to Asego Holding Company in 1996, on the understanding that they would be paying Kshs80,000 a month to the Co-operative Bank which is owed over Kshs65 million, and Kshs20,000 every month to the farmers. I would like to know from the Minister whether he is aware that last week these two ginneries were auctioned apparently to proxies of Asego Holding Limited. Could he also tell the House how much money has been paid to the Bank and how much, since 1996, has been paid to the farmers? Why can the Government not consider writing off this loan of Kshs65 million, considering the harsh weather conditions that the region has suffered over the past few years?

MINISTERIAL STATEMENTS

EVALUATION TESTS IN KALAWA DIVISION

The Assistant Minister for Education, Science and Technology (Mr. Awori): Mr. Speaker, Sir, in response to a request made by hon. Munyao regarding the evaluation tests in Kalawa Division, I wish to make the following Ministerial Statement.

In accordance with the provisions of the Education Act, the Makueni District Education Board, by its Minute No.8/2000 of 24th July this year, duly authorised the zonal, divisional and district primary schools evaluation tests for classes Four to Six. The tests are set by a competent teachers panel. Each child is charged a maximum of Kshs35 to cover printing and administrative costs. This money is collected, banked and its expenditure is authorised by the respective zonal, divisional and district education committees. The Standard Six divisional tests were successfully done in all the divisions except for Kalawa. In Kalawa, each of the 467 Standard Six pupils was charged Kshs30. The divisional test was printed but it was never administered because it was alleged there was not enough money to cover the costs. Consequently, all the candidates sat for the test.

There certainly are loopholes in the whole organisation of the zonal and divisional evaluation tests and laxity was definitely evident in the administration. Accountability for the money and effectiveness of Standard Six tests was never assured. My Ministry is analysing the situation with a view to advising the District Education Board on how to reorganise the tests and administration---

(Loud consultations)

Mr. Speaker: Order, Members! Can we hear the Member on the Floor?

Proceed.

The Assistant Minister for Education, Science and Technology (Mr. Awori): Mr. Speaker, Sir, my Ministry is analysing the situation with a view to advising the District Education Board on how to reorganise the tests, the administration and co-ordination. In this particular case, appropriate disciplinary action will definitely be taken against my Ministry's officials in the field who have been responsible for the failure of the tests. If necessary, the money that the children have paid should be surcharged to the officers and refunded to parents.

Mr. Munyao: Mr. Speaker, Sir, I thank the Assistant Minister sincerely for the effort he has made to get the

truth of the matter. In October, the same cartel of the DEO and his officials, collected Kshs300 from every primary school and Kshs1,000 from every secondary school per stream, on the pretext that they had not been given enough money for exams. Since the Assistant Minister is now trying to get the money refunded to the parents, will he also facilitate a refund of the money which was paid in October because it was in excess of Kshs2 million and it was not authorised by any board?

The Assistant Minister for Education, Science and Technology (Mr. Awori): Mr. Speaker, Sir, I just want to assure the hon. Member that we will include that particular aspect in the question of trying to see if we can recover this money from the officials who collected it without any authorisation.

EVICTON OF MR. MIRICHO

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, hon. Mwiraria requested for a Ministerial Statement regarding one William Miricho who was evicted from a plot at Kanguni Village in Timau.

The plot on which Mr. William Miricho was living was the subject of a dispute in court, Nanyuki Civil Case No.31/2000. The Senior Resident Magistrate's Court, Nanyuki, ruled on 16th November, 2000, that plot No.6, within Timau Township and on which Mr. William Miricho Kimondo was living legally, belonged to Mr. Nathan Chemaima. The Court issued an eviction order directing the Officer Commanding Station (OCS), Timau, to provide security to Memco Auctioneers during the eviction. The OCS received the court order and complied with it. The actual eviction was carried out on 20th November, 2000, by Memco Auctioneers Agents. The presence of the police during the eviction was in compliance with the court direction to provide security. The police did not participate in the eviction or alleged demolition of houses. In view of the foregoing, the action of Memco Auctioneers, and the police, was lawful as it was in accordance with the court order. However, if Mr. Miricho has evidence of wrongdoing from the police or Memco Auctioneers, he is free to seek redress from the relevant authorities.

Mr. Mwiraria: Mr. Speaker, Sir, the Minister states clearly that the Resident Magistrate, Nanyuki, ruled on the 16th of November that the plot belonged to somebody other than Miricho, Mr. Miricho who is a squatter, had been on the---

(Loud consultations)

Mr. Speaker: Order, hon. Members! Mr. Mwiraria cannot be heard! As you can see, he is an elected Member for North Imenti and he must be heard somehow.

Proceed!

Mr. Mwiraria: Thank you for the protection, Mr. Speaker, Sir.

I was saying that the Resident Magistrate ruled on the 16th of November that Mr. Miricho, who had been squatting on the plot for many years, was not the rightful owner of the plot. Even though the area was set aside for settling squatters, somebody else was given his plot where he had built his house. Is it really fair for someone to be given four days notice before his houses are pulled down by auctioneers? Should he not have been given enough time to move his buildings and his family so that they would not be thrown out in the cold and rain?

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, I really do not know the number of days he was given, but all I know is that these officials were complying with a court order. If he was not given adequate notice, that might have been unfair but I really do not know what transpired.

Mr. Speaker: Very well! That is the end of everything!

Mr. Okemo, you were ordered by me to say something here!

PERSONAL STATEMENT

APOLOGY TO THE HOUSE

The Minister for Finance (Mr. Okemo): Thank you very much, Mr. Speaker, Sir. Indeed, there is something that you ordered me to say in this House. I will not go into a long and lengthy story as to what happened and why it happened. I will straightaway comply with your order and apologise for having discussed the matter of this House, and the conduct of the Speaker, outside the Chamber. So, I apologise.

Mr. Speaker: Well, I accept the apology. Mr. Okemo, you are a very wise person and I accept your apology.

Just before we get into the Committee of the whole House, I would like to say that we have a Supplementary Order Paper, as hon. Members will notice. The Supplementary Order Paper contains various amendments from hon. Members and the Minister. I am informed that, through consultation between various hon. Members and the Minister,

the Committee will begin discussions on the amendments of the Minister. I am also told that consequent upon that agreement, the other preferred amendments proposed by the other hon. Members stand withdrawn. Is that the general agreement?

Hon. Members: Yes!

Mr. Speaker: So, we will proceed on that basis.

Hon. Members: No! No!

Mr. Speaker: Order! We will proceed on that basis and any hon. Member who has an amendment contrary to what they have agreed with the other hon. Members and the Minister can generally push it through. You can go ahead and do so, but I am saying what has been brought to the Chair, as an agreement. Can I begin with Mr. Anyona? Hon. Anyona, have you dropped yours?

Mr. Anyona: Yes, Mr. Speaker, Sir.

Mr. Speaker: That is okay. Mr. Michuki, have you dropped yours?

Mr. Michuki: Mr. Speaker, Sir, I have dropped my amendment in good faith.

Mr. Speaker: Mr. Angwenyi, have you dropped yours?

Mr. Angwenyi: Yes, Mr. Speaker, Sir.

Mr. Speaker: Mr. Gatabaki, have you dropped your amendment?

Mr. Gatabaki: Mr. Speaker, Sir, I have not withdrawn my amendment!

(Applause)

Mr. Speaker: Mr. Shitanda, have you dropped yours?

Mr. Shitanda: Yes, Mr. Speaker, Sir.

Mr. Speaker: Mr. Murungi, have you dropped yours? Is he not here? It will come out there. So, the only amendments left are those of the Minister and Mr. Gatabaki. So, you can deal with them.

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

[The Temporary Deputy Chairman

(Mr. Musila) took the Chair]

THE CENTRAL BANK OF KENYA (AMENDMENT) BILL

Clause 2

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

THAT, Clause 2 be amended-

(a) by deleting the proposed Subsection (1) and substituting therefor the following new subsection -

(1) The maximum rate of interest which specified banks or specified financial institutions may charge on loans or advances shall be the 91-day Treasury Bill rate published by the Bank on the last Friday of each month, or the latest published 91-day Treasury Bill rate, plus four per centum:

Provided that the maximum interest chargeable under this subsection shall not exceed the principal sum loaned or advanced except in the case of-

(a) loans or advances for a period exceeding three years; or

(b) loans or advances in respect of which the borrower is in default of repayment.

Mr. Michuki: On a point of order, Mr. Temporary Deputy Chairman, Sir. Maybe, through a slip of the tongue, the Minister has said something different from what we agreed. It is in the proviso that the "maximum" becomes "total". That is what we agreed on behind there.

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, I have no problem with the word "total" replacing the word "maximum".

The Temporary Deputy Chairman (Mr. Musila): Mr. Minister, then you read up to part "b" so that we deal with that part.

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, I will read part "b".

(b) by deleting the proposed subsection (2) and substituting therefor the following new subsection-
(2) The minimum rate of interest which specified banks or specified financial institutions may pay on deposits held in interest-earning accounts shall be seventy per centum of the latest 91-day Treasury Bill rate published by the Bank on the last Friday of each month, or of the latest published 91-day Treasury Bill rate.

The Temporary Deputy chairman (Mr. Musila): Let me dispose of that part first, so that we take our time.

(Question of the amendment proposed)

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Chairman, Sir, I think the Minister must explain to the House very clearly what this amendment means, because hon. Members of the House may not be privy to the details and technical language used. First of all, reference to Treasury Bills must mean reference to the domestic debts. Hon. Members must be assured that the Treasury will not charge high interest rates to attract the buying of Treasury Bills so that they can deal with the domestic debt. Unless the Minister guarantees the House that Treasury Bills will not attract high interest rates because of the high domestic debt we have, this amendment is dead as a dodo. Secondly, the proviso "a" leaves a lot to be desired. I would have preferred that there is no proviso at all. That subsection (1) should be minus part "a" and "b".

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, I think we have gone through the question of Treasury Bills (TBs) determination, and how it is used as an instrument by Central Bank to raise finances for the Government, and as a weapon to deal with the supply of money so many times that Members do not need to be educated on that. I think they are very familiar with that. It is very difficult for me, to stand here as the Minister for Finance, and give guarantees. I think I would be cheating the House. I cannot give a guarantee that the Government will not borrow using Treasury Bills and therefore, that will not influence the level of Treasury Bills. I think it is better to be honest and say: That will depend on the financing gap and how we will fill it up. This will involve the revenue that we collect, credits that we obtain from multilateral and bilateral donors and the debt rescheduling process which has already began. We do not know the net outcome of that yet. That process will take, at least, nine months. So, I think I will be lying to this House to guarantee that the Government will not go to the domestic market to borrow in case there is a financing gap.

Mr. Temporary Deputy Chairman, having said that, I think it is also important for us to know that the Bill as it is, will have certain consequences. However, I will not go into that. So, it is only time that will tell how the financial sector will react to the Bill. It is too early to say anything. I do not know how it will react. The consequences will come out very clearly, some time ahead of us.

Mr. Donde: Mr. Temporary Deputy Chairman, Sir, let me make something a little bit clearer. Arising from this amendment, it shows that we are moving away from the auction system to the monetary policy committee system. So, any fears which have been expressed by hon. Members that the auction system, which has been used during the decontrol period would be used, will not be used. There is an impending amendment which the Minister, with the approval of the House will move to establish have a monetary committee system that will set the rates of Treasury Bills. I think that is covered. It is because we have not reached there and some hon. Members might be fearing about that.

There is also another thing that I would like to clarify. There is really nothing wrong with the proviso (a). In countries where they use that system, they also need to protect the banks. For example, if a customer knows that he does not have a strong security, and his loan can only be difficult to service when it doubles, he can go to the bank and take Kshs2 million.

But because the interest rates are low - maybe 12 per cent - the Kshs2 million cannot double in eight years. So, he can just decide to sit and make no payments. That is why we have the three years to act as a safeguard for people with Regulatory Body to those kind of intentions. That is the explanation.

Mr. Angwenyi: Mr. Temporary Deputy Chairman, Sir, I hope the hon. Member or the Minister can explain how the Committee will be responsible to this House, once we have appointed it. How will it be responsible to this House?

The Temporary Deputy Chairman (Mr. Musila): Mr. Angwenyi, we have not yet reached that stage. We will talk about it when we come to the amendment.

Mr. Michuki: Mr. Temporary Deputy Chairman, Sir, I would like to respond to the proposal that the proviso should not be there. The proviso covers one of the amendments which was withdrawn. It was for that reason that we withdrew it. The Minister had provided for it. But I would urge the Minister to agree that the proviso should end by putting a full stop after the word "advance" appearing in line three of the amendment. Then, we delete part (a) altogether.

I say that because, first of all, the very reason why we removed Clause 2, parts 2(a) and (b) is that, by putting

a proviso there, we will remove the reason why there should be a protection for money not to double. Therefore, if we stop at that point, we must also bear in mind that when an advance is made, we must assume that it must have been made based on due diligence. The due diligence is for the bank to be convinced that the advance will be repayable and properly covered with a proper security. It will be stupid on the part of the bank or a financial institution to allow a borrower to continue for one full year, or even two years, without making any payments per the agreement, and without realising the security. Therefore, there is no occasion, unless there is carelessness on the part of the bank, when the money should be allowed to be more than double. We are also trying, through this amendment, to introduce efficiency and assessment within the banking system.

Therefore, when we try to imagine that people will be allowed to stay for seven years without making any payments, and even without security being realised, that is most unrealistic! We will be sending very bad signals to the banks.

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I would like to support hon. Michuki that, the proviso to Clause No.2(1) ends with the words "loaned or advanced."; and then we delete all the words beginning with the words "except in the case of", up to (b). The reason why I am saying that is because we will create a big temptation for the banks to loan only those who want to accept loans repayable in three and half years onwards. They will not access loans stretched up to three years, but over three years. That will remove most people who would want to be loaned money for commercial purposes. Then, banks will penalise those who would like to go into short-term borrowing. They want to evade the new rule which we have just introduced. So, I think it was an afterthought to try to run away from the Bill which we published, debated and passed the other day. It is a negation of what we did, so that the banks could find a route to escape from the consequences of what we did. So, I would like to support hon. Michuki.

Mr. Kibaki: Mr. Temporary Deputy Chairman, Sir, I have two issues. The first one is on Treasury Bills. We have been told that it will be covered somewhere else. The price of Treasury Bills should not be dictated by the banks. In this nation, 40 per cent of the resources which are saved lie idle in the banks. That is a fact. Only 60 per cent of the savings of the nation are utilised by the same banks. That is because borrowers who create the demand cannot dare borrow at the present rates of interest. That is the whole matter. I think the 40 per cent of the savings lying idle are not being utilised for a primary purpose.

The primary purpose is inject investment so as to create employment. So, we are not helping to revive the economy. We do not like anything that will encourage the Treasury Bill rates to rise. Indeed, in one of the nations which is heavily borrowed internally, that is Japan, the rates that we are talking about are never above 3 per cent. That is why it is the heaviest borrowed country. That is not a rate to be dictated by the banks. They have money lying idle. They can accept 3 per cent if that is what is offered. If 40 per cent of the savings lie idle, why do you want to induce the people to invest in Treasury Bills. We are cheating ourselves. We are biting our own fingers. It is something very mistaken. There is no logic in it whatsoever! The Treasury Bills rates should be determined by that Committee. But when we come to that Committee, we should also have definition of the parameters beyond which they may not go. Otherwise, kidded by commercial banks, they can put it at 12 per cent. The theory the Minister was propagating just now is that, if he needs to borrow more, he has to raise Treasury Bills rates. That is false because 40 per cent of the money is lying idle. So, even if we offered those banks 3 per cent or 4 per cent, they will take it rather than letting the rates to be idle. It is a fact, not a theory.

Mr. Temporary Deputy Chairman, Sir, we want to be sure of this, because that is what we were tackling in the original draft. So, whereas I support the proposal which is being put across, could we be assured by the Minister that there is provision in that other article, regarding the Treasury Bill rate that is going to be operational? If not, then we need to go back to the original proviso.

Mr. Murathe: Mr. Temporary Deputy Chairman, Sir, the rate of Treasury Bills is dependent on domestic borrowing. The Minister knows there is a ceiling on the amount that Government is allowed to borrow. Probably, the Minister should tell this House why the Government exceeds the 5 per cent it is allowed to borrow from the domestic market. One of the things the Minister would do to reduce the Treasury Bill rates would be to externalise domestic debt. He knows very well that this will never happen, because the people who would be willing to take on that debt at about 2 per cent know the real causes of the Kshs170 billion debt.

The Temporary Deputy Chairman (Mr. Musila): Mr. Murathe, what is your proposal on what we are discussing?

Mr. Murathe: Mr. Temporary Deputy Chairman, Sir, I am supporting the proposal by Prof. Anyang'-Nyong'o, Mr. Michuki and Mr. Kajwang that we delete both parts "a" and "b".

Mr. Twaha: Mr. Temporary Deputy Chairman, Sir, hon. Prof. Anyang'-Nyong'o has raised a very important point regarding the value of the rates payable on Treasury Bills. The Minister, in his defence, said that it all depends on the budget deficit. Here we have a vicious circle; we are paying a lot of money in interest on Treasury Bills which is causing the debt to balloon.

The Temporary Deputy Chairman (Mr. Musila): Mr. Twaha, we are not debating. Could you be specific?

Mr. Twaha: Mr. Temporary Deputy Chairman, Sir, even without the intervention of the Monetary Policy

Committee, the Minister has powers to declare his own interest on Treasury Bills. Then every year during the Budget when he is stating the amount of taxation and expenditure, he should also tell us how much he will be spending on Treasury Bills, for this House to approve and not the Monetary Policy Committee which can be easily corrupted. I am sure 90 per cent, they will be corrupted by the banks.

Mr. Temporary Deputy Chairman (Mr. Musila): Mr. Twaha, now you are introducing a new dimension. We should go by the proposed amendment.

Mr. Twaha: Mr. Temporary Deputy Chairman, Sir, we are setting the 4 per cent above the Treasury Bill, but leaving it loose. The Minister should bring the rate at which we shall be paying interest on Treasury Bills in the Budget.

Mr. Temporary Deputy Chairman (Mr. Musila): Now, what is your proposal on this?

Mr. Twaha: Mr. Temporary Deputy Chairman, Sir, in addition to deleting part "a" and part "b", we should insert---

Mr. Temporary Deputy Chairman (Mr. Musila): You do not do that. If you want anything inserted, you give a notice and then we put it as a proposed amendment.

Mr. Twaha: Mr. Temporary Deputy Chairman, Sir, do I not have the right to give ideas to my colleagues?

Mr. Temporary Deputy Chairman (Mr. Musila): You have already done so.

Mr. Maitha: Mr. Temporary Deputy Chairman, Sir, while I support the proposals made by my colleagues, in the Minister's first address, he seemed to be quite uncomfortable with the House. The other day, we heard that the Minister is in charge of policy and we should create an atmosphere for him to be comfortable with the House. Could he assure us that he has trust in the House after giving him all this mandate?

Eng. Muriuki: Mr. Temporary Deputy Chairman, Sir, I stand to support the proposed amendment, that we delete parts "a" and "b". In support of that, I would like to add, that there was a purpose for which we are putting a limit on the total amount of the interest that can be charged. Very often, banks have lent out money for three or four years and if something goes wrong with the original borrower; for example, if he passes away, the bank continues to charge interest. This is because they know they have land as security. Then ten years later, they sell the property of that individual.

So, I would suggest that we deal with this particular point first, so that we know for sure that the maximum amount will not exceed double the borrowed sum. The amendment should stop at the word "advance".

Mr. Keriri: Mr. Temporary Deputy Chairman, Sir, I stand to support the proposed amendment. If we have this proviso for three years, temptation will be created for banks and for borrowers to want to restrict their lending and borrowing to three years. You are also going to make the long-term lending financial institutions to become commercial banks because, they would rather have this proviso than remain outside.

Mr. Muiruri: Mr. Temporary Deputy Chairman, Sir, the Minister is aware that banks in this country are trading on the Treasury Bills. I stand to support the proposal on the amendment, but on top of that, I think we should go back to the rate of three per cent, because if the banks are trading with **[Mr. Muiruri]** the Central Bank and making profits, that would be the fairest idea.

The Temporary Deputy Chairman (Mr. Musila): That is a substantial amendment which you have not given notice of.

Mr. Orenge: Mr. Temporary Deputy Chairman, Sir, I rise to ask the Minister to give an explanation in relation to what hon. Kibaki raised. There is something that is structurally wrong with the Act because there is a conflict between the role of the Governor of the Central Bank and the Minister for Finance. In that sense, over the years, the Central Bank has behaved more like a commercial bank than a regulatory body. For that reason, I was of the opinion that the banks should not be given the authority to set the rates on the Treasury Bills. That it should be the work of the Committee as set out in the proposed amendment to the proposed clause on Page 539. Banks should not be allowed to publish the Treasury Bill rates because they have caused all these problems.

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, I only have one worry as far as Clause 2 (a) is concerned. If we are going to borrow a loan at 20 per cent for a period of eight years, then that loan will be more than double after that period of time. What we are actually saying in that statement is that the banks should restrict themselves to short-term borrowing. If we put a cap on it, then the banks will know that the limiting percentage does not force them to reduce the lending period. I appeal to the House to see the harmfulness of deleting that particular clause.

Mr. Temporary Deputy Chairman, Sir, there has been talk here about the Government borrowing more than what it should borrow. That statement is factually wrong because the Government borrows through a different window from the Treasury Bill market. That is not the same lending as going to the open market to borrow through Treasury Bills.

Mr. Temporary Deputy Chairman, Sir, on the issue of determining the Treasury Bill rates by the Monetary Policy Committee, one hon. Member gave the example of Japan. But I would say that was the wrong example because Japan's circumstances are totally different from Kenya's. Japan does not have a domestic debt. It does not also have a

budget deficit. Those two issues make a complete difference---

Mr. Donde: On a point of information, Mr. Temporary Deputy Chairman, Sir. I would like to inform the Minister that Japan is the second country with the highest domestic debt after the United States of America. I have got those statistics and I can give them to the Minister if he so desires.

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, I do not agree with that assertion. He is actually referring to public debt. There is a big difference between public debt and domestic debt. Domestic debt is part of public debt. I do not think we really want to go into that. If it is the opinion of the House that we remove that clause, then time will show that I was right. I still maintain that Clause 2(a) remains.

Mr. Muite: On a point of order, Mr. Temporary Deputy Chairman, Sir. We would like to get a clarification from the Minister as to whether he agrees with the sentiments of the House that both Clauses 2(a) and (b) be deleted.

The Temporary Deputy Chairman (Mr. Musila): I think the Minister appealed to the House that Clause 2(a) remains as it is.

Mr. Karume: Mr. Temporary Deputy Chairman, Sir, I would like to support the position that both Clauses 2 (a) and (b) be deleted. I do not agree with the Minister when he says the banks will not agree to lend money for eight years. There is no difference between three and eight years. They will have to know how to prepare their accounts.

Mr. Raila: Mr. Temporary Deputy Chairman, Sir, I really sympathise with the Minister. The reason why we are in this position is because of a high percentage of non-performing loan portfolio. The non-performing loan ratio is as a result of high interest rates. What we are trying to achieve here is what they call the "Dudlum" rule in South Africa which does not allow a bank to charge interest more than double the principal sum that was advanced. If Clause 2 (a) is allowed to stand, it is going to defeat the objective which we want to achieve.

Mr. Kariuki: Mr. Temporary Deputy Chairman, Sir, I support the sentiments which have been expressed by Prof. Anyang'-Nyong'o. The Minister should clarify what he means by specified financial institutions. There are institutions which do not fall under the Central Bank Act, for instance the Building Societies and hire purchase companies that charge interest rates above those of the banks. It is important that those are also addressed.

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, if we exclude mortgage companies and building societies, then I will be happy to drop that clause.

Mr. Michuki: On a point of information, Mr. Temporary Deputy Chairman, Sir. I would like to inform the Minister that when we last amended the Central Bank of Kenya Act, the financial institutions including building societies, came under Central Bank. So, there is nothing that is left out in your definition of banking institutions.

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, we are dealing with the amendment here as read out by the Minister. So, I will put the Question on this amendment as it is.

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

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

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, when we went for consultations, there was no enough time. There were arguments both ways. I would rather---

Hon. Members: No way! No, no! Who sent you to come for the negotiations?

Mr. Kajwang: No! Stop that attempt again!

The Temporary Deputy Chairman (Mr. Musila): Order! Order, hon. Kajwang!

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, I would rather appeal and persuade the House--- Is the Chair in control of the House or not?

The Temporary Deputy Chairman (Mr. Musila): Order! Order!

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, this amendment is a product of consultations which led to some hon. Members dropping their proposals. I would like to persuade the Minister to agree to the proposed amendments so that we can then monitor the problems he was talking about. I would like to appeal to the Minister so that, instead of going into--- This is a product of negotiation.

The Temporary Deputy Chairman (Mr. Musila): Order! Order, hon. Members!

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, I think it is important that I explain myself. Let me express myself and so please give me a hearing. The removal of part (a) of Clause 2, is equivalent to removing part (b). So, what that really means is that, we are going to discourage long-term lending.

Hon. Member: Let it go!

The Minister for Finance (Mr. Okemo): Wait a minute! If you borrow money today for a 15 or 20 year period---

An hon. Member: From where?

The Minister for Finance (Mr. Okemo): From a mortgage company!

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, why do you not give the Minister a chance to explain?

The Minister for Finance (Mr. Okemo) If you go to a mortgage company today to borrow an asset for over 15 to 20 years, it is quite obvious that if you calculate the interest, it will be more than 100 per cent. That is very certain! Now, logic tells us that, if the banks or the mortgage companies do that calculation, then the next thing they will do is not to lend for long-term periods. So, what we are doing is to discourage long-term lending. Is that the intention of the Bill; that we discourage long-term lending?

Hon. Members: No! No!

The Minister for Finance (Mr. Okemo): It is going to hurt the same people we are encouraging!

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

The Temporary Deputy Chairman (Mr. Musila): Order! Order, hon. Members! Take it easy, Mr. Keriri! I am looking at an amendment whose notice has just been given. There is a proposed amendment by hon. Prof. Anyang'-Nyong'o. Could he tell us what it is all about?

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Chairman, Sir, I am proposing that Clause 2 be amended by deleting the words "except in the case of" up to the word "repayment" so that it now reads:

THAT, Clause 2 be amended-

(a) by deleting the proposed Subsection 1 and substituting therefor the following new subsection-
1. "The maximum rate of interest which specified banks or specified financial institutions may charge on loans or advances shall be the 91-day Treasury Bill rate published by the bank on the last Friday of each month, or the latest published 91-day Treasury rate, plus 4 per centum.
Provided the maximum interest chargeable under this subsection shall not exceed the principal sum loaned or advance."

(Applause)

(Question of the amendment proposed)

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, as hon. Members are aware, both the Government side and the Opposition side are in agreement that something ought to be done with the interest rates, they should come down and that they should not be charged excessively. So, the spirit of the amendment is right. But looking at the Minister's proposal very closely and bearing in mind the purpose for which these funds will be borrowed or loaned, and relating it specifically to business, for instance housing and other projects which require long-term borrowing, what incentive will the banks have if we limit the long-term lending? The short-term lending is adequately covered by the proposal given by hon. Prof. Anyang'-Nyong'o.

I would really plead with this House to listen to what the Minister has just suggested because we want, at least, business people and those who are trying to secure homes, to be given long-term loans. We should not limit these amendments by putting a full stop at the words "loans or advance" instead we should accept what the Minister has proposed.

Mr. Wamae: Mr. Temporary Deputy Chairman, Sir. If we leave this clause the way it is in part I (a), we are going to encourage the banks to put pressure and charge an interest rate of 30 per cent, so that in three years, it will be 100 per cent. It is very dangerous for the borrower. If the Minister had said five years or six, it would be something else. But if you limit this to three years, it means that, they would try to get 30 per cent interest, so that in three year's time, it will be 100 per cent.

The Temporary Deputy Chairman (Mr. Musila): Mr. Minister, do you have anything to say?

The Minister for Finance (Mr. Okemo): No, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Musila): All right! Hon. Members---

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, I think what the hon. Wamae has said is true in this sense: If we limit loans to three years, there will be a temptation to charge as much as possible within that period and recoup it quickly. Therefore, we need medium-term to long-term loans, if we are going to sustain this economy.

The Vice-President (Prof. Saitoti): Mr. Temporary Deputy Chairman, Sir, I am not going to oppose this one. But there are bankers here. I think it is important to also attach importance to long-term lending because that is obvious. For the purpose of development, I think we need to encourage long-term lending.

Mr. Temporary Deputy Chairman, Sir, secondly, there is the assumption that if we legislate that to affect the long-term loaning, you cannot have more loans going up by 100 per cent, and we are going to encourage the banks to charge much higher interest rates. It is not true because you have already put a cap on the maximum interest rates that a

bank can charge. So, you have got to take those factors into account. This is because the moment you have already put up a cap on how much the bank can charge on the interest rates, then within a period of three years, definitely, you are not going to get 200 per cent. But

in the case of the mortgage, if you take into account an interest rate which is above 15 per cent, well, within ten years, what will you end up with? You will have about 150 per cent of the total. Then what do you do? I think we must ensure that we do not also encourage short-term borrowing because that can actually be a disincentive to development.

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

Clause 2

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, I beg to move a further amendment to Clause 2 by deleting the proposed sub-section 2 and substituting therefor the following new sub-section:-

(2)"The minimum rate of interest which specified banks or financial institutions may pay on deposits held on interest earning accounts shall be 70 per cent amount of the latest 91 day Treasury Bill rate published by the bank on the last Friday of each month or of the latest published 91 day Treasury Bill".

Mr. Temporary Deputy Chairman, Sir, what that means of course is that--

The Temporary Deputy Chairman (Mr. Musila): Mr. Minister, can you continue with (c), so that we finish them together.

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, one other amendment is proposed in "c" by inserting the following new sub-sections immediately after sub-section 2:-

(3) "Notwithstanding any other provisions of this Act to the contrary, (a) no loan or advance made by a specified bank or specified financial institution to a company shall be guaranteed by a director thereof".

(b) "Except for legal fees, valuation fees and any other statutory charges on securities, no charge other than the interest chargeable under sub-section (1) shall be levied on any loan or advance".

(4) "A specified bank or specified financial institution which contravenes any of the provisions of this section shall be deemed to be guilty of an offence under the Banking Act and liable to such penalty as the Minister may prescribe under Section 55 of the Act".

(5) In this Section, the expression "Treasury Bill" has the meaning assigned to it in Section 2 of the Internal Loans Act.

(Question of the amendment proposed)

The Assistant Minister for Education, Science and Technology (Mr. Karauri): Mr. Temporary Deputy Chairman, Sir, I want to understand, because it is not clear in my mind, what "specified banks" and "specified financial institutions" are. Are we saying that not all banks will give loans the way we are talking about and legislating? Are we saying not all financial institutions will do this? I want to understand because if there are going to be banks and financial institutions that are not covered by this Act, then we may as well be doing a useless job.

The Temporary Deputy Chairman (Mr. Musila): Mr. Minister, the Member has asked and I think the Minister did not listen because someone was talking to him. Mr. Karauri, for the benefit of the Minister, may I ask you to repeat your question?

The Assistant Minister for Education, Science and Technology (Mr. Karauri): Mr. Temporary Deputy Chairman, Sir, I said that it is not clear in my mind and I am sure in the minds of many hon. Members. There is this phrase that is everywhere which is "specified banks" and "specified banking institutions". Does it then mean that, the legislation we are enacting today will not cover all the banks and all financial institutions and that there will be some that will continue doing what they were doing before? If that is the case, then the use of making this legislation may not be there.

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, I think what it simply says is as hon. Michuki rightly said a little earlier; that, these will be all financial institutions which are covered under the Banking Act.

Mr. Michuki: Mr. Temporary Deputy Chairman, Sir, the amendment which the Minister has just read out is

a synchronisation of the amendments that we had put forward. However, maybe the Attorney-General who is the legal advisor to this House should give the interpretation because when the Minister's amendment in (c) (a) refers to a director thereof, it is not clear. Maybe, the Attorney-General could tell us. Is it a director of the lending financial institution or is it the director of the company? This is because the way it reads, it leaves a lot of doubt as to which one he is referring to and yet, the intention is that the director of the company that is borrowing should not be asked to give guarantee because we are keeping away talent from companies that require the expertise of people who are not ready to guarantee loans in relation to which they have no pecuniary interest. They only offer their own talent to those companies. Therefore, we need that clarification, otherwise if "thereof" refers to the company, then the intention is properly interpreted.

The Vice-President (Prof. Saitoti): Mr. Temporary Deputy Chairman, Sir, under normal circumstances, I would not stand on these amendments by the Minister, but because it is a conglomeration of various amendments, I just want to draw the attention of the Members to one particular danger here. May I, in actual fact, put in a lower bound or a minimum of the interest rate that I as said, our depositor must put. Can we also reflect on the fact that some of the banks, now because they are going to be asked to pay the minimum, they may very well decide to decline to accept the interest bearing deposits and ask the clients to put the money in the current account? Another point that should be taken into account is that because the performers---

(Loud consultations)

The Temporary Deputy Chairman (Mr. Musila): Order, hon. Members! Let us listen, since this is very serious business that we are doing.

The Vice-President (Prof. Saitoti): Yes, this is serious business. I am saying there is a point which has been left out here. Most of the depositors may very well put all their money into the big international banks because they may lack confidence in the local banks or when they go there, the multinational banks will have so much deposits and they refuse to take the money and take it into the current account. We need a proviso for that.

Mr. Muchiri: Mr. Temporary Deputy Chairman, Sir, I request the Minister to make a clarification under sub-paragraph 4 where he says:-

"If specified banks or specified financial institutions which contravene any of the provisions of the section shall be deemed to be guilty of an offence under the Banking Act and liable to a penalty---

The Temporary Deputy Chairman (Mr. Musila): Ask the Minister your question?

Mr. Muchiri: Mr. Temporary Deputy Chairman, Sir, once a person is guilty, he is sentenced by the court. Can he clarify what we need when we come to that section?

The Temporary Deputy Chairman (Mr. Musila): We are already there. Mr. Minister, did you understand hon. Muchiri's question?

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, I heard him but I did not understand his question.

The Temporary Deputy Chairman (Mr. Musila): Mr. Minister, are you responding to what Mr. Muchiri has just asked? Mr. Muchiri, the Minister did not understand your question.

Mr. Muchiri: Mr. Temporary Deputy Chairman, Sir, what I am asking the Minister to clarify is: A person is normally found guilty by a competent court, but here we are saying that it is the Minister who will prescribe the penalty. Could you clarify this?

The Temporary Deputy Chairman (Mr. Musila): Mr. Minister, did you understand the question now? Let us give the Minister the chance to respond.

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, this is in conformity with Section 55 of the Banking Act. It says:-

"The Minister may make regulations generally for carrying out the proposals and provisions of this Act. Without prejudice to the generality of sub-section (1), the Minister may, in regulations, prescribe penalties to be paid by institutions which fail or refuse to comply with any directions of the Central Bank under this Act." That is exactly what I am saying.

Mr. Wamae: Mr. Temporary Deputy Chairman, Sir, my concern is on Clause 2(b)(ii). It says:-

"The deposits held in interest earning accounts shall be 70 per cent---

Mr. Temporary Deputy Chairman, Sir, this should not be the maximum interest. This is because if a bank wants to give 80 per cent to compete for deposits, there is nothing wrong with that. So, instead of saying the words "shall be", let us substitute them with "shall not be lower than 70 per cent."

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, I think the hon. Member has

not read this clause properly. I am talking about the minimum, which means you could charge more.

Mr. Murathe: Mr. Temporary Deputy Chairman, Sir, we are quite happy with the proposal except in Clause 2(c)(3)(b). It says:-

"except for legal fees, valuation fees and any charges on securities, no charge other than the interest chargeable under subsection (1) shall be levied on any loan or advance."

Mr. Temporary Deputy Chairman, Sir, we want this to be statutory.

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, it is a statutory. It has been changed.

Mr. O.K. Mwangi: Mr. Temporary Deputy Chairman, Sir, I just need a clarification from the Minister on Clause 2(c)(4). It says: "----shall be deemed to be guilty of an offence under the Banking Act---" If somebody has already committed an offence, why should he be deemed to have committed it? So, I am proposing that we delete the word "deemed" and substitute thereof with the following words; "shall be guilty of an offence."

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, I cannot really pretend to be an expert because this was done by legal experts. I do not know the difference between the two.

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

The Temporary Deputy Chairman (Mr. Musila): I think we have deliberated on this clause exhaustively. I think the Chair really has been generous. I, therefore, put the question.

Mr. Orengo: Mr. Temporary Deputy Chairman, Sir, there is a point which has been raised by hon. O.K. Mwangi which I think is very important. This is because the function of that clause 2(4) is to create an offence. That is the purpose of that Clause. If you are using the word "deemed", then legally you are not getting us very far. I think the Attorney-General is aware that in any statute in this country which creates an offence, the proper words used are "shall be guilty of an offence" and not "shall be deemed to have committed an offence". This is because it leaves the matter in doubt. I think the Attorney-General can confirm this.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, the wording is correct, but it can be improved by deleting the words "be deemed".

The Temporary Deputy Chairman (Mr. Musila): What are you saying?

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, it is correct in the sense that it is referring to another legislation under which the Minister has powers to make regulations. But it can be improved by deleting the words "be deemed."

The Temporary Deputy Chairman (Mr. Musila): Could I now ask the Minister to formally propose that amendment?

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, if the Attorney-General of the Republic of Kenya says it is okay, whom am I to say it should not be there? So, I propose we amend it by deleting the words "be deemed", and substituting in place thereof the words "shall be".

Eng. Muriuki: Mr. Temporary Chairman, Sir, I want to move an amendment.

The Temporary Deputy Chairman (Mr. Musila): Eng. Muriuki, under our Standing Orders, you cannot propose an amendment at this juncture. You should have given notice of your intention to the Chair earlier enough.

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

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

The Temporary Deputy Chairman (Mr. Musila): There is a proposed amendment by hon. Gatabaki on page 536.

Mr. Gatabaki: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 be amended by inserting the following new subsections immediately after subsection(7)-

(8) The Bank shall ensure that any past borrower from the specified banks and specified financial institutions whose interest has accumulated more than one-hundred-and-fifty percentum of the principal sum shall not pass any monies above this amount.

(9) The Bank shall ensure that the collateral/security provided by the borrower to specified banks and specified financial institutions shall be sufficient to cover the principal borrowed, interest due and charges thereof such that the borrower shall not be required to pay to the specified banks and specified financial institutions any more monies in the event of sale of collateral/security for any reason.

- (10) The Bank shall ensure that in the event of sale of the collateral/security provided to specified banks and specified financial institutions by the borrower to secure a loan or loans, the borrower shall be entitled within three months from the date of sale of the collateral/security by public auction to retrieve the collateral/security subject to payment by him of twenty-five percentum of the bidden amount plus interest thereon and the balance outstanding and all relevant costs within a period of three months.

Mr. Temporary Deputy Chairman, Sir, the last few days have brought consensus within this House reflecting the will of the people who sent us here. But the action of the banks for the last ten years borders on criminality. We have seen the impoverishment of our people who sent us here. Every one of us has been sent here by the people of Kenya and not by the IMF and the World Bank. We are sent here by the ordinary common person who saves about 40 per cent of the money that is not used by these banks and financial institutions as hon. Kibaki said. We all bear testimony to the remarkable presentation of the Bill by hon. Donde. I cannot add more to that magnificent presentation.

However, I think it is illogical for us to agree on the interest payments and forget to reflect back on what has happened before. This Bill is dated 1st January 2000, but there exist in the books of banks and financial these abnormal figures of funds, loans and overdrafts which have accumulated over the years with all the charges. Now that we have agreed in principle that the interest should not exceed the principal, subsection (8) is harmonising that tradition. Given the prevailing spirit in the House, I do not think that anybody will oppose this remarkable Bill.

I beg to move.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Musila): I have just received another amendment to subsection (8) by Mr. Mbitiru.

Mr. Mbitiru: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2(8) be amended by deleting the word "and fifty" after the word "hundred".

The Bill will then read: The Bank shall ensure that any past borrowers from the specified banks and specified financial institutions whose interest has accumulated more than 100 per cent of the principal sum shall not pay any monies above this amount.

(Applause)

Mr. Temporary Deputy Chairman, Sir, currently the banks are making super profits when all the other businesses are recording losses. A bank has a capital base of about Kshs500 million and makes an abnormal profit of Kshs2.8 billion. We cannot allow a small sector of the economy to patronise all the other sectors and at the same time pay them.

I beg to move.

(Question of the amendment to the amendment proposed)

Mr. Kibaki: Mr. Temporary Deputy Chairman, Sir, we have not debated the original amendment. So, I do not know how we shall amend it. We are treating it like it has already been debated.

The Temporary Deputy Chairman (Mr. Musila): I was about to put the question because no one stood up. Then, Mr. Mbitiru's further amendment came. This is why I had to go to this proposed amendment because there was nobody to contribute to the amendment by Mr. Gatabaki.

Mr. Angwenyi: Thank you, Mr. Temporary Deputy Chairman, Sir. I rise to support the amendment to Clause 2(9) simply because our banks and financial institutions have been reckless in disposing of properties placed as collateral in those institutions. They have been doing under-hand deals with auctioneers and a property worth so much, is sold out at a pittance. Therefore, we should support this amendment by hon. Gatabaki.

I beg to support.

Mr. Mwenje: Mr. Temporary Deputy Chairman, Sir, the biggest problem we have is that, when interest is added to the principal, and the banks continue charging compound interest, then we arrive at these figures which are unbelievable. You find also that immediately banks write to you a reminder, they also charge you. Legal fees is also added to the principal and eventually, it starts attracting interest on the same figure. The complication continues. There are so many areas where the banks load other levies on your loan. That is how they arrive at 150 and 250 per cent. We need to have a limit which they cannot pass and 150 per cent is on the higher side. So, we should have a maximum of

100 per cent, so that even if lawyers write letters to us, and banks and other financial institutions load that money onto loans, they are aware that they have a limit within which they can do that.

With that, I beg to agree with proposed amendment.

Mr. Murathe: Mr. Temporary Deputy Chairman, Sir, this amendment is asking that the law be made retroactive in paragraph (a). Therefore, it is faulty; it is defective in paragraph (a). In paragraph (b)---

(Loud consultations)

The Temporary Deputy Chairman (Mr. Musila): Order! Order, hon. Members! Could we hear Mr. Murathe? Mr. Murathe, please, be brief?

Mr. Murathe: Mr. Temporary Deputy Chairman, Sir, in (b), considering the fact that we have approved the proposed amendment to Clause 2C(3)(a)---

The Temporary Deputy Chairman (Mr. Musila): Which part of the clause are you referring to, Mr. Murathe?

Mr. Murathe: Where the clause says: "Where there shall be no personal guarantees by directors---

The Temporary Deputy Chairman (Mr. Musila): Are we going back?

Mr. Murathe: Mr. Temporary Deputy Chairman, Sir, I am saying that, by doing it means that once the banks sell off your collateral, they will have nothing else belonging to you to go for. Therefore, this part of the Bill is superfluous.

The Minister for Finance (Mr. Okemo): Mr. Temporary Chairman, Sir, I think I must oppose hon. Gatabaki's proposed amendment very vehemently. The proposed amendment, really, seeks some amnesty for defaulters; defaulters will be able to go back to banks and tell them: "You charged us so much money in the past; we now want you to pay us back". First of all, where will banks get the money from? It will already have been spent. So, really, I do not think that hon. Gatabaki's proposed amendment merit support. If approved, it will cause chaos in the banking sector. What about those borrowers who pay up their loans in time? Are we saying that we want to reward loan defaulters by allowing them to be given back money that they ought to have paid?

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

The Temporary Deputy Chairman (Mr. Musila): No, no, no! I have already given you a chance, Mr. Mwenje!

The Minister for Finance (Mr. Okemo): Mr. Temporary Chairman, Sir, also, on the proposed amendment that says that one must be allowed to buy back the collateral that has already been auctioned, I am not a lawyer, but my logic makes me ask: How can one go back to banks and retrieve collateral for which somebody has bade and been offered security? How can you ask the owner to go back and retrieve such property? I think it is illogical.

Mr. Kajwang: Mr. Temporary Chairman, Sir, I would like to agree with the Minister in one respect, especially the amendment proposed to Clause 2(10). This particular proposed amendment is saying that even if somebody buys some property at an auction, pays the amount due in full and transfers that property into his name, three months later, the original owner, whose property has been sold, can pay 25 per cent - I do not know to whom since the bank will already have sold that property to somebody else - and be given his property back. If we approve this proposed amendment, we will end up interfering with the rules of land ownership so drastically that there will be a lot of confusion. Even auctions are places where I can buy property. If I buy property at an auction, I should be sure of owning that property. But, if three months later, somebody can pay 25 per cent to somebody I do not know and take away what I have bought, that cannot be law; we cannot do things that way.

The Temporary Deputy Chairman (Mr. Musila): Very well. Hon. Members, let me, first of all, dispose of Mr. Mbitiru's proposed amendment to Mr. Gatabaki's proposed amendment, so that we can go ahead; let us agree to make some progress.

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

Hon Members, we shall now go back to the original amendment proposed by Mr. Gatabaki. That particular proposed amendment has been debated. Therefore, I will put the question.

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

Mr. Murungi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause (2) be amended by inserting the following new subsection immediately after Subsection 39(3)-

(4) Interest on the 91-day Treasury Bill shall be at a rate which shall be fixed by the Minister for Finance with the approval of the Finance and Planning Committee of the National Assembly.

Mr. Temporary Deputy Chairman, Sir, the whole purpose of hon. Donde's Bill was to control interest rates charged by banks so as to protect Kenyans against over-exploitation by banks. The purpose of this amendment is to give the National Assembly a role in the process of fixing Treasury Bill rates (TBs). Unless we control the TBs, we shall have done nothing. Bank interest rates are pegged to TB rates. Unless Parliament has a supervisory role in fixing that rate, the entire Bill can be sabotaged.

The Temporary Deputy Chairman (Mr. Musila): Order, Mr. Murungi. I just want to find out whether you are aware that the new clause provides for what you are saying. Have you looked at the new clause? If you have, would you still like to continue with what you are saying?

Mr. Murungi: Mr. Temporary Deputy Chairman, Sir, I have looked at the new clause. It seeks to give the Minister powers to set up the Monetary Policy Committee. The Monetary Policy Committee is a committee of the Minister.

The Temporary Deputy Chairman (Mr. Musila): Very well; continue.

Mr. Murungi: Mr. Temporary Deputy Chairman, Sir, we are saying that the Minister should sit down with the Monetary Policy Advisory Committee and come up with the proposed rate of interest, and then come to the Departmental House's Committee on Finance, Planning and Trade for the final approval of the same. Suppose the Minister's Committee fixes the TB rate at 20 per cent, as Parliament, do we not have a role to say: "No, no! This is too high. Go back, think about it again and come back to us?" So, this does not contradict the monetary policy. All we are trying to say is that let the Minister with his committees come to Parliament which will approve whatever TB rates. It is only through this clause that this Parliament can be in control of the Treasury Bill rates. Also, in that way, it can be in control of the rates of interest charged by the banks.

Mr. Temporary Deputy Chairman, Sir, with those few remarks, I beg to move, and Mrs. Ngilu will second my amendment.

The Temporary Deputy Chairman (Mr. Musila): You do not need a seconder. I will just proceed and propose the question.

(Question of the amendment proposed)

Mr. Oloo-Aringo: Mr. Temporary Deputy Chairman, Sir, I am an apostle of a strong and effective Parliament. That is why I fully agree that, that does not contradict with the committee set up by the Minister, but Parliament must also oversee it. Therefore, I support the idea that we make sure that we bring Parliament in to supervise both the Government and the institutions such as the Central Bank of Kenya. That is my prayer.

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Temporary Deputy Chairman, Sir, in our enthusiasm to do our job well, we seem to be tempting ourselves to go further into the encroachment of other functions. As it is at the moment, the Minister has been very generous. If it was me, I would not have recommended that, because the functions are very clear. So, the way the Minister has proposed is adequate because the National Assembly of Kenya has at least, the approval role. We know that Parliament is supreme and so does the Constitution state; that Parliament shall have the legislative powers and the Executive shall have their Executive authority, but the Minister has been quite magnanimous and has even allowed the incorporation of the National Assembly into that.

With these few remarks, I would like to support the proposal of the Minister and plead with the House not to accept any other amendments.

Mr. Donde: Mr. Temporary Deputy Chairman, Sir, I would just like to support the sentiments expressed. For a change, let me support the sentiments of hon. Biwott. The Monetary Policy Committee which we have agreed on in this particular amendment--- In another amendment which is coming, we have proposed some further amendments which say that the Committee will report to the House every six months. So, that issue has been taken care of fully, and I would like also to---

Mr. Michuki: Mr. Temporary Deputy Chairman, Sir, I would like to make a brief comment on these proposals. First of all, the whole of the banking fraternity, including the early thoughts of the Minister for Finance, were that the fixing of interest rates was going to be harmful. The proposal by Mr. Donde is a proposal that has provided flexibility, in that the subordination of interest rates chargeable to the Treasury Bills rate is self-regulating. If the interest rates in the Treasury Bills go up, the cost of deposits to the banks would also go up. So, it is in the interest

of the banks under the circumstances to ensure that, that balance is maintained. I think that is one reason why a proposal to literally fix the rates of interest could be argued against. Therefore, it seems to me that the system that the Minister proposes will take care of that situation in what will be a very flexible situation where the rates of interest are not fixed but self-regulating.

Mr. Obwocha: Mr. Temporary Deputy Chairman, Sir, I would like the Chair to look up because some of us have been rising on our feet for some time. The amendment by Mr. Murungi is good, but it is superfluous. If you look at the clause that is being proposed by the Minister - up to Clause 3 - it says that the Monetary Policy Committee will be appointed and will fix the rates with the approval of the National Assembly. I believe that the National Assembly will be the Committee on Finance, Planning and Trade. It cannot be any other body. It is a further amendment. I will plead with my brother to look at that one and see whether it is not included. If it is not, we can include it.

The Vice-President (Prof. Saitoti): Mr. Temporary Deputy Chairman, Sir, although we are anticipating to see the amendment in Clause (3), it is rather pertinent for us to refer to it because the recommendations of nine experts on monetary matters will be part of the Monetary Policy Committee. It will be in the new clause. I think that will take care of it - by ensuring that the interest rates on the 91-day Treasury Bills are fixed arbitrarily. Perhaps, in hindsight, one can say that, maybe, the difficulty that we have had with the interest rates is because we never had a monetary committee of very qualified monetary persons. But, in any case, according to what I have seen here, those who are going to be appointed are going to be ratified by the National Assembly. Indeed, the Monetary Policy Committee will be reporting through the Minister, to the National Assembly, and I think we should take that one as a sufficient safeguard for the fact that there will be a machinery, although indirectly appointed by the National Assembly.

The Temporary Deputy Chairman (Mr. Musila): We have to make progress. Can we listen to Mr. Murungi and then I put the Question?

Mr. Murungi: Mr. Temporary Deputy Chairman, Sir, I appreciate the comments made by my colleagues from both sides of the House. The intention of my amendment is good. In fact, they are operating under misapprehension. They are saying that the committee which will be appointed under the new Clause 3 will fix the TB rates with approval of Parliament. There is no such provision under the new clause. Parliament is merely approving the nine persons being appointed to the Committee. After they are appointed, you will not hear of them again making report to Parliament and they do not have to approve the rates. I would have no objection if this Committee---

Mr. Muite: On a point of information, Mr. Temporary Deputy Chairman, Sir. I would just like to inform hon. Murungi that, in fact, there is a proposed amendment which has already been handed in, giving that Committee powers to fix the interest rates. Perhaps, if he takes that into account, he may wish to withdraw his amendment.

The Temporary Deputy Chairman (Mr. Musila): Mr. Murungi, did you get that comment so that we can make progress?

Mr. Murungi: Yes, Mr. Temporary Deputy Chairman, Sir. I have been shown by my friend, Mr. Imanyara, who was privy to some amendments which do not appear on the Order Paper. Some amendments have been made which cater for what I have been trying to do. Therefore, I want to withdraw my amendment.

(Mr. Murungi withdrew his amendment)

(Clause 2 as amended agreed to)

New Clause

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the Bill be amended by inserting the following new clause immediately after Clause 2-

The Central Bank of Kenya Act is amended by inserting the following new section-
39A(1) The Minister shall

establish a Committee to be known as the Monetary Policy Committee (hereinafter referred to as "the Committee").

(2) The Committee shall comprise nine members, being persons with knowledge or expertise in matters relating to monetary policy, appointed by the Minister with approval of the National Assembly.

(3) The members of the Committee appointed under subsection (1) shall hold office for a term of three years from the date of appointment, but shall be eligible for reappointment.

(4) The functions of the Committee shall be-

(a) to advise the Bank on the formulation and implementation of monetary policy, including the levels of the Treasury Bill rates referred to in Section 39; and---

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

The Temporary Deputy Chairman (Mr. Musila): You cannot interrupt him while he is moving his amendment!

Mr. Michuki: He is not moving it in accordance with our agreement!

The Temporary Deputy Chairman (Mr. Musila): You will have an opportunity to say that. Let him finish moving then you will get an opportunity to explain what you want.

Continue, Mr. Minister!

The Minister for Finance (Mr. Okemo): Hon. Michuki, we have already breached a number of things that we agreed on then. However, let me reword that to capture the spirit of what hon. Michuki has just said.

"(4) The functions of the Committee shall be -

(a) To formulate monetary policy for implementation by the Bank---

The Temporary Deputy Chairman (Mr. Musila): Could you go slowly so that we can record what you are saying, Mr. Minister?

The Minister for Finance (Mr. Okemo): The functions of the Committee shall be - "(a) To formulate monetary policy for implementation by the Bank, including setting the levels of Treasury Bill rates."

That is what we agreed on and I have no substantial disagreement with that.

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

The Temporary Deputy Chairman (Mr. Musila): The rules are that the Mover finishes what he is saying before you comment. Could you let the Minister move the amendment, please? After that, I will propose the question and then, if you want to say something I will "see" you.

Continue, Mr. Minister!

The Minister for Finance (Mr. Okemo): Thank you, Mr. Temporary Deputy Chairman, Sir.

"(b) To perform such other functions as may be prescribed by the Minister.

(5) The conduct and regulation of the affairs of the Committee shall be as prescribed by the Minister but subject thereto, the Committee shall regulate its own proceedings."

(Question of the new clause proposed)

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, while I concur with the setting up of the Committee, I disagree with the "long string: being attached for political interference with this Committee. The Minister will have undue influence on this Committee.

Mr. Temporary Deputy Chairman, Sir, I propose that this particular Committee, after being approved by Parliament, should have the authority to undertake independent, confidential and reliable tasks and it should not be subject to political interference. The setting up of a Treasury Bill rate can make or break banks. Here is a situation where we do not want political interference in this Committee. It must be "sacrosanct." What the Minister has proposed is good but it is amorphous, especially as to the control and use of the word "formulation".

The Temporary Deputy Chairman (Mr. Musila): Mr. Odoyo, could you summarise what you are saying?

Mr. Odoyo: The Monetary Committee will make or break people in this country. They must be able to sustain a high level of independence, beyond the amendment proposed by the Minister.

Thank you, Mr. Temporary Deputy Chairman, Sir.

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

Mr. Angwenyi: Mr. Temporary Deputy Chairman, Sir, I support the new clause introduced by the Minister, but I want to make the following amendment. To allay the fears raised by hon. Murungi, we must make this Committee responsible to the House. I am, therefore, moving the following amendment to the New Clause 39(2).

THAT, the New Clause 39A(2) be further amended by adding the words "to whom it shall report

every six months" after the word "Assembly". Also, in (4)(a), by deleting the word "and" and inserting the words "for approval of the Minister and the House" in place thereof.

I want to add that so that this Committee is responsible to this House.

The Temporary Deputy Chairman (Mr. Musila): Order, hon. Members! We are going by our Standing Orders. In accordance with the Standing Orders, any amendment that is to be proposed has to be given in advance in writing. What I am reading here is what I got and I do not have what hon. Angwenyi has read there.

Mr. Angwenyi: It is here, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Musila): No, this has just been written as we were debating.

*(Mr. Angwenyi consulted with
the Clerk-at-the Table)*

Order, Mr. Angwenyi! May I ask you to go back to your seat! Hon. Members, really we have got to follow some order. At this juncture, I am getting many papers on amendments. Let us go through them, one by one. I have a further amendment to the new clause which came a long time ago from Mr. Donde. It reads:

"The Committee shall comprise nine members, being persons with knowledge or expertise in matters relating to monetary policy, appointed by the Minister with the approval of the National Assembly to whom it shall report every six months."

Mr. Angwenyi, you do not have to come and argue with the Chair here! You should go back and sit down! I have to go by order! You cannot come and amend things just here! Mr. Donde, I am holding this document which you signed.

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, purely as a matter of grammar, there should be a "full stop" there and then you can say "the Committee shall report to Parliament every six months", instead of to "whom".

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, in accordance with the Standing Orders, there is no proposed amendment. That is Standing Order No.136. This is a very serious matter. We cannot bend rules here to suit certain people. Let us make some progress.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, if what we want is a Committee to report to the House, and I think that is right, then the House has the right to approve the appointment in the first place. There are only two ways in which a Committee can report to the House. A technical committee, appointed by the Minister, cannot report directly to this House. It can only report to the House through the Minister. So, we should tell the Minister that, if he wants provision, that is already obvious, but if he wants it, it must be the Minister and not the Committee. Secondly, the other way of a technical committee out there reporting to the House is through the relevant Departmental Committee. If you look at Standing Order 151(4)(a), it says:

"A Committee shall investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments."

There are only two channels.

The Temporary Deputy Chairman (Mr. Musila): Very well. Therefore, I have no amendments here.

Mr. Keriri: Mr. Temporary Deputy Chairman, Sir, if we do not take care, we will confuse separation of powers in this House. We must play our role as a Parliament and tell the Executive what we want from them. We cannot bypass the Minister, go to a Committee appointed by him, and deal with it directly. We must have that Committee dealing with us through the Minister. So, any amendment that makes its report directly to this House is, in fact, interfering with the separation of powers, which we talk about everyday.

Mr. Ndicho: Mr. Temporary Deputy Chairman, Sir, I have got a problem with subsection (2) where the Minister is appointing a Committee of nine Members and then bringing the names to the National Assembly for approval. We do not want the National Assembly to be a rubber stamp. This means that the Minister can appoint nine members who are his friends and then bring them here for our approval. So, I propose that the number of members that the Minister will bring to this House should be more than nine and then the National Assembly will approve the nine members.

The other problem is with regard to subsection (3). The Minister has said that the Members of the Committee appointed under subsection (1) shall hold office for a term of three years; from the date of appointment but shall be eligible for re-appointment. He is not saying the number of years they shall serve if they are re-appointed. Will they serve for another three years?

The Minister for Medical Services (Dr. Anangwe): Mr. Temporary Deputy Chairman, Sir, may I add my voice to what hon. Anyona did say as well as hon. Keriri because we have to be very careful. We are Parliament, but we must respect the doctrine of "separation of powers." Ultimately, the Government possesses executive authority, and

whatever law we design, we should go through that particular channel. The issue of political interference which I had mentioned here--- So long as the National Assembly will have a role in the appointment of persons to this Committee - and the National Assembly is very meticulous and it scrutinises the calibre of people it appoints - it will ensure that whoever is appointed will perform. By saying that this particular Committee should report to this House, that means that accountability for the success or failure of monetary and fiscal policy lies with this House. We had better also bear the consequences of that kind of provision.

Clause 39A

The Temporary Deputy Chairman (Mr. Musila): I have received another notice of amendment from hon. Donde. Mr. Donde, could you move your proposed amendment?

Mr. Donde: Mr. Temporary Deputy Chairman, Sir, I beg to move a further amendment to the new clause 39A(2):-

THAT, the new clause be amended by adding the words "The Committee shall report to the National Assembly every three months" after the word "Assembly".

The Temporary Deputy Chairman (Mr. Musila): Mr. Donde, what I have here says "with the approval of the National Assembly and report to the National Assembly every three months". That is what I have here.

(Question of the amendment proposed)

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, I am requesting this House to give me the authority to appoint members of the Committee. I am also saying that, that Committee will be approved by this House. I am also saying that the Committee will report to me. I will, in turn, report to the House. I have no problem with that. I think what is being proposed is not that!

Mr. Ndicho: On a point of order, Mr. Temporary Deputy Chairman, Sir. My issue was not addressed! Suppose one of the nine people that the Minister will appoint is Mr. Kamlesh Pattni whom we will reject! What will happen? We want more names, so that we can approve only nine people.

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, that is already answered! The names will be brought here. Mr. Ndicho will have a chance to say yes or no.

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, this matter is not solved. I think the issue is not the report to the Minister. The issue is accountability. That is to say that, should those people differ with the Minister on an issue, what option do they have? Even the Controller and Auditor-General's Report is brought to this House through the Minister. But accountability is to the House. The Minister can answer questions here.

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, I think on all matters of economic and financial affairs of this country, I am answerable to this House! So, why does hon. Odoyo want to "demean" my responsibilities to this country?

Mr. Angwenyi: On a point of order, Mr. Temporary Deputy Chairman, Sir. What we are trying to avoid is something like what we had this afternoon, where the Minister said that, we have created the Central Tender Board, which is above him! He cannot even change what they have done! So, what we are saying is this: They will report to the Minister, as he has said. He, in turn, will report to this House. We can cancel whatever they have approved, if we do not agree with them. That must be in the amendment.

The Temporary Deputy Chairman (Mr. Musila): Order, hon. Members! The Chair is finding it very difficult to put the question as it is. That is because Standing Order No.106(4), reads:-

"The Chairman may refuse to propose the question upon any amendment which, in his opinion, is frivolous or would make the clause or schedule which it proposes to amend, unintelligible or ungrammatical".

Mr. Donde, there is a suggestion here, which I would like to read to the Members. It reads as follows: "Shall report to the National Assembly through the Minister every three months".

The Minister for Finance (Mr. Okemo): Mr. Temporary Deputy Chairman, Sir, I think, for practicability, I really would like to ask for six months; three months would be too frequent and repetitive. Six months would be okay.

Mr. Odoyo: Mr. Temporary Deputy Chairman, Sir, the Central Bank is already reporting to us on a quarterly basis! It gives us the monetary policy on a quarterly basis. Why will it be difficult--

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

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, I have a further amendment on the same Sub-Clause (2), proposed by Mrs. Ngilu. Could you move your amendment, Mrs. Ngilu.

Mrs. Ngilu: Mr. Temporary Deputy Chairman, Sir, I beg to move the following further amendment:- THAT, we add after the word "members" the following words "three of whom shall be women", being persons with knowledge or expertise in matters relating to monetary policy.

(Question of the amendment proposed)

Mr. Muiruri: Mr. Temporary Deputy Chairman, Sir, I do not support that amendment. For the first time, the Minister for Finance has asked Parliament to approve a number of names. That has never been done before. I must thank him a lot for that. That is the way forward. The amendment does not bar him from appointing a lady, if he feels she is very qualified. We cannot confine him to three or four names. We should not come to that. Let us give the Minister the opportunity to appoint the people who are qualified, but not on gender sensitivity.

The Attorney-General (Mr. Wako): On a point of order, Mr. Temporary Deputy Chairman, Sir. Could I propose a further amendment to that? I think the words "at least, three of whom shall be women" should be added because there could be a situation where nearly all of them are women! We have very many competent women in the financing industry in this country.

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

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, I have a further amendment by hon. Murungi on subsection (4)(a). Could he move his amendment?

Mr. Murungi: Mr. Temporary Deputy Chairman, Sir, I beg to move the following amendment to the new Clause 39A(4). The proposal is to delete subsection (4) and replace it with the following new subsection (4):- THAT, the functions of the Committee shall be to advise the bank on the formulation and implementation of monetary policy, including setting up of the levels of Treasury Bill rates referred to in Section 39 and replaced with "the approval of the Finance, Planning and Trade Committee of the National Assembly".

The reason why I am introducing this amendment is because I was misled when I withdrew my amendment. I was told that, under the new clause, the approval of Parliament in setting the Treasury Bill rates is included. That is, approval is now limited only to the appointment of members and not to the fixing of the Treasury Bill rates. We have been receiving regular reports from the Central Bank; every three months. What has Parliament done about them? We will also receive reports from the Minister every six months. What will he do with them? The more effective way for parliamentary supervision of the fixing of those rates is for the Finance, Planning and Trade Committee of Parliament to be involved. That is why I propose that we should have the new Sub- Clause (4) instead of the old one.

With those few remarks, I beg to move.

(Question of the amendment proposed)

Mr. Anyona: On a point of order, Mr. Temporary Deputy Chairman, Sir. Before we prejudice that issue one way or another, what difference does it make? Under the Standing Orders, any committee of the House has no authority of its own. So, they cannot go and approve and then tell the Minister for Finance that they have approved! It must come to the House only when the House approves. If we pass it the way it is, we are creating a further problem. We should say that they work together with the Finance Committee and then table the report if the job is done. But if we say that they approve, they have no powers.

The Temporary Deputy Chairman (Mr. Musila): Hon. Members, let me draw your attention to a provision in our Standing Orders. First of all, we had already disposed of that clause. There was also an amendment which we approved. Standing Order No.106 reads:-

"No amendment shall be moved which is inconsistent with any part of the Bill already agreed".

You remember I put the question that, "that be part of the Bill," and you agreed. So, this amendment by Mr. Murungi is inconsistent with the one we have already approved and, therefore, is disallowed.

(The Amendment by Mr. Murungi disallowed)

Mr. Kombo: Mr. Temporary Deputy Chairman, Sir, I thought when the Minister moved the amendment to Clause 4(A), he actually amended what is here. Is that correct?

The Temporary Deputy Chairman (Mr. Musila): Yes, I had already put the question that it be part of the Bill as amended, and the question was put and agreed to. So, that will be inconsistent.

Mr. Murathe: Mr. Temporary Deputy Chairman, Sir, everything seems to be in order, except that there is no provision for the time frame within which some of these things are going to happen. I am, therefore, proposing the following amendment to Clause 39A(1):-

"The Minister shall establish a Committee to be known as the Monetary Policy Committee (hereinafter referred to as the "the Committee") immediately upon the commencement of the Act".

(Question of amendment proposed)

Mr. Maundu: Mr. Temporary Deputy Chairman, Sir, the word "immediately" has no serious legal consequences. So, we should put a time limit as follows: "That upon the commencement of the Act, but not later than--"

The Temporary Deputy Chairman (Mr. Musila): Mr. Maundu, I am only going to put the question on the proposed amendment, so that you either agree with it or decline.

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

Mr. Maundu: Mr. Temporary Deputy Chairman, Sir, the word "immediately" has no time frame. It can go on even for a year. So, that will counter the very purpose of the Bill.

The Temporary Deputy Chairman (Mr. Musila): Mr. Maundu, I have already put the question and it has already been agreed to. So, I cannot go back to it.

(Clause 39A as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

Mr. Donde: Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Central Bank of Kenya (Amendment) Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

[The House resumed]

[Mr. Speaker in the Chair]

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE CENTRAL BANK OF KENYA (AMENDMENT) BILL

Mr. Musila: Mr. Speaker, Sir, I beg to report that the Committee of the whole House has considered the Central Bank of Kenya (Amendment) Bill and approved the same with amendments.

Mr. Donde: Mr. Speaker, Sir, I beg to move that the House doth agree with the Committee in the said report.

Mr. Anyona seconded.

(Question proposed)

(Question put and agreed to)

Mr. Donde: Mr. Speaker, Sir, I beg to move that the Central Bank of Kenya (Amendment) Bill be now read the Third Time.

Mr. Oloo-Aringo seconded.

(Question proposed)

Mr. Kibaki: Mr. Speaker, Sir, I congratulate both the Mover of this Bill and the Minister for Finance. We are pleased to see it sail through the Third Reading. I am happy that we at last found out a way to move forward together.

Mr. Speaker, Sir, in practical terms, the origin of the problems which our economy faces right now has to do with the mismanagement of the finances of this nation. By passing this Bill, we have resumed a sensible rate of interest based on the Treasury Bills. Everything else hinges on that particular principle. This will ensure that the Government reduces its amount of borrowing from the domestic market. If the Government does not have such a commitment, then we shall not achieve what we are planning to achieve.

Therefore, I want to appeal to those who will be implementing this Bill that they should not be bullied by the commercial banks. The Government should not be intimidated by commercial banks to raise the interest rates on Treasury Bills so that they can continue to lend to the Government. That argument is faulty. As I said earlier, 40 per cent of bank deposits in Kenya are lying idle and banks will lend them out at any rate of interest to earn more money. We hope that those who will be in that committee, together with the Minister for Finance and the Governor of the Central Bank, will not agree to be bullied by commercial banks to raise the Treasury Bill rates.

Thank you.

The Vice-President (Prof. Saitoti): Mr. Speaker, Sir, it is important that this House has passed this historical Bill to control the lending rates. We know very well about the emotions and general feelings that led to the passage of this Bill.

Mr. Speaker, Sir, the appointment of the Monetary Policy Committee, as stipulated in this Bill, is a very fundamental achievement. The fact that they are going to be experts on monetary matters, drawn from the private sector, is very encouraging. Indeed, in the Bank of England there has always been a monetary policy mechanism similar to what we have come up with in this Bill.

While we do agree that this is a very good Bill, it is important that the matter is kept under very strict monitoring. We hope the Minister for Finance will come here and inform us that the measures we have passed will not lead to the tightening of the credit, misdirection of credit or the creation of a parallel market. If we monitor anything negative, the Minister should come back here with a comprehensive review of what we have done.

The Minister for Finance (Mr. Okemo): Mr. Speaker, Sir, I wish to put it on record that the Government is committed to reducing the domestic debt. Every time Members of Parliament stand to contribute here, they talk about the domestic debt having gone up from Kshs160 billion to Kshs172 billion. It should be clearly specified that part of the Kshs172 billion constitutes the 5 per cent that hon. Murathe was talking about. So, that is not money that we have gone out to borrow through Treasury Bills.

Mr. Speaker, Sir, it is also important for me as the Minister for Finance to put it on record that I see practical difficulties in the implementation of this Bill. I would be dishonest if I did not put that on record. After six months, when I will be coming to report to this House, I will be coming here to enumerate the practical difficulties of implementation. We should not pretend that the implementation of this Bill is going to be smooth.

(Question put and agreed to)

*(The Bill was accordingly read
the Third Time and passed)*

BILL

Second Reading

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to move that the Statute Law (Miscellaneous

Amendments) Bill be read a Second Time.

Mr. Speaker, Sir, this Bill has the purpose of making amendments to numerous Acts of Parliament. Those amendments cannot be justified by a single amendment to a specific Act. This Bill is touching on 39 different Acts of Parliament and they would not warrant the bringing of specific Bills for each one of them. So, we have put them together. The last time we had such a Bill was in 1997.

Ideally, we ought to be having this type of Bill every year. I will be moving a similar Bill in the course of early next year because of the amendments we have received from various governments.

Mr. Speaker: Order! Order! Mr. Attorney-General, there is one thing that I must rectify on what I said earlier. I think I said earlier, when I gave the Minister for Finance a chance to speak, that we did not give him a chance to speak last time. I said for correction of the records, that he did not ask for the chance. Now he has sought the chance and he has got it.

Proceed!

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I also have the chance to move this Bill for the Second Reading. I will not go through all the 39 different Acts of Parliament, but I will just touch on a few.

One of the minor amendments we are making is to increase the remuneration package of the members of the Speaker's Panel from K£4865 to K£5400. These are various Deputy Speakers and Acting Deputy Speakers and so on. We are increasing their allowances under the National Assembly Remuneration Act. It may very well be that since we received these proposals, sometime ago, further increments are now due. I hope that will be reflected in the next year's legislation.

The next amendment touches on the National Assembly and Presidential Elections Act. The main purpose of this amendment to that Act is to make the registration of voters a continuous exercise. I know Members of Parliament have been very much concerned with this whole issue of registration of voters, which normally takes place just before a General Election and it stops there. We have to start the exercise all over again.

Mr. Speaker, Sir, just recently, I believe, a Motion was moved by hon. Obwocha calling for a system to be put in place for a continuous registration of voters. This is what this amendment is all about. During that Motion, I did say that, in fact, the Electoral Commission had already began and had submitted to me proposals for that exercise. The proposals are now reflected in this Bill. What will happen on enactment of this Bill is that, upon the coming into operation of this section, the Electoral Commission shall cause all the constituency registers to be opened for inspection by members of the public for such periods as it will deem fit. This is because at the start of the exercise, we have to be sure that the existing voter register is already up to date. It is only when we will be sure that the existing one is up to date that the Electoral Commission will then publish a notice in the Gazette to the effect that the completion of the existing one has now been done and it is up to date and then transmit to every registration officer a copy or part of the register dealing or relating to the constituency for which he is responsible. In other words, the continuous registration of voters would be done at constituency level. But I know that in the plans of the Electoral Commission, these registers will, at least, be at the district level and then proceed to the constituency level, depending on the demand for continuous registration.

Mr. Speaker, Sir, it is provided that any person or citizen of Kenya who attains the age of 18 years, as soon as he gets his/her identity card, can then proceed to be registered immediately as a voter. This is very important as a democratic exercise because it cannot be "cold" and when it is cold, the Register will be ready and people will be enabled to vote. I do not really want to anticipate a debate on this matter but I know that there is a Private Member's Motion coming which is more or less saying that the voting by any Kenyan who is over 18 must be made compulsory. This House will be debate on that issue but what we are now doing is to ensure that each and every Kenyan who is over 18 is registered, so that, that Kenyan can exercise his or her right to vote.

Mr. Speaker, Sir, the next amendments touch on the Advocates Act. I am proud to say and inform this National Assembly that the amendments that have been put under the Advocates Act have been done as a result of a thorough consultative process involving all advocates, be they in the private or public sector. Only this year, my Complaints Commission organised a seminar at the School of Monetary Studies with the theme: "*Honesty in the Legal Profession*". I am pleased that in that seminar, the Council of the Law Society, the various members of the Faculties of Law of both Nairobi and Moi Universities, officers from my office, members of the Judiciary, Court of Appeal and High Court judges, magistrates and registries also attended that seminar. It was for the first time that members of the legal profession from all arms wherever they are public or private, made a point to attend and there was no doubt in my mind whatsoever, that the entire legal profession was concerned with its own image in the eyes of the public.

Mr. Speaker, Sir, as you are aware, members of the legal profession do not enjoy a positive image amongst the members of the public related to unprofessional activities in which we engage in, related to theft of clients' money, not giving diligent and good advice to clients, not attending court and correspondence, not expeditiously dealing with conveyancing documents and so on. This has led to an outcry amongst the members of the public and consequently,

the members of the legal profession do not currently enjoy the widespread public confidence. That is why my office called for that workshop for us to look at ourselves and find out where we have gone wrong and what we can do to correct that particular image. All of us attended and we were of one mind. At the end of that meeting, resolutions were passed and part of these amendments that are now in the Statute Law Miscellaneous (Amendments) Bill and which will come during the Committee Stage, are as a result of that seminar.

Mr. Speaker, Sir, I called that first seminar and then, the Law Society of Kenya called a similar seminar in August, which was held at Utalii College. At Utalii College, I can also tell you that the entire spectrum of the legal profession attended. My chambers, the Law Society of Kenya members and the Judiciary were there. In fact, the Chief Justice opened the seminar and I closed it. The faculty members of law were also there. Again, we reiterated the resolutions that we had passed at the previous seminar and many resolutions called upon the Attorney-General to bring legislation to this House to address some of those issues which are giving the profession a bad name.

Mr. Speaker, Sir, one of the resolutions was that we, as the legal profession, must be concerned with these issues and must address them. I will read you the last resolution. Resolution number 20 says:

"The hon. Chief Justice, hon. Attorney-General, the Council of the Law Society of Kenya, the Disciplinary Committee, the Complaints Commission, the Council of Legal Education, the University Law Faculties, the Judiciary and all other institutions and offices in the legal fraternity agree and undertake to entrench a new era of meaningful consultation, collaboration and partnership with regard to raising standards of learning, practice and conduct in the legal profession and for tangible and meaningful realisation of the rule of law and administration of justice."

Mr. Speaker, Sir, I want to take this opportunity to say that we, members of the legal profession - I happen to be a titular head of profession by tradition and custom - are now working together and focused on raising the professional standards of our profession in terms of professional etiquette and quality of the legal services that we can render to the people and also in terms of ensuring that these legal services are not only confined to the rich or those people who can afford to pay legal services, but even the poor can also have access to those services.

Mr. Speaker, Sir, some of the resolutions that were passed were, first of all, that we commit ourselves to commence this new era of honest, diligent and excellent provision of legal services and of meaningful collaboration and partnership between the various organs. One of the recommendations was to recommend to the Attorney-General to introduce into the Bill a provision to increase the pecuniary jurisdiction of the disciplinary committee from what was Ksh100,000 to what is currently here Kshs1 million, but they recommended that, that should be increased to Kshs5 million.

Mr. Speaker, Sir, as a result of further consultation, we are agreed that we shall not put a limit to the amount of money the disciplinary committee can order a professional who has been found guilty to reimburse or compensate a client. It is now agreed throughout the profession that the disciplinary committee should be able to order complete restitution, be it Kshs10 or Kshs10 million. Once the disciplinary committee has gone into that issue and has made a decision on it, that restitution should be recoverable from the advocate by way of a civil claim which the court can order under summary procedure.

Mr. Speaker, Sir, Clause 53(6) states that:

"If the Commission considers that the complainant has suffered loss or damage by reason of an advocate's conduct, the Commission may award such complainant compensation or reimbursement not exceeding Kshs100,000."

This proposal will be amended in the Committee Stage to read "complete compensation", whatever the amount that is. That will be recoverable. It will be like an order which shall be registered with a court and shall there upon be enforceable in the same manner as an order of the court or to like effect. Many of the complaints that we have received that, if a client complains that his money has not been accounted for by the advocate; the procedures for that become very cumbersome. First of all, we have disciplinary procedures where it can go on and on for almost one year. This makes the poor client spend more money than what he is claiming when he comes to give evidence. Because that poor client has not obtained that money which was ordered by the court that he deserves by way of damages, either for past injuries and so on, and he is not receiving it; it is not just that client who is suffering but the entire family. That money has, as it were, been "eaten" by the advocates. Many of the clients report to the Complaints Commission and some of them come to me for assistance. When I tell them that I will order the police to take action, the clients are more interested in getting that money rather than even sending the advocate to jail. They plead with me to ask the advocates to pay them instead of involving the police.

Mr. Speaker, Sir, these procedures for the recovery of money which is obviously stolen should be such that it is easy for the client to have access to it. What better body than under the Disciplinary Procedure that is there to have those powers to order compensation? That issue has been agreed to by the entire legal fraternity. Because of that, the fine to be imposed will not be as high as it had been proposed. It had been proposed that a fine in this regard should be

Kshs1 million. But the profession feels that provided that the disciplinary procedures are such that those bodies can order compensation and that, that order can be enforced by the court, then the fine need not to be as high as Kshs1 million.

Mr. Speaker, Sir, when we come to the Committee Stage, I will be proposing further amendments to what we already have agreed here. I must say that some of these meetings were held after I had published this Bill. The input before I published this Bill was a Committee that I set up consisting of the Chairman and Secretary of the Law Society of Kenya (LSK), members of the Disciplinary Committee and the Complaints Commission. So, a number of the initial amendments as they appear here come from that Committee. But at these two workshops, they were further revised. In fact, these two workshops blamed us and the Committee for not having dealt with the problem with the urgency that it deserves, hence, the amendments I will introduce at the Committee Stage.

Mr. Speaker, Sir, there are obviously other issues which will empower the Disciplinary Committee to order that somebody appears before it and that can be enforced. So far, all these orders have really been depending on the good nature of the professionals, that when they are called upon to attend a meeting, they will attend. But it has now become necessary that the Disciplinary Committee and the Complaints Committee must be empowered to summon the professionals to appear before them.

Under the Disciplinary Procedures, we are making amendments to ensure that the members of the Disciplinary Committee and others are also reimbursed for the sitting allowances that they have. Part of the problem has been that the Committee has not been meeting because there is no incentive. They only meet outside there---

ADJOURNMENT

Mr. Speaker: Order! Order! Hon. Members, it is now time for us to interrupt our business. Therefore, the House stands adjourned until tomorrow, Wednesday, 6th December, 2000, at 9.00 a.m.

The House rose at 6.30 p.m.