

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 4th August, 2005

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

POINT OF ORDER

ASSISTANT MINISTER IS LATE
TO LAY PAPERS

The Assistant Minister, Office of the President (Mr. Shitanda): On a point of order, Mr. Deputy Speaker, Sir. I have some Papers I want to lay on the Table.

Mr. Deputy Speaker: Sorry, we have passed that Order! You have already been overtaken by events.

Next Order!

QUESTIONS BY PRIVATE NOTICE

DEATH OF MR. ABDI
AHMED ALI

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

(a) Under what circumstances did businessman Abdi Ahmed Ali die in Merille Market, Laisamis Division, Marsabit District in February, 2005?

(b) What steps has the Minister taken to apprehend the police officers involved in the killing of the businessman?

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

(a) The late Ahmed Ali is alleged to have died after he was shot by an

Administration Police (AP) constable on 24th February, 2005, at Yasin Hotel in Merille Market.

(b) The officer was arrested on 26th February, 2005, and arraigned before court with a charge of murder on 24th March, 2005, vide High Court Criminal File No.24 of 2005. The next hearing date is set for 18th November, 2005, at Meru High Court.

Mr. Ngoyoni: Mr. Deputy Speaker, Sir, among the rights that Kenyans are entitled to, the right to life is paramount. The deceased met his fate while serving customers who were travelling in a mini-bus to Marsabit and Moyale districts. One AP constable and one regular police constable walked into the hotel, caused a scene and shot the late Ahmed Ali. What prompted the two police officers to

shoot the deceased? Those officers were demanding bribes from the deceased.

Mr. M. Kariuki: Mr. Deputy Speaker, Sir, from the answer I have given this House, it is clear that the matter is pending before court. The facts and circumstances which relate to the death of the deceased will be the subject matter of the trial.

I do not think it is fair for me to comment on a matter that has not been adjudicated upon by the court.

Mr. Deputy Speaker: Mr. Ngoyoni, since the matter is in court, it is only fair to let the judge presiding over the case make a decision.

Mr. Ngoyoni: On a point of order, Mr. Deputy Speaker, Sir. While I agree with the Assistant Minister that the matter is *sub judice* because it is in court, the deceased was running his aging father's business. Since the family has been rendered destitute, could the Assistant Minister undertake to compensate it for the loss of their kinsman? The gun that killed the deceased belongs to the Government.

Mr. M. Kariuki: Mr. Deputy Speaker, Sir, although that was supposed to be a point of order, I do not think it was one. Civil liability cannot be established at this point. Whether the constable was on lawful duty or not at the time he was alleged to have committed the offence will have to await the outcome of the murder trial.

NEW GENERATOR FOR ST. ANNE'S
NZOIA SECONDARY SCHOOL

Dr. Kibunguchy: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Education, Science and Technology the following Question by Private Notice.

(a) Is the Minister aware that the generator which was serving St. Anne's Nzoia Girls' Secondary School in Lugari Constituency has broken down and is unserviceable?

(b) Is he further aware that the above has greatly inconvenienced the students who are preparing for the end of term examinations?

(c) When will the Ministry buy a new generator for this school?

The Assistant Minister for Education, Science and Technology (Mrs. Mugo): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that the generator of St. Anne's Nzoia Girls' Secondary School broke down on 1st July, 2005. It was an old generator which had been bought by the local Catholic Mission several years ago.

(b) I am also aware that the students are being inconvenienced. However, the school has availed pressure lamps for the students.

(c) The provision of physical facilities in secondary schools remain the responsibility of the Boards of Governors (BoGs) and the Parents Teachers Association (PTA) together with the parents. Thus the Ministry does not purchase generators for schools. Current budgetary allocations do not provide for the Ministry to purchase generators and allied equipment to schools. The school management has, therefore, been advised to look for ways and means of replacing the old generator.

Dr. Kibunguchy: Thank you, Mr. Deputy Speaker, Sir. I thank the Assistant Minister although her answer is rather disappointing. This is one of our very old schools in Lugari Constituency---

Mr. Deputy Speaker: Dr. Kibunguchy, move closer to the microphone! You are short! Unfortunately, there is nothing I can do about it.

Dr. Kibunguchy: Mr. Deputy Speaker, maybe, I will wear high-heeled shoes next time I come here!

This is one of our very old schools. It has about 600 girls. I am rather disappointed when the

Assistant Minister says that the school has pressure lamps. Does the Ministry have any emergency funds that it can avail to schools like these when they have such an emergency case? As she answers that question, I would like to tell her that---

Mr. Deputy Speaker: Order, Dr. Kibunguchy! You have asked your question. Let the Assistant Minister answer.

Mrs. Mugo: Mr. Deputy Speaker, Sir, I am afraid there is no such provision in our budgetary allocation. I would like to remind the hon. Member that this school is sponsored by the Catholic Church. The generator serves the school and the mission facilities. We post teachers to schools, but the responsibility to maintain the facilities belong to the sponsor, the BoG and the parents. I am afraid we do not have any emergency funds to cater for such cases.

Mr. Bifwoli: Mr. Deputy Speaker, Sir, it is the responsibility of the Government to provide electricity to schools. What plans does the Ministry have to supply electricity to schools? The Ministry should provide generators and pressure lamps to schools which do not have electricity, as she has said. What about the money for the girl-child?

Mrs. Mugo: Mr. Deputy Speaker, Sir, I do not know where the hon. Member got that information from. Our schools are supplied with electricity through the Rural Electrification Programme. We have requested the Ministry of Energy to speed up that programme. We would like all schools to be supplied with electricity because we want to introduce computer studies. It is the responsibility of secondary schools to do wiring and apply for electricity. My Ministry has asked the Ministry of Energy to speed up the Rural Electrification Programme.

Capt. Nakitare: Thank you, Mr. Deputy Speaker, Sir. Is the Assistant Minister aware that the brightness of a pressure lamp is strong and that it spoils the students' eyesight? What steps has she taken to address this problem?

Mrs. Mugo: Mr. Deputy Speaker, Sir, I am very concerned, especially when it comes to the girl-child. However, everything has been budgeted for. This House passes Votes for all the Ministries. We do not have such a provision in our Budget. The District Education Officer has requested the Chairman of the Constituency Development Fund (CDF) and the Catholic Mission to address that problem by providing funds. We have a provision for emergencies under the CDF to cater for emergencies. Those funds are provided by the same Government.

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

Mr. Deputy Speaker: Order! I did not hear the Assistant Minister mention anything which is out of order!

Mr. Cheboi: Mr. Deputy Speaker, Sir, I want---

Mr. Deputy Speaker: Order! Could you sit down?

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

Mr. Deputy Speaker: Overruled! Could you sit down?

Dr. Kibunguchy: Mr. Deputy Speaker, Sir, I was afraid the Assistant Minister was going to talk about the CDF. It is as if this has become a perfect excuse for all these Ministries.

(Applause)

The Assistant Minister should understand that the CDF money for this financial year has not been released. We are talking about the CDF for the last financial year which has been exhausted. So, she cannot hide under the CDF every time we ask a Question about her Ministry.

I would like to say something before I ask my question---

Mr. Deputy Speaker: Order, Dr. Kibunguchy! I gave you this opportunity to ask a supplementary question. You have already explained your point on the Constituency Development Fund (CDF) Could you, please, ask a question?

Dr. Kibunguchy: Mr. Deputy Speaker, Sir, I wanted to emphasize something about

emergency funds.

Mr. Deputy Speaker: Order! Dr. Kibunguchy, this is Question Time. Could you ask a question?

Dr. Kibunguchy: Mr. Deputy Speaker, Sir, I would like to know from the Assistant Minister why a while ago they released some money to a school in my constituency from the Emergency Fund, and why that money was paid through another person. I would like to know where that money came from?

Hon. Members: Say who the person was?

Mrs. Mugo: Mr. Deputy Speaker, Sir, I did not hear which emergency money the hon. Member talked about.

Dr. Kibunguchy: There was some money that was released through the former Member of Parliament for Lugari, and it [**Dr. Kibunguchy**] was said to have come from the Emergency Fund of her Ministry.

Hon. Members: What is his name?

Dr. Kibunguchy: His name is Mr. Cyrus Jirongo.

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

Mr. Deputy Speaker: Order, Mr. Cheboi! I want you to take it easy. I will give you an opportunity, but not through this kind of persistence!

Mrs. Mugo: Mr. Deputy Speaker, Sir, I do not have that information. Maybe, the hon. Member could pass it to me if he has it. I do not believe that there is anyone who was given money by my Ministry other than our officials, who are District Education Officers, or hon. Members of this House.

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

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

Mr. Cheboi: Mr. Deputy Speaker, Sir, St. Anne's Nzoia Girls' Secondary School is a mission school. Is it in order, therefore, for the Assistant Minister to continue misleading this House that she can give it the CDF funds when, in fact, the law is very clear that we are not supposed to fund mission or private schools?

Mrs. Mugo: Mr. Deputy Speaker, Sir, I think that anything that relates to community, or schools where children of all communities go to, can be helped through the CDF. In any case---

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

Mrs. Mugo: Mr. Deputy Speaker, Sir, could the hon. Member, let me finish what I am saying?

Mr. Deputy Speaker: Order! Could you, please, let the Assistant Minister finish what she is saying?

Mr. Cheboi: But she is misleading the House, Mr. Deputy Speaker, Sir!

Mr. Deputy Speaker: Order, Mr. Cheboi! You will have to maintain order in this House!

Mrs. Mugo: Mr. Deputy Speaker, Sir, the information I have is that a request has been made by this school to the CDF Chairman. If it is not possible to get help from the Fund, the Chairman of the CDF Committee will say it is not possible. He has not said it is not possible so far. I do not see what the problem is.

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

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

Mr. Obwocha: Mr. Deputy Speaker, Sir, did you see the hon. Member for Kuresoi raise his hands three times? Could you tell him that we do not raise our hands in this House? We just stand up in our positions to catch the Chair's eye.

(Laughter)

Mr. Deputy Speaker: Very well! Next Question, Mr. C. Kilonzo.

PROVISION OF DRUGS TO MATUU
SUB-DISTRICT HOSPITAL

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Health the following Question by Private Notice.

- (a) Is the Minister aware that Matuu Sub-district Hospital has no ARV drugs?
- (b) Is she further aware that the ARVs are too expensive for the poor?
- (c) When will the Government provide ARVs to the hospital?

The Assistant Minister for Health (Dr. Kuti): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that there are ARVs at Matuu Sub-district Hospital, which were supplied from the Kenya Medical Supplies Agency (KEMSA) on 5th of July, 2005 at a cost of Kshs181,051.

(b) I am aware that ARVs are expensive outside public institutions, and it is for this reason that my Ministry has availed them to all the district hospitals in the country. There are 30 patients in need of this service, who are already enrolled under this programme at Matuu Sub-district Hospital. The charges are Kshs100 per month per patient at the moment.

(c) ARVs were provided to Matuu Sub-district Hospital in July, 2005 and four clinical officers and one nurse have been trained in HIV/AIDS management. Currently, patients in need of services are being attended to. They were previously being referred to Machakos District Hospital.

Thank you.

Mr. C. Kilonzo: Thank you, Mr. Deputy Speaker. The answer given by the Assistant Minister is a very good one. What is disappointing is that this Ministry has always worked in response to Parliamentary Questions! When I brought this Question to the House, there were no ARV drugs at this hospital. After I submitted this Question they supplied the drugs. Even though they have supplied ARVs to the hospital, there is also the issue of CD4 counts, which can only be done at Thika or Machakos. What will the Assistant Minister do about providing CD4 count facilities to this hospital?

Dr. Kuti: Mr. Deputy Speaker, Sir, Matuu health facility is a sub-district hospital. We started supplying ARV services to district hospitals first. We have just started moving to sub-district hospitals and other smaller health facilities. As for CD4 count, I appreciate the fact that the hon. Member knows the importance of CD4 count in treatment of HIV/AIDS, but due to financial constrains, the CD4 count machines are not even available in some of our district hospitals yet. We are working hard to avail them. When we finish with the district hospitals we shall be able to consider sub-district hospitals and other smaller health facilities.

Prof. Oniango: Mr. Deputy Speaker, Sir, currently, over 200,000 Kenyans require ARVs, but the Ministry is only reaching 45,000 patients. It is not very serious about controlling the spread of HIV/AIDS. Could the Assistant Minister tell the House when he is going to start supplying ARVs to health centres at the community level?

Dr. Kuti: Mr. Deputy Speaker, Sir, it is true that we are treating about 40,000 to 45,000 patients as of now. Our target is to reach 95,000 patients by the end of 2005. We hope to reach the Millennium Development Goal (MDG) for HIV/AIDS treatment by the year 2006, which is to have about 200,000 patients on ARVs treatment.

Mr. Midiwo: Thank you, Mr. Deputy Speaker, Sir. Provision of these drugs in our hospitals may not mean much to ordinary Kenyans. Could the Assistant Minister tell this House how many sick Kenyans cannot access these drugs because of their cost?

Dr. Kuti: Mr. Deputy Speaker, Sir, ARVs, as I said are now supplied to most district hospitals. Earlier their cost was Kshs500 per month but now it is Kshs100 per month for every patient. We are working towards providing free ARVs to all HIV/AIDS patients by 2006.

Mr. Kimeto: Mr. Deputy Speaker, Sir, you have heard the Assistant Minister say that they are only assisting about 45,000 Kenyans with the ARVs, while there are over 200,000 Kenyans suffering from HIV/AIDS. Why does the Ministry not take money from the National Aids Control Council and distribute it to district hospitals to buy ARVS, so that as many AIDS patients as possible can be easily assisted?

Dr. Kuti: Mr. Deputy Speaker, Sir, the National Aids Control Council is mainly focused on advocacy, which is in the purview of prevention. The Global Fund is the one that is focused on provision of ARVs and treatment. It is also the one which is helping us to reach our target of putting over 2,000 patients on ARV treatment in the next one or two years.

Mr. C. Kilonzo: Mr. Deputy Speaker, Sir, while I appreciate that the Ministry is doing something about HIV/AIDS, may I request the Assistant Minister to consider providing mobile clinics to collect specimen or samples, so that they can be taken to the CD4 count centres?

Dr. Kuti: Mr. Deputy Speaker, Sir, handling of samples in the field is a very tricky business. A CD4 count test is highly specialised. It can only be done at facilities where staff are trained to carry out the test. So, as of now, I do not think it is possible to undertake field or outreach programmes for sampling patients.

Mr. Deputy Speaker: We will now proceed to ordinary Questions, starting with Mr. Wamwere's Question.

ORAL ANSWERS TO QUESTIONS

Question No.056

REFUND OF MONEY TO MUKENIA FARMERS SACCO

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

(a) when Mukenia Farmers Co-operative Society will refund Kshs100,000 and Kshs30,000 belonging to Mr. Kimani Kamau and Mr. Maina Kimani respectively, which was meant for buying them land; and,

(b) whether he could inform the House if there were other people owed money by the said society, and if so, what action he is taking to ensure that the affected persons are refunded their money with immediate effect.

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

(a) Mukenia Farmers Co-operative Society has been dormant for the past nine years, and efforts to trace its officials through their last known address have not borne fruit. We have involved the police to trace the former officials.

(b) It appears that there are other members of the society who paid for land but did not get it. We have directed the District Co-operatives Officer (DCO), Nakuru, to compile a list of claimants, who are in the same predicament.

Mr. Wamwere: Mr. Deputy Speaker, Sir, for over one year, the Officer Commanding Police Division (OCPD), Nakuru, has not found the corrupt directors of Mukenia Co-operative Society because he is partisan in favour of corrupt directors of land-buying companies and co-operative societies in Nakuru District. Could the Assistant Minister, therefore, consider commissioning police

officers from either the Police Department Headquarters in Nairobi, or any other district, to look for these corrupt officials?

Mr. Kenneth: Mr. Deputy Speaker, Sir, I have no problem with the concerns of the hon. Member. Indeed, I have consulted with my colleague in the Office of the President with a view to getting some other officers from Nairobi to take up the matter.

Mr. Wamwere: Mr. Deputy Speaker, Sir, could I ask the Assistant Minister whether it is possible for the Ministry to charge those officials with theft in absentia, while we wait for them to be caught?

Mr. Kenneth: Mr. Deputy Speaker, Sir, we can only charge them with theft after a complete investigation.

Mr. Deputy Speaker: By an agreement between Mr. Kagwe and the Minister for Co-operative Development and Marketing, the next Question is deferred to Thursday next week.

Question No.566

BENEFICIARIES OF CO-OPERATIVE
SOCIETIES' DEBT WRITE-OFF

(Question deferred)

Question No.234

QUANTIFICATION OF WOMEN'S REPRODUCTIVE

WORK IN ECONOMIC SURVEY

Ms. Mwau asked the Minister for Planning and National Development:-

(a) whether he was aware that women's reproductive work was not quantified in the economic survey or recognised in the budgeting process as having economic value; and,

(b) what measures he has taken to measure the value of women's reproductive work and calculate it in terms of GNP.

Mr. Deputy Speaker: Where is the Minister for Planning and National Development? Ms. Mwau, the Minister for Planning and National Development is not here. Now, what do I do?

Ms. Mwau: Mr. Deputy Speaker, Sir, this is the third time this Question is being deferred. I would like to know what is happening. Is the Minister avoiding to answer the Question?

Mr. Deputy Speaker: Well, I have taken note of your concern. It is, indeed, obvious that the Question is being avoided. I had previously seen this Question on the Order Paper. I, therefore, order that the Minister avails himself on Tuesday next week to answer this Question. The Clerk of the National Assembly should inform the Minister of this order.

(Question deferred)

Question No.344

WHEREABOUTS OF MR. MUTUA MATHITU

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

(a) whether he is aware that Mr. Mutua Mathitu was arrested in October, 1996 and detained at Kitui Police Station;

(b) whether he is also aware that while in police custody, Mr. Mutua fell ill and was taken to hospital but has since never been seen; and,

(c) whether he could inform the House of the whereabouts of Mr. Mutua Mathitu.

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Deputy Speaker, Sir, I had answered this Question but I sought time to give further details relating to it.

Mr. Deputy Speaker: Yes, indeed.

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Deputy Speaker, Sir, the additional information we have is that upon his arrest on 31st October, 1996, Mr. Mutua was kept in police custody until 4th November, 1996, when he was charged with two counts of assault before the Kitui Magistrate's Court. In the first count of assault, his father was the complainant while in the second count, his mother was the complainant.

He was placed in prison custody until 18th November, 1996, when the court made an order for his release on a Kshs10,000 bond and a surety of a similar amount, or Kshs500 cash bail. He was unable to raise either of the two. Therefore, he remained in custody until 24th February, 1997, when he was convicted on his own plea of guilty and sentenced to two year's imprisonment on each count. Thereafter, he was placed in prison custody.

Additional information we have, which is unconfirmed, is that Mr. Mutua was a beneficiary of Presidential amnesty on 20th October, 1997. We have asked the Commissioner of Prisons to provide us with the details of the list of the persons who were released on that particular day but he has not been able to do so. Therefore, we just presume that he could have, or could not have, been released.

The fate of Mr. Mutua, therefore, lies with the Prisons Department. We are not certain when he was released, and we have not been able to trace him. We have received information from the area chief, that Mr. Mutua suffered fits of mental insanity. Even at the time of arrest, according to the chief, he was known to have suffered mental disorder. However, when he appeared at the police station and before the court, there were no signs of mental disorder. Therefore, I am going to propose that the latter part of the Question, as to what happened to him while in custody, could best be answered by the Ministry of Home Affairs. He was in police custody for only four days.

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, while answering this Question last time, the Assistant Minister said that Mr. Mathitu had been released on Presidential amnesty. You, therefore, deferred the Question, so that he could provide a release order, which he undertook to bring to this House. I do not know whether we have two Governments. The Assistant Minister cannot afford to pass the buck to the Minister for Home Affairs. It is upon this House to demand of this Assistant Minister the whereabouts of Mr. Mathitu. As I stand here, we do not know where Mr. Mathitu is. His family knows that he is still in custody. Otherwise, the Government is duty-bound to tell us where he is. So, could the Assistant Minister tell this House where Mr. Mathitu is?

Mr. Deputy Speaker: Mr. M. Mirugi, you had stated that you would ask the officer in charge of the prison to give you details of when this man was released, but you have not received that information. You further said that you presumed he was either released or not released. This is not a matter to be presumed. We deferred this Question last time so that you could produce documentation to prove that the person was released from prison.

Mr. M. Kariuki: Mr. Deputy Speaker, Sir, there are two issues for clarification: The first one is whether before Mr. Mutua was sentenced on 24th, February, 1997 he was in police custody or not. The second issue is whether he fell ill during that particular period. The clarification has already been made. He stayed in police custody for four days. Thereafter, he was placed under prison custody.

Mr. Deputy Speaker, Sir, I have endeavoured to write a letter to the Commissioner of Prisons to provide a list of the persons who benefited from the amnesty of 20th, October, 1997. The last correspondence was that he was unable to trace the list. That was why I said that the people to answer as to the whereabouts of that person should be the Office of the Vice-President and Ministry of Home

Affairs. As far as the Question was concerned, it sought to know what happened to him at Kitui Police Station, and we have satisfied the House.

Mr. Mwenje: Mr. Deputy Speaker, Sir, this is a serious matter. I think the Assistant Minister is not taking it seriously at all. This is a question of a Kenyan who is missing. It is not known where he is at the moment. The Assistant Minister has all the opportunity to check with the Commissioner of Prisons or his colleague, who is in charge of prisons. He should check and confirm where that person is.

Mr. Deputy Speaker, Sir, the Assistant Minister has not done the job that he was requested by the Chair to do. He should tell us exactly where that person is. It is very bad for any government to say that it does not know where one particular person is. I still feel that this Question is not being answered satisfactorily. The Assistant Minister should be ordered to go back and find out where that particular Kenyan is.

Mr. Deputy Speaker: Mr. Assistant Minister, you may say what you want but, you see, we are dealing with a life of a person. I do not think we can assume things. The fact that you are in charge of security makes you responsible for getting your facts correct. You owe that to this House. Tell us where that man went after leaving prison; if he ever left the prison. What do you think, Mr. Assistant Minister?

Mr. M. Kariuki: Mr. Deputy Speaker, Sir, as far as my docket is concerned, I think I have acquitted myself. The Question referred to the period of detention at Kitui Police Station. We have said that the period was four days and he left when he was fit. He was charged in court and, thereafter, he was in the custody of a prison.

Mr. Deputy Speaker, Sir, the unsatisfactory part of the Question is the fact that I have asked the Commissioner of Prisons to give me a list of the people who were released on a Presidential pardon. He has said that, he does not have the list. Therefore, I am saying that the best Ministry to explain what happened to that person after he was placed in prison custody is the Office of the Vice-President and Ministry of Home Affairs. The police handed him over to the Prisons Department. Therefore, the police could have been responsible for him thereafter. I appreciate that the life of every Kenyan is very important. I wish we could get better details from the family as to whether they went to see him in prison or not. That was a person who was at loggerheads with his father and mother. They were the complainants in the charge against him.

Mr. Moroto: Bw. Naibu Spika, imekuwa kawaida kwa Ofisi ya Rais, ambayo inahusika na mambo ya usalama, kuruka hapa na pale wanapoulizwa maswali. Tunataka Waziri Msaidizi atueleze ikiwa anauwezo wa kufanya Wizara hiyo na kulinda maisha ya Wakenya.

Pia, ningetaka Waziri Msaidizi atueleze ikiwa kuna Serikali mbili, ile inayohusika na magereza na ile inayohusika na polisi.

Mr. M. Kariuki: Kwanza, nataka kumhakikishia Mbunge wa Kapenguria kwamba tunatekeleza wajibu wetu. Tunaelewa kazi yetu na tunaitekeleza kwa njia inayofaa. Ni vizuri kuelewa kwamba kuna Wizara tofauti tofauti katika Serikali. Hatuwezi kufanya kazi ya kila Wizara.

Swali la pili ni ikiwa tulihakikisha usalama wa Bw. Mutua alipokuwa katika kituo cha polisi. Ikiwa swali linahusu wakati alipokuwa jela, basi Wizara nyingine inahusika. Kwa hivyo, naona nimetekeleza wajibu wangu. Ikiwa kuna swali linalohusu vile alivyowekwa jela kwa miaka miwili, Ofisi ya Makamu wa Rais na Wizara ya Mambo ya Nchini inafaa kulijibu Swali hilo.

Mr. Deputy Speaker: Mr. K. Kilonzo, do you have any other question!

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

Mr. Deputy Speaker: Mr. Kimeto, will you wait? I will give you an opportunity but, first of all, I have called Mr. K. Kilonzo.

Mr. K. Kilonzo, ask your question.

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, there is not much for me to demand from the

Assistant Minister other than to agree with your ruling that it is incumbent upon him--- Indeed, we do not have two governments in this country. I am sure that is a security issue relating to a Kenyan. He should undertake to produce to this House documentary evidence to show the whereabouts of my constituent.

Mr. Deputy Speaker: Mr. Assistant Minister, do you have anything to say?

Mr. M. Kariuki: Mr. Deputy Speaker, Sir, I doubt whether I have anything useful to add to what I have already said. If I got the necessary help from the Office of the Vice-President and Ministry of Home Affairs, I would be able to address the question of the whereabouts of that person. We would know whether he left prison custody or not, and his whereabouts.

Mr. Deputy Speaker: All right. Mr. Kimeto, what is your point of order?

Mr. Kimeto: Mr. Deputy Speaker, Sir, the Assistant Minister said that he had dealt with one part of the Question, and the other part would be dealt with by a different Ministry. Why did he not ask the other Ministry to assist him, so that he could bring the whole answer here? The Office of the President supervises all the other Ministries. If he feels he cannot carry out his duties, he should resign!

(Laughter)

Mr. M. Kariuki: Mr. Deputy Speaker, Sir, I wish I had the supervisory jurisdiction over Ministries. I am sure I would be able to assert my powers over all the other Ministries. I said that I received a letter from the Commissioner of Prisons stating that he could not trace the list of those who got the Presidential amnesty. That is why I came to a dead end. If there is any direction that I can receive from the Chair to assist this House, I will be quite happy to receive it.

Mr. Deputy Speaker: Since this matter involves the life of a person, we shall refer it to the relevant Ministry. It will be re-directed to the Office of the Vice-President and Ministry of Home Affairs. So, the matter remains on the Order Paper. We have not finished with this Question until we get His Excellency the Vice-President and Minister for Home Affairs involved, so that it can be properly concluded. So, the Question is deferred!

(Question deferred)

Next Question by Mr. Kimeto!

Question No.134

RETIREMENT BENEFITS FOR
MR. FRANCIS KIRUI

Mr. Kimeto asked the Minister for Tourism and Wildlife:-

(a) whether he is aware that Mr. Francis Sigira Kirui - Personal No.1980106420 - retired from the Civil Service in 2002, and has not received his retirement benefits so far; and,

(b) when he will be paid his retirement dues.

The Assistant Minister for Tourism and Wildlife (Mr. Mganga): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The name in our records reads Francis Tuwei Kirui, who retired while serving as a Ranger/Driver Grade One in the Kenya Wildlife Service (KWS), effective July 1st, 2002. He was then based at Lake Nakuru National Park. According to records held at the KWS Headquarters, he was paid a lumpsum of Kshs289,293 vide cheque No.301340 of 11th July, 2002 under the KWS Staff

Superannuation Scheme as his final dues.

Currently, Mr. Kirui receives a monthly pension of Kshs2,411 from KWS, which is remitted through his bank account No.3809058 held at Barclays Bank of Kenya, Nakuru East Branch.

(b) Mr. Kirui has been paid all his dues owed to him by the Service.

Mr. Kimeto: Mr. Deputy Speaker, Sir, let me thank the Assistant Minister for that answer. I admit that the man has been paid his dues. But he was not paid immediately, otherwise, he would not have come to me to ask this Question. The Assistant Minister should have admitted that the man was paid recently.

Mr. Deputy Speaker: It looks like the matter is finished and the hon. Member is happy. So, I will go to the next Question by Mr. Muriungi.

Question No.607

STANDARD INFRASTRUCTURAL/
HUMAN RESOURCE REQUIREMENT
FOR DISTRICT HOSPITALS

Mr. Muriungi asked the Minister for Health what the standard infrastructural and human resource requirements for a district hospital are.

The Assistant Minister for Health (Dr. Kuti): Mr. Deputy Speaker, Sir, I beg to reply. The hon. Member's Question is very generalised. I have split the answer into two. I will give a short overview and then I will give a detailed answer, which I cannot read out because of the volume of the paper-work.

Mr. Deputy Speaker: Dr. Kuti, I am objecting to your statement, that you are going to give an over-view. Please, answer the Question briefly, and if there are any lengthy documents, lay them on the Table.

The Assistant Minister for Health (Dr. Kuti): That is what I am going to do.

Mr. Temporary Deputy Speaker, Sir, I beg to reply.

The standard infrastructure of a district hospital is based on the following essential services.

(a) The primary, secondary and tertiary care as well as training. A district hospital is the second referral level hospital for the district facilities, which are the dispensaries and health centres. So, the essential services are:

(i) Internal medicine and paediatrics, obstetrics and gynaecology, surgical services, psychiatry, ophthalmology, ear, nose and throat (ENT), forensic medicine and tryrine supply department.

The minimum human resource requirements are as follows, doctors, nurses, laboratory technologists and technicians, nutritionists, outreach field workers, clinical officers and other support staff. The infrastructure requirements are an out-patient block, an in-patient block, a theatre, a laundry facility, a kitchen and a mortuary.

Mr. Deputy Speaker, Sir, I will now table the itemised and detailed infrastructure and quantified human resource requirements for further information.

(Dr. Kuti laid the documents on the Table)

Mr. Muriungi: Mr. Deputy Speaker, Sir, while I thank the Assistant Minister for giving me an answer which is good enough for somebody training to be an administrator of a hospital, my Question was mutilated, and I do not know who to blame. There was a part (b) of the Question, which specifically referred to Meru North District Hospital at Maua. That hospital has no wards--- a

mortuary, is congested and dirty, and I wonder whether it qualifies to be a district hospital!

Dr. Kuti: Mr. Deputy Speaker, Sir, the Question we received at the Ministry is the one that is on the Order Paper. But I would like to say that district hospitals in this country are at various levels of development. Of course, the limiting factor is the financial capability of the Government to fully equip and supply the necessary facilities to all district hospitals. Therefore, all efforts are being made to make sure that all hospitals in the districts are as close as possible to the ideal situation.

Mr. Wambora: Mr. Deputy Speaker, Sir, I have seen the detailed response by the Assistant Minister. I had an opportunity to tour Meru North District Hospital yesterday with four other hon. Members. The kind of theoretical stuff he has put here, like the kitchen and administration block, fully equipped with computers, printers and photocopiers, is not there. Could the Assistant Minister physically tour that hospital and many others, which are very crowded and do not have the facilities that he has mentioned in this detailed reply?

Dr. Kuti: Mr. Deputy Speaker, Sir, Meru North District Hospital is in a neighbouring district to mine, and I know about it. It was gazetted not more than five years ago. Being a new district hospital, it still has a long way to go, because of what I said earlier. I would like to assure the hon. Member that the Government will do what it can to ensure that it comes as close as possible to the ideal situation.

Dr. Galgallo: Mr. Deputy Speaker, Sir, the tragedy with the allocation of funds by the Ministry of Health is that year in, year out, all facilities are given money based on the allocations of the previous years, without looking at the needs of particular hospitals. Since this particular hospital was upgraded to a district hospital status five years ago, what has the Government done to make it achieve the standard of a district hospital?

Dr. Kuti: Mr. Deputy Speaker, Sir, as you can see, a specific Question on Meru North District Hospital is not on this Order Paper. So, I am not able to competently talk about what has been done recently for the hospital. But I know it is a new hospital, and I am sure in the five years of its existence, it has been improved step by step. I am also sure that this year, because of the increased funding to the Ministry, more facilities will be put in place.

Mr. Muriungi: Mr. Deputy Speaker, Sir, in view of the seriousness of the situation in this hospital, could the Assistant Minister tell us if there are any plans to build some wards or a mortuary? There is only a maternity ward in the hospital. Yesterday, for example, we saw a body placed in one of the labour beds in the maternity ward. Could the Assistant Minister, as a matter of urgency, tell us if something will be done to provide basic requirements?

Dr. Kuti: Mr. Deputy Speaker, Sir, this hospital is very close to Maua Methodist Hospital, which has various facilities. The bodies, as of now, are being taken to Maua Methodist Hospital mortuary. This being a new financial year, the hon. Member could come to the Ministry Headquarters and we see what could be done.

Question No.502

RETIREMENT BENEFITS FOR
MR. MITO OLOO

Mr. Deputy Speaker: Dr. Oburu's Question, with the agreement of the Minister, is deferred to Tuesday next week.

(Question deferred)

*Question No.596*MEMBERS OF MAIZE FLOUR PROCESSING
PROJECT IMPLEMENTATION TEAM

Mr. Salat asked the Minister for Roads and Public Works whether he could explain how the Government implementation team for the Maize Flour Processing Project in Bomet Constituency, which is being funded by the People's Republic of China, was constituted.

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

After successfully negotiating with the Chinese Government to help implement a maize flour processing project in Bomet Town, the Government appointed an implementation team vide the Treasury letter Ref.No.EA/LA/214/78/O/P dated 7th May, 2004, to ensure that the project proceeds smoothly.

Mr. Salat: Mr. Deputy Speaker, Sir, I am asking this Question because the implementation team, which was listed by the Ministry, consisted of the District Development Committee (DDC), Korokwony Women Group and hon. Kones. This project is in my constituency and yet, it is being implemented without my involvement. How did the Ministry appoint an hon. Member who does not represent any constituency to the project implementation team?

Eng. Toro: Mr. Deputy Speaker, Sir, the Minister for Finance is the one who appointed the team that the hon. Member is talking about. As he has rightly said, hon. Kones is a member of the project implementation team. The DDC, Bomet District, is one of the bodies that will be in the implementation team and hon. Salat is a member of the DDC. So, he has not been left out.

Mr. Salat: Mr. Deputy Speaker, Sir, hon. Kones is also a member of the DDC, Bomet District. What is so special about him, that he is being mentioned and not me?

Eng. Toro: Mr. Deputy Speaker, Sir, what is special about hon. Kones is the fact that this project was not started last year or the year before. It was started by hon. Kones himself when he was a Minister. An agreement was signed between the Chinese Government and the Kenyan Government as far back as 1999, when hon. Kones was a Minister and the hon. Member for Bomet Constituency. The issue here is not whether hon. Kones is a member of the implementation team or not. The issue is whether the hon. Member is against this project, simply because hon. Kones is a member of the implementation team?

Mr. Deputy Speaker: I think that matter should rest there.

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

Mr. Deputy Speaker: Order, Mr. Salat! These are matters that should not take this House's time. These are matters that are better handled elsewhere.

Mr. Salat: On a point of order, Mr. Deputy Speaker, Sir. I am trying to save this Government some money. The Korokwony Women Group is a limited company. It is not a community project and yet, the Government is funding it using the donations from the Chinese Embassy. I have a document here showing that Korokwony is a limited company and allowing the Government to fund it, is actually condoning corruption.

Mr. Deputy Speaker: Mr. Salat, that is not the point you raised before. You have personalised the issue and that is why I thought you are taking a lot of this House's time.

Eng. Toro: Mr. Deputy Speaker, Sir, hon. Salat is misleading the House. The Kshs110 million that is going to be used to implement the project is a grant from the Chinese Government. It is not from the Kenya Government. The said maize flour project, which is owned by a certain women group, will be processing 50 tonnes of maize per day and it is going to benefit the hon. Member's

constituents. I do not understand why he is so agitated. However, the hon. Member should also declare his interest because his mother was once a Treasurer of the said women group.

Mr. Deputy Speaker: Order! Mr. Salat, you can now see the direction the Question is taking. I had cautioned that it is not proper for us to mention individuals in this House. So, Mr. Salat, you will be well advised to let the matter rest there.

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

Mr. Deputy Speaker: Mr. Salat, you will maintain order!

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

Mr. Deputy Speaker: Order, Mr. Salat! You are disorderly and you are ordered to leave the Chamber now.

(Mr. Salat withdrew from the Chamber)

Question No.504

TARMACKING OF BENARD ESTATE'S
AMBOSELI ROAD

Eng. Nyamunga asked the Minister for Local Government:-

(a) whether he is aware that only 60 per cent of Amboseli Road in Benard Estate, Lavington, is tarmacked;

(b) whether he is further aware that the remaining 40 per cent has no drainage system and is maintained by residents of the estate; and,

(c) whether he could ensure that the entire road is tarmacked, for the benefit of the area residents, who pay land rates to the City Council of Nairobi and, therefore, deserve proper services.

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

(a) I am aware that only 60 per cent of Amboseli Road in Benard Estate, Lavington, is tarmacked.

(b) I am aware that the remaining 40 per cent has no drainage system and that it is maintained by the residents of that estate. (c) Amboseli Road is non-adopted under the Street Adoption Act. As such, the responsibility for its maintenance rests with the frontagers. However, the Minister can ensure that the road is up-graded to an adoptive standard in accordance with Section 8 of the Street Adoption Act. The Nairobi City Council will portion the cost between the frontagers and the council and provide designs to up-grade the road to adoptive standards.

Eng. Nyamunga: Mr. Deputy Speaker, Sir, I am surprised that a main road like the Amboseli Road, which is used by even *matatus* is meant to be maintained by the residents of the area. What is the Minister doing to ensure that we get the designs, so that we can contribute to the road's upgrading?

Mr. Kamanda: Mr. Deputy Speaker Sir, as soon as they pay the cost of design to the council, we will provide the design to them so that they can proceed with their work.

Mr. Manoti: Mr. Deputy Speaker, Sir, arising from the answer which has been given by the Assistant Minister, it is true that the City Council of Nairobi is doing very little for its residents. In most estates, roads are impassable. What is the Assistant Minister doing to make sure that most of the roads in the estates are repaired with the LATF money the City Council receives?

Mr. Kamanda: Mr. Deputy Speaker, Sir, it is not true that the Nairobi City Council has not repaired any roads. In the last one and a half years, we have re-carpeted about 12 roads, which are

Huruma, Embakasi Village, Donholm, Macharia, Muhoho, Ole Shapare and Ridgeway roads, and about another four roads within the Central Business District (CBD). We are now working on the Eastleigh Second Avenue Road.

Eng. Nyamunga: Thank you, Mr. Deputy Speaker, Sir. A road has many users. Since we will be required to contribute towards its upgrading, will we be allowed to monopolise its use?

Mr. Kamanda: Mr. Deputy Speaker, Sir, if you repair the road, we will adopt it and in future, it will be repaired by the City Council. That will be to your advantage.

Mr. Deputy Speaker: That is the end of Question Time!

We will now move on to a Ministerial Statement from the Ministry of Foreign Affairs.

POINT OF ORDER

NON-INCLUSION OF MR. ROTINO'S QUESTION ON THE ORDER PAPER

Mr. Rotino: On a point of order, Mr. Deputy Speaker, Sir. Last Thursday, I had a Question listed in the Order Paper. The Minister who was supposed to answer it was not in and it was deferred to today. Today, it is not in the Order Paper although it concerns an important issue.

Mr. Deputy Speaker: I will ask you to consult with the Clerk-at-the-Table, so that he can list it for Tuesday.

MINISTERIAL STATEMENT

CANCELLATION OF DR. MURUNGARU'S BRITISH VISA

The Assistant Minister for Foreign Affairs (Mr. Ojode): Mr. Deputy Speaker, Sir, last week, this House requested for a Ministerial Statement regarding the cancellation of hon. Dr. Murungaru's British visa. I wish to give a Ministerial Statement on the cancellation of the visa.

Mr. Deputy Speaker, Sir, the Government is aware that the British High Commission, in Nairobi, wrote a personal letter to hon. Dr. Murungaru, Minister for Transport, informing him of the revocation of his British visa. The Government is also aware that the Commission wrote to airline companies on the same matter.

Upon learning of the issue, the Ministry of Foreign Affairs wrote to the British High Commission in Nairobi, requesting for an official confirmation and reasons for the revocation of the hon. Minister's visa. The Government has now received an official notification from the British Government on the revocation of the visa of the hon. Minister. In its response, the British High Commission confirmed that, indeed, hon. Dr. Murungaru's visa had been revoked. The British High Commission also informed us that due to reasons of confidentiality, it wrote, directly to hon. Dr. Murungaru regarding the cancellation. The British High Commission has also indicated, in its response, that airline companies were informed in confidence that they should not disclose grounds for such a decision to third parties.

Mr. Deputy Speaker, Sir, I wish, to also, confirm that a sovereign government is not obliged to give reasons for its decisions in matters related to visa revocation or refusal to issue a visa.

Maj. Madoka: On a point of clarification, Mr. Deputy Speaker, Sir. I think this is a very serious matter. Hon. Dr. Murungaru is not an ordinary Kenyan. He is a Minister of the Government. Could the Assistant Minister tell us why the visa has been cancelled because there must be a reason? Owing to the relationship we have with the British Government, it should disclose and let us know the

reasons behind the visa cancellation. Even if it does not want all of us to know, then it should, at least, release the information to the Government, or else we take further action in sending their Commissioner back home!

(Applause)

The Assistant Minister for Foreign Affairs (Mr. Ojode): Mr. Deputy Speaker, Sir, this is a personal matter and the Government's machinery should not be involved at all in it. There is a confidential letter which was written to hon. Dr. Murungaru and we do not know what information it contains. It is only Dr. Murungaru who can tell us what the letter contains.

Mr. Mwenje: Mr. Deputy Speaker, Sir, as the hon. Member has said, the position of the Minister is that of a public office. The Government should know what reasons were given to him. We know that the letter was sent yesterday to the Ministry. The Assistant Minister has just told us that Dr. Murungaru was given the reasons himself. Why is it difficult for the Ministry of Foreign Affairs to contact Dr. Murungaru and know from him what reasons were given? We have heard of many reasons. We have heard that it is because of his involvement in corruption; the Embassy once said. We have also heard that it is because of his association with drug business. To clear this issue, could we be told what the reasons are because I do not think we can leave the issue as it is? The country is entitled to know the reasons which were forwarded to the Minister. If the reasons are contained in Dr. Murungaru's letter, why can the Ministry of Foreign Affairs not ask for the letter and tell us the reasons which were given?

Mr. Wamwere: Asante, Bw. Naibu Spika. Ningetaka kujua jambo moja kutoka kwa Waziri Msaidizi. Kwa vile Serikali ilifanya juhudi ya kupata sababu za Waziri kunyang'anywa visa yake kutoka kwa Ubalozi wa Uingereza, na sasa tumeambiwa kwamba sababu zenyewe zilipatiwa Waziri, na ako na hizo sababu, ni kwa nini Waziri huyo, akiwa mmoja katika Serikali ambayo tunaiuliza itupatie sababu, asikuje hapa Bungeni na kutupatia sababu alizopewa na Serikali ya Uingereza, atuambie ni kwa nini amenyag'anywa visa?

Mr. Wanjala: Mr. Deputy Speaker, Sir, the matter is now of public interest. The people in Dr. Murungaru's constituency are already demonstrating. They have burnt farms belonging to British farmers. That means this has ceased to be an individual issue, but a public issue. Dr. Murungaru is a Minister of the Government of Kenya. He is a public officer. Why are the British not being transparent and tell us what they told Dr. Murungaru in their letter?

Could the Assistant Minister also tell us why he is hiding when Dr. Murungaru's constituents are already on the streets demonstrating? This has ceased to be an individual issue.

Mr. Omingo: Mr. Deputy Speaker, Sir, it does not really matter what opinion I hold concerning Dr. Murungaru. There comes a time when this nation must act as a nation united on a course. It appears now that the British Government is about to commit a *coup d'etat* on Kibaki's Government. Who knows, they might cancel President Kibaki's visa tomorrow. It is time the Government moved fast and made a decision on this issue. We should be told exactly what is going on. We have also been told that there are five more Ministers who could be on the queue---

Mr. Deputy Speaker: Mr. Omingo, you are seeking a clarification. You are not debating.

Mr. Omingo: I am sorry, Mr. Deputy Speaker, Sir. There comes a time when this nation must act as one regardless of our position in society. Could we now know whether the British Government is actually moving closer to overthrow this Government silently? Could we also know who the other five Ministers that are on the queue are, so that we can have confidence in the Government?

Mr. K. Kilonzo: Mr. Deputy Speaker, Sir, we have just heard from the Assistant Minister that the reason why Dr. Murungaru has been banned from visiting Britain is personal. Dr. Murungaru is a Minister of the Government and he usually goes to Britain to transact official business of the

Government. If the reason for the revocation of his visa is personal, could the British Government exempt Dr. Murungaru when he visits Britain on official duty?

The Assistant Minister for Foreign Affairs (Mr. Ojode): Mr. Deputy Speaker, Sir, I would like hon. Members to note that those who execute a ban are guided by rules and guidelines. In order to reach such a decision, a lot of consultations must have been done.

Secondly, the Ministerial Statement did not come from my desk. This is a Ministerial Statement from the Ministry of Foreign Affairs. The Statement says that it was a personal issue. The Minister should follow up the matter without making it look like a national issue.

Mr. Mwandawiro: Jambo la nidhamu, Bw. Naibu Spika. Je, ni nidhamu kwa Serikali hii kumkana Waziri wake?

The Assistant Minister for Foreign Affairs (Mr. Ojode): Mr. Deputy Speaker---

Mr. Deputy Speaker: Mr. Ojode, why do you not just relax and go through the issues without those emotions?

Mr. Ogur: Mr. Deputy Speaker, Sir, you heard the Assistant Minister say that consultations must have been done exhaustively. When were those consultations about Dr. Murungaru done, when the Ministry only received a letter from the British Government yesterday?

The Assistant Minister for Foreign Affairs (Mr. Ojode): Mr. Deputy Speaker, Sir, I am so sorry that my hands are tied. There is nothing I can do about this issue. The information we got as a Ministry is that, it was a personal matter. The only thing the Minister can do is to appeal to the British Government. I have nothing more to add.

Mr. Deputy Speaker: Order, hon. Members. This is a Ministerial Statement from the Government about a Government Minister. The Chair cannot really go further and push the Government to say what it does not want to say. Therefore, that Statement ends there.

POINT OF ORDER

IMPOUNDING OF LIVESTOCK FROM MOYALE

Dr. Galgallo: Mr. Deputy Speaker, Sir, I rise on a point of order to seek a Ministerial Statement from the Minister in charge of internal security in the Office of the President.

Over the last two weeks, the police have been impounding vehicles transporting livestock from Moyale. So far, four trucks have been impounded. The livestock belongs to farmers and legitimate traders who purchase it in open market and acquire all the necessary documents from the relevant authorities.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members!

Dr. Galgallo: Mr. Deputy Speaker, Sir, unfortunately the police have been dishing out this livestock to people from Marsabit Town and Kariobangi, here in Nairobi, who are claiming to be the victims of the Turbi raid of 12th July, 2005. It is merciless and immoral to trade in the blood of the victims. This action by the police has brought the livestock trade in Moyale and Marsabit districts to a standstill, as traders have now stopped transporting their livestock to the market in Nairobi for fear of losing them illegally.

I want the Minister to explain to us under what law the police are giving out the impounded livestock to those people who are masquerading as victims of the Turbi attack. Secondly, the Minister should also provide to this House a list of the recipients of the livestock impounded so far. Thirdly, the Minister should order a stop to this illegal action by the police to enable my people resume their

livestock trade which is the mainstay of their economic livelihood.

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

Mr. Deputy Speaker: May I have order at that corner, particularly you Mr. Wanjala. Could you keep order? I am sure you do not even know what is going on here.

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Deputy Speaker, Sir, we will issue an appropriate Ministerial Statement on Tuesday. Meanwhile the recovery of livestock will continue. As long as cattle rustling continues in that area, the police will continue with their efforts for recovery of lost livestock. We will give the full details on Tuesday.

Mr. Deputy Speaker: Very well! Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

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

THE PUBLIC PROCUREMENT AND DISPOSAL BILL

Clause 2

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I have 45 amendments. I do not know whether you want me to read all of them or to just say "it is as per the Order Paper".

The Temporary Deputy Chairman (Mr. Ethuro): I suggest "as per the Order Paper" since everybody must be having a copy of the Order Paper.

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

THAT, Clause 2 be amended by inserting the following new paragraph immediately after paragraph (e)-

(f) to facilitate the promotion of local industry and economic development.

(Question of the amendment proposed)

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Chairman, Sir, we fully support the amendment.

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

(Clause 2 as amended agreed to)

Clause 3

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

THAT, Clause 3 be amended -

(a) in the definition of "procurement" by inserting the word "assets" immediately after the word "works";

b) by inserting the following new definitions in proper alphabetical sequence-

"citizen contractor" means a natural person or an incorporated company wholly owned and controlled by persons who are citizens of Kenya;

"local contractor" means a contractor who is registered in Kenya under the Companies Act and whose operation is based in Kenya;

"public funds" has the meaning assigned to it in the Exchequer and Audit Act and include monetary resources appropriated to procuring entities through budgetary process, as well as extra budgetary funds including aid grants and credits put at the disposal of procuring entities by foreign donors, and revenues of procuring entities;

"urgent need" means the need for goods, works or services in circumstances where there is an imminent or actual threat to public health, welfare, safety, or damage to property such that engaging in tendering proceedings or other procurement methods would not be practicable;

(Question of the amendment proposed)

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Chairmn, Sir, we had consultations over this amendment. We support it.

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

(Clause 3 as amended agreed to)

Clause 4

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, there was an error in the drafting of the Order Paper because it says that we delete. However, we are supposed to be inserting a new subclause immediately after subclause (a). What is there is in addition to, and not deletion.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Kagwe, you would help the House by reading out the amendment. I suppose you are dealing with subclause (a)(i)

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, if you look at Clause 4, it says that this Act applies with respect to. However, the amendment proposes that it should not apply. If you delete subclause (b), it means that it does not apply to public entities, stores, and equipment. We had proposed that, instead of deleting anything, we insert that contract management and supply chain management be part of what this Act applies to.

I beg to move:-

THAT, Clause 4 be amended by inserting immediately after subclause (a) thereof a new subclause as follows:-

This Act applies with respect to:-

(a) procurement by public entity;

(b) contract management;

(c) supply chain management which includes inventory and distribution; and,

(d) disposal by public entity of stores, equipment that are unserviceable, obsolete or surplus.

(Question of the amendment proposed)

Capt. Nakitare: Mr. Temporary Deputy Chairman, Sir, I second the amendment as proposed by Mr. Kagwe.

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Chairman, Sir, this amendment elaborates on what already exists and seems to add value to the law we are making. We, therefore, support it.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Minister, since we have many amendments, if you are just supporting, we will be happier to dispose of it.

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

(Clause 4 as amended agreed to)

Clause 5

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

THAT, Clause 5 be amended by inserting the words "in matters relating to procurement and disposal" immediately after the word "conflict" appearing in subclause (1).

(Question of the amendment proposed)

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

(Clause 5 as amended agreed to)

Clause 6

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

THAT, the Bill be amended by deleting Clause 6 and replacing it with the following new clause -

Conflict with international 6.(1) Where any provision of this Act conflicts with any obligations of the Republic of Kenya arising international from a treaty agreements, or other agreement to which Kenya is a party, this Act shall prevail except in instances negotiated grants and loans.

(2) Where a treaty or agreement referred to in subsection (1) contains provisions favourable to citizens and local contractors, full advantage shall be taken of these in the interest of promoting domestic capacity development.

(3) Where Kenya is required under the terms of any treaty or agreement to which she is a party to contribute from her own resources, in any form, to any procurement activities within Kenya in part or wholly, jointly or separately, procurement through such contributions shall be -

(a) in discrete activities where possible; and

(b) subject to the applicable provisions of this Act.

(4) The disposal of any, or all of the goods, or public assets accruing to Kenya as a result of procurement activities made under subsections (1) and (2) shall be subject to the provisions of this Act.

(5) Where the procurement under subsection (1) favours an external beneficiary -

(a) the procurement through contributions made by Kenya, shall be undertaken in Kenya through contractors registered in Kenya; and

(b) all relevant insurances shall be placed with companies registered in Kenya and goods shall be transported in carriages registered in Kenya.

(Question of the amendment proposed)

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

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

(Clause 6 as amended agreed to)

(Clauses 7 and 8 agreed to)

Clause 9

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

THAT, Clause 9 be amended by renumbering the existing paragraph (d) as (e) and inserting a new paragraph (d) as follows -

(d) to initiate public procurement policy and propose amendments to this Act and regulations.

(Question of the amendment proposed)

The Assistant Minister for Finance (Mr. Obwocha): Mr. Temporary Deputy Chairman, Sir, the Minister is consulting. However, we have no objections. We have consulted.

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

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

(Clause 9 as amended agreed to)

Clause 10

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

THAT, Clause 10 be amended -

(a) by inserting the words "with the approval of Parliament" immediately after the word "Board" appearing in subclause (2);

(b) by inserting the words "engineering or related field of study" immediately after the word "economics" appearing in subclause (3);

(Question of the amendment proposed)

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Chairman, Sir, we had very extensive consultations with the Departmental Committee on Finance, Planning and Trade over these amendments. We have no objection.

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

(Clause 10 as amended agreed to)

(Clause 11 agreed to)

(Clause 11 agreed to)

Clause 12

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

THAT, Clause 12 be amended by deleting the words "after being appointed" and substituting therefor the words "During the period of his or her appointment".

(Question of the amendment proposed)

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

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

(Clause 12 as amended agreed to)

Clause 13

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

THAT, Clause 13 be amended by inserting the words "in accordance with the State Corporations Act" of the end thereof.

(Question of the amendment proposed)

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

(Clause 13 as amended agreed to)

(Clauses 14, 15, 16, 17, 18 and 19 agreed to)

Clause 20

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, there is a typographical error because in part "a" of this amendment, there is a part that reads "c". It should not be there. Secondly, part "b" reads: "(d) a report in the extent of positive bid to local participants." It should read: "(d) a report on the extent of positive buyers to local participation."

I beg to move the amendment as corrected:-

THAT, Clause 20 be amended in sub clause (3) -

(a) by deleting the words "specifically permitted under section 93" appearing in paragraph and substituting therefor the words, "specially permitted under section 92";

(b) by inserting the following new paragraph immediately after paragraph (c) -

(d) a report on the extent of positive buyers to local participation.

(Question of the amendment proposed)

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

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

(Clause 20 as amended agreed to)

(Clause 21 agreed to)

Clause 22

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

THAT, Clause 22 be amended in subclause (1) by inserting the words "and approved by Parliament" immediately after the words "Minister" appearing in paragraph (a).

(Question of the amendment proposed)

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

(Clause 22 as amended agreed to)

(Clauses 23 and 24 agreed to)

Clause 25

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 25 be amended by deleting the word "Complaints" and inserting it immediately before the word "Review".

(Question of the amendment proposed)

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

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

(Clause 25 as amended agreed to)

Clause 26

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 26 be amended -
(a) by deleting the marginal note and substituting therefor the following new marginal note-
"Threshold matrix and segregation of responsibilities."
(b) by deleting subclause (3) and replacing it with the following subclause-
(3) All procurement shall be –
(a) within the approved budget of the procuring entity and shall be planned by the procuring entity concerned through an annual procurement plan;
(b) undertaken by a procuring entity as per the threshold matrix as set out in regulations;
(c) handled by different offices in respect of procurement initiation, processing and receipt of goods, works and services.
(c) by inserting the following words immediately after the word "regulations" appearing in subclause (5) –
"and shall –
(a) consist of not less than five members;
(b) have as its secretary, the procurement professional in charge of the procurement unit.
(d) by deleting the word "establish" appearing in subclause (10) and substituting therefor the words "facilitate the establishment of"

(Question of the amendment proposed)

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

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

(Clause 26 as amended agreed to)

Clause 27

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

THAT, Clause 27 be amended by inserting the following new subclauses immediately after subclause (3)-

(4) Contractors, suppliers and consultants shall comply with all the provisions of this Act and the regulations.

(5) The accounting officer may use the procurement unit and tender committee of another procuring entity which shall carry out the procurement in accordance with this Act and Regulations.

(6) The Authority shall have power to transfer the procuring responsibility of a procuring entity to another procuring entity or procuring agent in the event of delay and or in such other instances as may be prescribed.

(Question of the amendment proposed)

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

(Clause 27 as amended agreed to)

Clause 28

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

THAT, Clause 28 be amended -

(a) by deleting subclause (1) and replacing it with the following new subclause -

(1) A procuring entity may appoint a procurement agent on competitive basis to carry out procurement proceedings on its behalf as may be prescribed.

(b) by inserting the following subclause immediately after subclause (2)-

(3) A procuring agent shall be registered with the Authority and where the procuring agent is undertaking procurement on behalf of a procurement entity, the procuring agent shall comply with the provisions of this Act and Regulations.

(Question of the amendment proposed)

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

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

(Clause 28 as amended agreed to)

Clause 29

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

THAT, Clause 29 be amended by inserting the following new subclause immediately after subclause (3) -

(4) A procuring entity shall use such standard tender documents as may be prescribed.

(Question of the amendment proposed)

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

(Clause 29 as amended agreed to)

Clause 30

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

THAT, Clause 30 be amended -

(a) by deleting the marginal note and replacing it with the following new marginal note - "No procurement at inflated prices".

(b) by inserting the following new subclauses immediately after subclause (2) -

(3) Standard goods, services and works with known market prices shall be procured at the prevailing real market price.

(4) Public officials involved in transactions in which standard goods, services and works are procured at unreasonably inflated prices shall in addition to other sanctions in this Act and Regulations be required to pay to the procuring entity for the loss resulting from their actions;

(Question of the amendment proposed)

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

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

(Clause 30 as amended agreed to)

Clause 31

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

THAT, Clause 31 be amended by inserting the following new subclause immediately after subclause (6)-

(7) Procuring entities shall use creative approaches such as design and build in order to enhance efficiency of the procurement process and project implementation.

(Question of the amendment proposed)

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

(Clause 31 as amended agreed to)

(Clauses 32, 33, and 34 agreed to)

Clause 35

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 35 be amended by inserting the words "and a declaration that the person will not engage in any corrupt practice" at the end thereof.

(Question of the amendment proposed)

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

(Clause 35 as amended agreed to)

Clause 36

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 36 be amended by inserting the words "within 14 days of the request" at the end of subclause (3).

I wish to point out that we are introducing the issue of time lines in the Public Procurement and Disposal Bill.

(Question of the amendment proposed)

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

(Clause 36 as amended agreed to)

(Clauses 37 and 38 agreed to)

Clause 39

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the Bill be amended by deleting Clause 39 and replacing it with the following new clause -

Participation in 39. (1) Candidates

procurement shall participate in procurement proceedings without discrimination
except where participation is limited in accordance with this Act and the
Regulations.

(2) In consideration of economic and social development factors, the Minister shall prescribe preferences and or reservations in public procurement and disposal.

(3) The preferences and reservations stated in sub section (2) shall-

- (a) be non-discriminatory in respect of the targeted groups;
- (b) allow competition among eligible;
- (c) be monitored and evaluated.

- (4) The preferences and reservations shall apply to -
- (a) candidates such as disadvantaged groups, micro, small and medium enterprises;
 - (b) works, services and goods or any combination thereof;
 - (c) identified regions; and
 - (d) such other categories as may be prescribed.
- (5) A procuring entity shall, when processing procurement, comply with the provisions of this Act and regulations in respect of preferences and reservations.
- (6) To qualify for a specific preference or reservation, a candidate shall provide evidence of eligibility.
- (7) The Authority shall maintain an up-to-date register of contractors in works, goods and services or any combination in order to be cognizant at all times of the workload and performance record of contractors.
- (8) In applying the preferences and reservations under this section-
- (a) exclusive preference shall be given to the nationals of Kenya where -
 - (i) the funding is 100% from the Government of Kenya or a Kenyan body; and
 - (ii) the amounts are below the prescribed threshold.
 - (b) a prescribed margin of preference may be given -
 - (i) in the evaluation of bids to candidates offering goods manufactured, mined, extracted and grown in Kenya; or
 - (ii) for works, goods and services where a preference may be applied depending on the percentage of shareholding of the locals on a graduating scale as prescribed.

Mr. Temporary Deputy Chairman, Sir, the reason why this clause is particularly important is because it deals with participation in procurement by Kenyan nationals.

(Applause)

The purpose of the amendments that we have made is to ensure that even as we draw up a Public Procurement and Disposal Bill, we are ensuring that our local industries are given weight and preference.

In so doing, I also want to make an amendment on the Order Paper and propose that Subclause 39(4)(a), (b), (c) and (d) be deleted because it is actually a repetition of Subclause 39(b) because it is as per prescription.

(Question of the amendment proposed)

Mr. Omingo: Mr. Temporary Deputy Chairman, Sir, Clause 39 is what has been itching most Kenyans, and the amendments on the amendments must be clear before this House sanctions this clause. This is the clause which could really bar Kenyans from participating and ignore---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Omingo! The amendments are on the Order Paper and it is up to you to make the amendments!

Mr. Omingo: They are amendments to amendments; therefore, we must know the reason for that change.

The Temporary Deputy Chairman (Mr. Ethuro): But the Standing Orders are very clear; you can amend an amendment.

Proceed, Mr. Kagwe!

Mr. Kagwe: The Temporary Deputy Chairman, Sir, hon. Omingo is only acting in good faith and, therefore, maybe, I should take a little time to explain to him what it is all about. If you look at Clause 39(2), which reads:-

"In consideration of economic and social development factors, the Minister shall prescribe preferences and/or reservations in public procurement and disposal."

In other words, what we are doing in Clause 39(4) is actually already prescribing those preferences. Those preferences as described in Clause 39(4) are dynamic and can change; the Act is not dynamic and does not keep on changing. That is what hon. Omingo was referring to, and that is why we have deleted it.

The Temporary Deputy Chairman (Mr. Ethuro): Are you satisfied, Mr. Omingo?

Mr. Omingo: Yes.

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

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

(Clause 39 as amended agreed to)

Mr. Kagwe: Mr. Deputy Chairman, Sir, with your indulgence, could we dispose of Clauses 40, 41 and 42, because I have a slight grammatical amendment on Clause 43?

The Temporary Deputy Chairman (Mr. Ethuro): So, you have an issue with Clause 43?

Mr. Kagwe: It is a very slight grammatical correction.

The Temporary Deputy Chairman (Mr. Ethuro): Then I have to restart the whole exercise.

(Clauses 40, 41 and 42 agreed to)

Clause 43

Mr. Kagwe: The Temporary Deputy Chairman, Sir, I wish to propose an amendment on Clause 43, which was actually omitted from the Order Paper. It is actually not a major issues, but if you look at the grammar of Clause 43(b), it is actually wrong because what we are talking about here is about people who must not participate in a procurement. In this section, relatives are not supposed to participate in procurement; for example, a spouse, child, parent, brother or sister. If you look at Clause 43(b), and that is where the slight change is, it reads:

"A child of a spouse, child, parent---"

There is a problem there and, therefore, it should read:

"A child, parent, brother or sister of a spouse---"

In other words, I am proposing that---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Kagwe! You are referring to Clause 43(6)?

Mr. Kagwe: Yes. The proposal is that Clause 43(6)(b) be amended by deleting the words: "A child of a spouse" and inserting "of a spouse" after the word "sister" at the end.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Kagwe! He is referring to Clause 43 Subclause 6(b).

Mr. Kagwe: It is on page 72.

(Question of the amendment proposed)

Mr. Wanjala: Have you given notice of the amendment?

Mr. Kagwe: It is a grammatical issue.

Mr. Omingo: On a point of order, Mr. Deputy Chairman, Sir. For purposes of clarity and consistency, is it in order for us to do what we are doing without notice?

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! If you have an amendment, you need to bring it within a specified period, but Mr. Omingo and my friend, Mr. Kipchumba, you will appreciate that Mr. Kagwe is just making the document better. Since we all passed examinations of English to come to this House, I think that must be commended.

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

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

(Clause 43 as amended agreed to)

Clause 44

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

THAT, Clause 44 be amended by inserting the following new subclause immediately after subclause (2)-

(3) Notwithstanding the provisions of subsection (2), the disclosure to an applicant seeking a review under Part VII shall constitute only the summary referred to in section 45(2)(e).

*(Question of the amendment
proposed)*

Mr. Omingo: The Temporary Deputy Chairman, Sir, this appears to be a complete addition and I think the rationale should be put to hon. Members as well, as it were.

Mr. Kagwe: The Temporary Deputy Chairman, Sir, Clause 44(2)(c) is basically about inserting a new subsection, and it is to ensure that confidential business information is not released to competitors to maintain ethics in the business.

The Temporary Deputy Chairman (Mr. Ethuro): Are you satisfied, Mr. Omingo?

Mr. Omingo: Yes, I am satisfied. But that brings us to another dimension; that the renumbering of Clause 44 must also be done. If we are inserting subclause 3, yet it exists in the Bill, therefore, I propose that the clause be renumbered so that we will have up to subclause 4.

Mr. Kagwe: That is in order, The Temporary Deputy Chairman, Sir.

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

(Clause 44 as amended agreed to)

Mr. Omingo: On a point of order, The Temporary Deputy Chairman, Sir. The Clause should be amended and renumbered!

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Omingo, I did not want to delve into that issue because that is really the business of the Attorney-General.

Mr. Kagwe: That is not a big deal.

Clause 45

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

THAT, Clause 45 be amended by inserting the following new subclause immediately after subclause (5)-

(6) A procuring entity shall maintain a proper filing system with clear links between procurement and expenditure files.

(Question of the amendment proposed)

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

(Clause 45 as amended agreed to)

(Clause 46 agreed to)

Clause 47

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

THAT, Clause 47 be amended by deleting paragraph (b) and substituting therefor the following new paragraph-

(b) the contract variations are on the basis of the prescribed price variation, quantity variation for goods, works and services.

(Question of the amendment proposed)

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

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

(Clause 47 as amended agreed to)

Clause 48

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

THAT, Clause 48 be amended by deleting paragraph (b) and substituting therefor the following new subparagraph-

(b) the interest rates to be paid under paragraph (a) shall be in accordance with prevailing commercial bank rates.

(Question of the amendment proposed)

Mr. Omingo: Mr. Temporary Deputy Chairman, Sir, I am not standing to oppose, but I am looking at a very serious matter here. We all know for a fact that the Government is a major procurer, and we have seen contractors actually fleecing the Government through use of usurious rates of interest. I suggest that if hon. Kagwe wants to bring in interest rates, then we should peg them to the Treasury Bill rates. If we leave it to the market rates, companies will fleece the Government now that it will be difficult to control the interest rates.

Mr. Kipchumba: Mr. Temporary Deputy Chairman, Sir, I just want hon. Kagwe to clarify this amendment, because prevailing commercial bank rates no longer exist. Every bank has its own rates

Probably, we should be referring to an average rate stipulated by the Central Bank of Kenya.

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, with reference to the matter raised by hon. Omingo, it is, indeed, because of that reason that we have proposed the determination of interest rate to be paid where there is a delay of payment as per the prevailing commercial rates. This is because if the rate is as low as it is now, there is nothing to stop a contractor from proposing a rate of, say, 35 per cent, even when the interest rate is 20 per cent. However, we cannot peg this interest rate to the Treasury Bills, because a contractor who is borrowing will not be doing so at the Treasury Bill rate, but rather at bank interest rate. Therefore, the proposal by hon. Kipchumba is probably relevant, but I would imagine that the spirit of the Act is such that in any event, there will be an average prevailing interest rate.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Minister, it will be good to hear your opinion on the matter of commercial interest rates.

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Chairman, Sir, normally, even when courts award damages to companies that have sued, they limit interest to the prevailing commercial rates. However, they give the figure and say, for example, payable at the rate of 12 per cent, per annum, for as long as the bill is not paid. I think that this is reasonable.

Mr. Omingo: On a point of order, Mr. Temporary Deputy Speaker, Sir. I really respect my good friend, hon. Kagwe. However, you and I have sat in the Public Accounts Committee and actually seen how contractors charge the Government more than 200 per cent by keeping their equipment on site. Because of that, we are in the current situation. We want to see this nation working towards bringing the bank rates of interest down to match with the Treasury Bill rates which are more relevant and standard.

I would suggest that we put this matter to vote if you do not mind because I am going to propose amendments to Mr. Kagwe's amendment.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Omingo! You are now raising arguments.

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

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

(Clause 48 as amended agreed to)

Clause 49

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 49 be amended by deleting subclause (2) and renumbering subclause (3) as subclause (2).

(Question of the amendment proposed)

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

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

(Clause 49 as amended agreed to)

(Clauses 50, 51, 52 and 53 agreed to)

Clause 54

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 54 be amended in subclause (2) by deleting all the words appearing after the word "invitation" and substituting therefor the words "the procuring entity shall advertise at least twice in a newspaper of general nationwide circulation which has been regularly published for at least two years before the date of issue of the advertisement, and if the procuring entity has a website, on its website, and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity as certified by the head of the procurement unit."

(Question of the amendment proposed)

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

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

(Clause 54 as amended agreed to)

(Clauses 55, 56, 57, 58 and 59 agreed to)

Clause 60

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 60 be amended in subclause (5) by inserting the words "except where not applicable as may be prescribed" immediately after the word "tender" appearing in paragraph (b).

(Question of the amendment proposed)

(Question, that the words to be

inserted be inserted, put and agreed to)

(Clause 60 as amended agreed to)

*(Clauses 61, 62, 63, 64, 65, 66, 67,
68, 69, 70, 71, 72 and 73 agreed to)*

Clause 74

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 74 be amended by deleting subclause (4).

(Question of the amendment proposed)

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

(Clause 74 as amended agreed to)

Clause 75

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 75 be amended by deleting paragraph (b) and renumbering paragraphs
(c) and (d) as (b) and (c) respectively.

(Question of the amendment proposed)

Mr. Omingo: Mr. Temporary Deputy Chairman, Sir, the Chairman of the Committee on Finance, Planning and Trade is actually rushing us through this. He is only taking advantage of some of us. But we are saying that even the reason for dropping this is because it relates to Clause 74(4).

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, first of all, I am not rushing anybody anywhere. Indeed, we have extended the time so that we could be here as long as Mr. Omingo wishes. But the reason is that having deleted Clause 74(4), you have automatically deleted Clause 75. It is consequential, as the learned people would say.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Omingo, you will appreciate that there was a workshop organised by the Committee. So, there is nothing being rushed.

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

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

(Clause 75 as amended agreed to)

*(Clauses 76, 77, 78, 79, 80, 81, 82, 83,
84, 85, 86, 87, 88, 89, 90 and 91 agreed to)*

Clause 92

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 92 be amended by renumbering the last subclause (3) as subclause (4).

(Question of the amendment proposed)

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

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

(Clause 92 as amended agreed to)

Clause 93

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 93 be amended -
(a) in subsection (1) by deleting the word "person" and substituting therefor the word "candidate";
(b) in subsection (2) -
(i) by deleting the number "33" appearing in paragraph (b) and substituting therefor the number "36";
(ii) by deleting the number "63" appearing in paragraph (c) and substituting therefor the number "68".

(Question of the amendment proposed)

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

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

(Clause 93 as amended agreed to)

Clause 94

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 94 be amended by deleting subclause (1) and substituting therefor the following new subclause:-

(1) Upon receiving a request for a review under Section 93, the secretary to the Review Board shall notify the procuring entity of the pending review and the suspension of the procurement proceedings in such a manner as may be prescribed.

(Question of the amendment proposed)

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

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

(Clause 94 as amended agreed to)

(Clauses 95 and 96 agreed to)

Clause 97

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

THAT, Clause 97 be amended by renumbering the existing provision as subclause (1) and inserting a new subclause (2) as follows:-

(2) In no case shall any appeal under the Act stay or delay the procurement process beyond the time stipulated in this Act and Regulations.

Mr. Temporary Deputy Chairman, Sir, I wish to express that it is introducing time-lines and making sure that procurement is done within certain times.

(Question of the amendment proposed)

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

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

(Clause 97 as amended agreed to)

(Clauses 98 and 99 agreed to)

Clause 100

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

THAT, Clause 100 be amended:-

(a) by inserting the words "unless a judicial review commences within fourteen days from the date of the Review Board decision." at the end of the subclause (1);

(b) by deleting the words "procuring entity" wherever they appear in subclause (3) and substituting therefor the words "party to the review" and "such party" respectively.

(c) by inserting the following new subclause immediately after subclause (3):-

(4) If a judicial review is not declared by the High Court within thirty days from the date of filing, the decision of the Review Board shall take effect.

Mr. Temporary Deputy Chairman, Sir, this is an important clause because it stops time wasting. You know you can delay things in court for ever and ever.

(Question of the amendment proposed)

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

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

(Clause 100 as amended agreed to)

(Clauses 101, 102, 103 agreed to)

Clause 104

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 104 be amended in subclause (1) by deleting paragraph (b) and
renumbering the clause accordingly.

Mr. Temporary Deputy Chairman, Sir, this is simply to put them in the relevant places.

(Question of the amendment proposed)

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

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

(Clause 104 as amended agreed to)

Clause 105

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 105 be amended in subclause (1) by inserting the following new
paragraph immediately after paragraph (c) -
(d) prepare a summary of the investigator's findings and recommendations and give a
copy of the summary to the procuring entity and to the Kenya Anti-Corruption
Commission established under the Anti-Corruption and Economic Crimes Act 2003.

(Question of the amendment proposed)

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

(Clause 105 as amended agreed to)

*(Clauses 106, 107, 108, 109,
110 and 111 agreed to)*

Clause 112

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 112 be amended by deleting the words "from" and "thirty" and substituting therefor the words "against" and "fourteen" respectively.
Mr. Temporary Deputy Chairman, Sir, this is again to tighten the procurement period.

(Question of the amendment proposed)

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

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

(Clause 112 as amended agreed to)

*(Clauses 113, 114, 115, 116, 117, 118,
119, 120, 121 and 122 agreed to)*

Clause 123

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 123 be amended by deleting the word "thirty" and substituting therefor the word "fourteen".
Mr. Temporary Deputy Chairman, Sir, again, this is to tighten the Procurement Bill.

(Question of the amendment proposed)

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

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

(Clause 123 as amended agreed to)

(Clauses 124, 125 and 126 agreed to)

Clause 127

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 127 be amended by deleting the words "complied with respect to"

appearing in subclause (1) and substituting therefor the words "complied with in respect of".

Mr. Temporary Deputy Chairman, Sir, this is basically a grammar issue.

(Question of the amendment proposed)

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

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

(Clause 127 as amended agreed to)

Clause 128

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

THAT, Clause 128 be amended by renumbering the existing provision as subclause (1) and inserting the following subclause immediately after subclause (1)-

(2) The disposal committee shall meet within the prescribed time to report on the items and subject to a technical report, recommend the best method of disposal.

Mr. Temporary Deputy Chairman, Sir, this is to ensure that these people meet in order to be disposing, rather than leaving things lying in the open for many years.

(Question of the amendment proposed)

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

(Clause 128 as amended agreed to)

Clause 129

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

THAT, Clause 129 be amended in subclause (3) by inserting the following new paragraph immediately after paragraph (d)-

(e) trade-in

Mr. Temporary Deputy Chairman, Sir, trade-in is now part of the ways of disposal, especially when you can get value for money through the exchange process.

(Question of the amendment proposed)

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

(Clause 129 as amended agreed to)

(Clauses 130, 131 and 132 agreed to)

Clause 133

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 133 be amended-

(a) by inserting the words "by the Controller and Auditor-General or his appointee" immediately after the word "audit" appearing in sub-clause (4);

(b) by inserting the following paragraphs immediately after paragraph (d) appearing in subclause (5)-

(e) Administration Police

(f) Kenya Wildlife Service

(h) such other institution as may be prescribed.

Mr. Temporary Deputy Chairman, Sir, this is an important amendment because in terms of security procurement, the Administration Police, Kenya Wildlife Service and other institutions that use arms are not actually part of it. So, it is to rationalise who falls under that. Also, it is to ensure that the Controller and Auditor-General or his appointee are the ones who audit.

(Question of the amendment proposed)

The Assistant Minister for Finance (Mr. Obwocha): Mr. Temporary Deputy Chairman, Sir, I need some clarification from the Chairman of the Departmental Committee on Finance, Planning and Trade. In our new Public Audit Act, do we have a Controller and Auditor-General? I thought it would be Auditor-General.

Mr. Kipchumba: Mr. Temporary Deputy Chairman, Sir, I want a clarification from the Chairman on "(h) such other institutions as may be prescribed". I think we will be opening a Pandora's Box on who else we should include in this amendment because he has listed almost all the forces that we can think of. So, when he leaves an open window, then it is subject to issues.

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, on the contrary, the idea of the last proposed amendment is to ensure that if any such institution would arise in future, it would also be prescribed as part of it as well. When you leave it without undertaking anything, that is when it becomes irrelevant. As for the Controller and Auditor-General, I am not aware that his title has changed to Auditor-General.

The Minister for Finance (Mr. Mwiraria): On a point of order, Mr. Temporary Deputy Chairman, Sir. I would like to recommend that Clause 4 be deleted, the reason being that when you have a list of items which are procured differently and not through the procurement system, you do not want to have them audited and put in the audit report. The reason why you buy items for security and you do not publicise that purchase is the need for secrecy and really you cannot issue an audited report on these items; otherwise, there will be no purpose of listing them and doing it outside the normal procurement procedure. What I think we really want to achieve is to ensure that procedures are followed in procuring; that items are bought through normal tenders but the committees which do the purchasing should comprise of people, say, in the army, and once that is done, the Auditor-General can audit it but I do not think we should make the audit report public. I would really plead with my colleagues that we delete this item.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Minister, for the sake of clarity, are you referring to Clause 4 on page 116 of the Bill?

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

The Temporary Deputy Chairman (Mr. Ethuro): So, you want it deleted from the Bill and

from the suggestions of the amendments?

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

The Temporary Deputy Chairman (Mr. Ethuro): So, it is the original Clause 4 in the Bill that the Minister wants to be deleted.

Mr. Kagwe: On a point of order, Mr. Temporary Deputy Chairman, Sir. To remove the confusion, can we dispose of the amendments that we have because what the Minister---

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Kagwe, now you are doing my job. Do yours and I will do mine. I was actually seeking clarification from the Minister so that it is very clear which Clause 4 he is dealing with; whether it is the one in the original Bill or the one that you have proposed in your amendments and he has made it abundantly clear that it is the one in the original Bill. They are a bit related like twins.

The Minister for Roads and Public Works (Mr. Raila): On a point of order, Mr Temporary Deputy Chairman, Sir. A clarification is needed here because if you look at Clause 4 (2) it says:

"The defence and national security organs shall manage the procurement and disposal on the basis of a dual list covering items subject to open and restricted to procurement and disposal methods respectively".

Clause 4 (4) says:

"The restricted list of items shall be subjected to classified audit and laid before Parliament in the annual report".

Mr. Temporary Deputy Chairman, Sir, my understanding here is that you have got two lists. One is subjected to ordinary audit by the Controller and Auditor-General, and then this other one which is restricted and, therefore, it is subjected to classified audit. So, what is going to be here is just a classified audit and not an open one like the other one which is in the other list. That is my understanding.

The Assistant Minister for Finance (Mr. Obwocha): But if you lay it before Parliament, then what is the purpose?

The Minister for Roads and Public Works (Mr. Raila): Mr. Temporary Deputy Chairman, Sir, I just dealt with the lump sum and not the agent. This is my understanding.

The Temporary Deputy Chairman (Mr. Ethuro): The issue was that there were amendments already made and I think that is what generated the discussion. The Minister has brought his own amendments which I am inclined to dispose of first on the principle that the subsequent amendments by the Committee were on the basis of the original amendments. Let us dispose that first and then tackle the amendments as proposed by Mr. Kagwe.

Mr. Kipchumba: Mr. Temporary Deputy Chairman, Sir, while I agree with the Minister, could he shed light on an issue? After the Controller and Auditor-General has looked at the accounts and there is misappropriation of funds, what will happen?

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Kipchumba. There is a procedural requirement that I have to propose the amendments as proposed by the Minister.

(Question of the further amendment proposed)

The Assistant Minister for Finance (Mr. Obwocha): Mr. Temporary Deputy Chairman, Sir, on this issue, there are certain classified items that security department is exempted. To answer Mr. Kipchumba, in the current system, if the Controller and Auditor-General finds that these are not in conformity, he normally tables them before the Public Accounts Committee (PAC) under confidence.

In fact, when I was Chairman, I dealt with one case where there was a lot of money spent on famine in Turkana. But when we went into confidence - I cannot tell you what they said - we were

satisfied that the money was properly used, because they presented documents and we saw what they bought.

Mr. Kipchumba: Mr. Temporary Deputy Chairman, Sir, then what he is confirming is that it still has to be tabled in Parliament, but under some very strict regulations.

Dr. Kibunguchy: Mr. Temporary Deputy Chairman, Sir, I would also like to say that sometimes it becomes very difficult, especially in this age and time, when we start talking about secrecy on security matters yet a lot of this information is available on the internet and all those other places. Really, are we justified in putting a lot of emphasis on issues of secrecy?

The Minister for Water and Irrigation (Ms. Karua): Mr. Temporary Deputy Chairman, Sir, tabling before Parliament means actually making it available to the House. It means it is a document belonging to the House, open to the scrutiny of all hon. Members. It also becomes, through the HANSARD, available to members of the public, as opposed to a confidential audit being given to a Committee of Parliament on a classified basis, and the information remaining limited in circulation. So, it is possible for the information to be available for audit by Parliament through the special mechanism, as a classified report to a specific Committee, under secrecy, as opposed to exposing it to everybody.

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, I do support the Minister in her sentiments. But when we discussed this issue, I think what we had alluded to is, indeed, what Ms. Karua has said; that there should be a special committee that vets the procurement in those circumstances. That committee itself should be sworn to secrecy.

The Minister for Roads and Public Works (Mr. Raila): Mr. Temporary Deputy Chairman, Sir, I share some sentiments of the Minister. The problem, really, here is the discretion which has been subject to a lot of abuse in the past. I think this is really what needs to be tightened up here; what will pass as security and what is subject to normal audit. But we could actually deal with that if we were to---- If you look at (4), it does not really imply that this will be subjected to normal scrutiny through the PAC like the others. I do not think so. It is just a normal audit statement, that these have been audited and have complied to normal practice, and that Parliament is, therefore, satisfied without having to scrutinise it. If that were to come out clearly here, then there would be no problem. Otherwise, I would then, probably, suggest that we end up at "classified audit" and remove the words "and laid before Parliament in the annual report".

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Chairman, Sir, the reason I wanted this subclause deleted is that any time the Controller and Auditor-General audits books and raises an audit query, he gets the information he wants. That information, as said by Mr. Obwocha, is always made available in confidence. So, my concern here is that, the way it is put, if we leave it, it will really become public information. There would be no point of having a special classified list. So, I think if we delete, we will still continue with the system that exists today, which is fairly satisfactory, in my view. I would plead that we do that. We have already introduced the proper purchasing procedures. We know they are subject to audit and there is not one cent of the Government's funds which is not audited.

I just want to assure the House about that. But we run the risk of having a special list, which we do not want to expose, and yet we are exposing it within the law. I would really plead.

Mr. Wambora: Mr. Temporary Deputy Chairman, Sir, the Committee foresaw this problem. We were not satisfied with the existing arrangement. We would rather go closer to what Mr. Raila said. We should state: "The restricted list of items shall be subjected to classified audit."

The Temporary Deputy Chairman (Mr. Ethuro): Actually, Mr. Minister, I was hoping that you would go in that direction, so that you amend your own amendment. It would neater that way.

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Chairman, Sir, I will accept to stop at "classified audit period."

The Temporary Deputy Chairman (Mr. Ethuro): That is true consensus! So, the Minister's amendment would read as follows: "Delete all the words after the word "audit"

The subclause would then read as follows: "The restricted list of items shall be subjected to

classified audit."

Mr. Kagwe, I need a clarification on "a", where you needed to specifically put the Controller and Auditor-General. Do you still want to proceed with that amendment?

Mr. Kagwe: Yes, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): That is all I need to know. I, therefore, wish to put the Question.

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

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

(Clause 133 as amended agreed to)

Clause 134

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

THAT, Clause 134 be amended-

(a) by deleting the words "three years" appearing in subclause (1) and substituting therefor the words "once annually".

(b) by deleting the words "in the regulation" appearing in subclause (4).

(Question of the amendment proposed)

Mr. Kipchumba: Mr. Temporary Deputy Chairman, Sir, I would like to further amend part (a) of the amendment to Clause 134, proposed by Mr. Kagwe, by deleting the words "once annually" and substituting therefor the word "annually".

Mr. Temporary Deputy Chairman, Sir, saying "once annually" is repeating oneself. The word "annually" is adequate in this case.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, I will go by Mr. Kipchumba's amendment.

(Question of the amendment to the amendment proposed)

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

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

(Clause 134 as amended agreed to)

(Clauses 135, 136, 137, 138 and 139 agreed to)

Clause 140

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

THAT, Clause 140 be amended-

(i) by deleting the word "may" appearing on the first line thereof and substituting therefor the word "shall".

(ii) by deleting the words "single members or" appearing in paragraph (d)

(Question of the amendment proposed)

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

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

(Clause 140 as amended agreed to)

(Clauses 141, 142, 143 and 144 agreed to)

(First Schedule agreed to)

Second Schedule

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

THAT, Section 4 of the Second Schedule be deleted and the following new section be inserted in place thereof-

"The Director-General shall be the Secretary of the Advisory Board"

(Question of the amendment proposed)

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

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

(The Second Schedule as amended agreed to)

Third Schedule

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

THAT, the Third Schedule be amended in Clause 14 by amending Section 199 to read as "Section 115"

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Kagwe, is the amendment you have moved the same as the one on the Order Paper?

Mr. Kagwe: Mr. Temporary Deputy Chairman, Sir, it is not the same as the amendment on the Order Paper. In the Bill, Section 119 deals with debarment. But now, Section 115 is the one that is dealing with debarment. So, this amendment is simply to rationalise the numbering.

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

(Question of the amendment proposed)

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

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

(The Third Schedule as amended agreed to)

Fourth Schedule

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

THAT, the Fourth Schedule be amended in Paragraph 16 by deleting the number "2004" and substituting therefor the number "2005"

(Question of the amendment proposed)

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

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

Title

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

THAT, the Title to the Bill be amended by inserting the words "efficient" and "assets" after the words "for" and "stores" respectively.

Mr. Temporary Deputy Chairman, Sir, this is basically the Title of the Bill. You will see that the Bill, at Page 46 reads, "An Act of Parliament to establish procedures for public procurement". We felt that the Act should not just establish procedure for public procurement but rather establish procedure for "efficient public procurement".

(Question of the amendment proposed)

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

(Title as amended agreed to)

(Clause 1 agreed to)

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Public Procurement and Disposal Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, we shall remain in the Committee of the whole House to dispose of the Forests Bill.

*[The Temporary Deputy Chairman
(Mr. Ethuro) left the Chair]*

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

THE FORESTS BILL

(Clause 2 agreed to)

Clause 3

The Minister for Environment and Natural Resources (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, before we deal with Clause 3, I need to point out that there was an omission by the Clerk's Department. The amendment as originally circulated has also been amended. I hope hon. Members have the updated version of the proposed amendments.

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

THAT, Clause 3 of the Bill be amended:

- (a) by deleting the definition of "forest conservation committee" where it first appears;
- (b) in the definition of "forest produce" by deleting the words "bat droppings" and substituting therefor the words "animal droppings";
- (c) by inserting the following new definitions in their proper alphabetical order:-
 - "forest conservancy area" means an area established by the Board under Clause 13;
 - "station" means the administrative unit of the Service, established under Clause 13.

The amendments basically deal with definition clauses.

(Question of the amendment proposed)

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I just want to understand what the Minister has said. He has said that there was a mistake by the Clerks' Department. We need to know whether the Order Paper we have is the correct and updated version, so that we can be able to follow. We need to get that clarification so that, he does not just say: "As per the Order Paper", and yet we are looking at an Order Paper which is not updated.

The Minister for Environment and Natural Resources (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, if Mr. Muturi will bear with me, we have a newly circulated letter to the Clerk

from the Attorney-General's Chambers. Basically, the original version appearing in the Order Paper omits recommended amendments to Clauses 18 and 54. It deals with Clauses 3 and 13. So, I think you should have another list.

The Temporary Deputy Chairman (Mr. Poghisio): We are amending the Bill as per this Order Paper!

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

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

The Temporary Deputy Chairman (Mr. Poghisio): Where is Mr. Bett? He had a further amendment!

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

THAT, Clause 3 of the Bill be amended-

(a) by inserting new definitions of the following words and phrases:-

- (i) "farm forestry";
- (ii) "river line forestry";
- (iii) "charcoal";
- (iv) "forest associations";
- (v) "roadside tree planting".

(Question of the further amendment proposed)

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

(Clause 3 as amended agreed to)

(Clause 4 agreed to)

Clause 5

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

THAT, Clause 5 of the Bill be amended by inserting a new paragraph (q) as follows:-

(q) in consultation the Attorney-General, train prosecutors from among the forest officers for purposes of prosecuting court cases under this Act in accordance with any other law relating to prosecution of criminal cases.

(Question of the amendment proposed)

The Minister for Environment and Natural Resources (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I wish to record that we had detailed consultations with the House Departmental Committee on these issues. So, rather than the Minister taking the Floor every time, I want to say that all the proposed amendments by Mr. Franklin Bett, on behalf of the Committee, have our approval. Therefore, they do not necessitate my intervention.

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

(Clause 5 as amended agreed to)

Clause 6

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

THAT, Clause 6 be amended:-

(a) in subclause (1) by

inserting the following new paragraph (b)-

(b) the Permanent Secretary for the time being responsible for matters relating to water, or a designated representative and by numbering the rest of the paragraphs accordingly;

(b) in subclause (3) by-

(i) deleting expressions "(2)(c)" and substituting therefor the expression "(1)(h)" and by deleting the word "designated" and substituting therefor the word "appointed";

(c) by deleting the word "his" wherever it appears and substituting therefor word "a"

(Question of the amendment proposed)

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

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

(Clause 6 as amended agreed to)

(Clause 7 agreed to)

Clause 8

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

THAT, Clause 8 of the Bill be amended by renumbering the paragraphs appearing immediately before subclause (2) as subclause (1).

(Question of the amendment proposed)

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

(Clause 8 as amended agreed to)

(Clause 9 agreed to)

Clause 10

Mr. Bett: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 10 of the Bill be amended:-

(a) in subclause (1) by inserting the words "in consultation with the Minister" after the word "Board";

(b) subclause (2) be amended by inserting the words "or related discipline" after the word "forestry" and by deleting the word "fifteen" and substituting therefor the word "ten".

(Question of the amendment proposed)

Mr. Kipchumba: Mr. Temporary Deputy Chairman, Sir, probably we need a clarification from the Chairman of the Committee. What does he mean by "related discipline". We run a risk of employing people without qualifications and call them "related" in that spirit.

Mr. Bett: Mr. Temporary Deputy Chairman, Sir, as you are aware, we send a good number of our children to schools to study environmental science and environmental law. Forestry is also included in those disciplines. We take into account those who come with environmental law or environmental science degrees. It does not necessarily have to be a degree in forestry.

Capt. Nakitare: Mr. Temporary Deputy Chairman, Sir, I feel that the word "discipline" has a number of definitions. It [Capt. Nakitare] may not be a plain language in this context. I would suggest that we stick to the word "forestry".

Dr. Kibuguchy: Mr. Temporary Deputy Chairman, I would like to get a clarification from Mr. Bett. He has said that; "in consultation with the Minister". I do not know what we wanted to say there. The procedure we are going to ask is that, there must be some approval of Parliament in most of these senior appointments. I do not know what he wanted to clear by simply saying that there must be consultation with the Minister.

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

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

(Clause 10 as amended agreed to)

(Clauses 11 and 12 agreed to)

Clause 13

Mr. Bett: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 13 of the Bill be amended -

(a) in subclause (3)(d) by deleting the words "local level" and inserting thereof the words "relevant conservancy area";

(b) in subclause (4)(e) by inserting the words "in consultation with the conservancy committees" immediately after the word "areas";

(c) in subclause (5) by inserting the words "but will not have voting powers"

immediately after the word "deliberations".

The Minister for Environment and Natural Resources (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I beg to move that Clause 13 of the Bill be amended further as elaborated in the earlier sheet which I referred to:

THAT Clause 13 of the Bill be amended by deleting subclause (1) and substituting therefor the following new subclause-

(1) The Board shall establish forest conservancy areas for the proper and efficient management of forests and may divide such conservancy areas into forest divisions and stations.

*(Question of the amendment
proposed)*

Mr. Bahari: Mr. Temporary Deputy Chairman, Sir, in Clause 13(4)(e), the amendment there reads "persons knowledgeable in forestry matters nominated by the forest association operating in the conservancy area in consultation with conservancy committee." I thought that the conservancy committee is the one we are putting in place. So, how can one consult with something that does not exist?

The Minister for Environment and Natural Resources (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I think the hon. Member has not seen the Definitions Clause. The conservancy committee is already given as such. So, we have in place a conservancy committee. In fact, under Clause 3, I proposed that the Definitions Clause be amended, and there is a definition of a forest conservancy area as well as conservancy committees. So, I refer the Member to the Definitions Clause.

Mr. Bahari: Mr. Temporary Deputy Chairman, Sir, so that it is very clear to me, in the clause we are trying to constitute, it says a forest committee shall consist of, and it says "four persons knowledgeable in forestry matters nominated by a forest association operating in the conservancy area." The amendment reads "in consultation with the conservancy committee." So, it is still not clear because the conservancy committee is being constituted. Some of the members are supposed to be from a forest association. So, we are saying again "in consultation with the conservancy committee."

The Minister for Environment and Natural Resources (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I think the hon. Member should distinguish between a conservancy committee and a conservancy area. So, the committees are established properly under the Act, if I understand him correctly.

Mr. Biwott: Mr. Temporary Deputy Chairman, Sir, I still have a problem with this. It appears to be that a conservancy committee will be in charge of the local forests, and not the local authority. I do not know why the local authority was not incorporated. I thought a local authority is much more relevant to local forests than that conservancy committee which is appointed.

The Minister for Environment and Natural Resources (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I think the hon. Biwott did indicate he had a problem of that kind. But I do not know why, because local authorities are given special responsibilities under this Bill. I do not know whether he has looked at that. I also wanted to allay the fears of hon. Bahari. If he looks at subsection (2), it says "there shall be established a Forest Conservation Committee." So, I do not understand his

problem, either.

Mr. Biwott: Mr. Temporary Deputy Chairman, Sir, I have no problem with the Minister if he can show me the relevant section which gives local authorities power to conserve forests and to relate to the Board. My main worry is that the Bill assigns responsibility to associations which are NGOs in everything but name.

The Minister for Environment and Natural Resources (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I cannot immediately locate the particular section. But I know that we have Government forests. Trust land is under county councils. The main thrust of this legislation is to have total involvement by all the stakeholders. So, there is no way anybody can rule out the participation of local authorities. Section 21 reads, "All forests in Kenya other than private and local authority forests--" So, anything that is under a local authority is under the local authority. I think that answers hon. Biwott's problem.

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

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

(Clause 13 as further amended agreed to)

(Clauses 14, 15, 16 and 17 agreed)

Clause 18

The Minister for Environment and Natural Resources (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 18 of the Bill be amended -

(a) in paragraph (i) by inserting the words "and protection" immediately after the word "maintenance" and inserting the words "trees and " immediately after the word "sacred", the word "groves".

(b) in paragraph (k) by inserting the words "protection and" immediately after the word "the" and inserting the word "trees" and immediately after the word "unique".

(c) by inserting a new paragraph (m) as follows -

(m) the management and protection of protected trees

(d) by renumbering paragraph (m) as paragraph (n).

(Question of the amendment proposed)

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

(Clause 18 as amended agreed to)

(Clauses 19 and 20 agreed to)

Clause 21

Mr. Biwott: Mr. Temporary Deputy Chairman, Sir, could the Minister explain to us in simple language what this provision means. It is clear to me that there will be forests which will be managed by local authorities and others will be private, then everything else will become State forest. I have a problem there. We have Kaptagat Forest which has given us one hell of a problem. The local people are penalised all the time, yet Raiply and Pan paper and other people who are given licences directly from Nairobi, are benefitting from the forest. That is upsetting the whole environment. The local people, who have conserved that forest all along, are marginalised in their own area. So, I would like to know exactly where Kaptagat Forest falls; whether it falls under the local authority or the State.

Mr. Khamasi: On a point of order, Mr. Temporary Deputy Chairman, Sir. Hon. Biwott is seeking an explanation from the Minister. I believe this would have come at the time when the Minister was responding. We are now in the Committee of the Whole House and I am wondering whether he is in order to seek an explanation, instead of, probably, proposing an amendment to this clause.

The Temporary Deputy Chairman (Mr. Poghisio): Yes, I think hon. Biwott should propose an amendment at the Committee Stage or probably try to seek a clarification on the issues. Hon. Khamasi is right that these are issues which should have been raised at an earlier stage.

Mr. Mwandawiro: Mr. Temporary Deputy Chairman, Sir, what hon. Biwott is saying is very important. There are local authorities' forests, for example, where I come from and there are communities' forests which are different from the local authorities' forests. These forests will be alienated if we pass this clause when they are not provided for. It is important for the Minister to give an explanation or you allow hon. Biwott to propose an amendment to include these forests.

The Minister for Environment and Natural Resources (Mr. Musyoka): Mr. Temporary Deputy Chairman, Sir, I want to assure hon. Mwandawiro that these forests are actually provided for. No community, which is properly seized of any forest, will be dispossessed; including county councils. This is as clear as that. I really do not understand the hon. Member's frustrations. I hope he can understand that this is as plain as that. This law intends to empower all the communities, including local authorities, with regard to the ownership of all lands. Some of it is categorised as State forests, county council forests or Trust Lands and private, which could also include communal; where that is clearly elaborated.

Mr. Biwott: Mr. Temporary Deputy Chairman, Sir, my argument should actually have come before, but you will remember that I raised this argument during the debate, but because of the closure of the debate, we had to resort to amendments. It is very important that we do not treat some Kenyans differently from others. If a forest, which is relied on by a community, is taken away from the people and possibly alienated, that is going to create a big problem. Indeed, we are affected and we are feeling it!

The Temporary Deputy Chairman (Mr. Poghisio): Order, hon. Biwott! At this stage, it does not matter what arguments are brought forward, unless they are in form of amendments. Nothing can really change. You have made a statement, but I do not think the Minister has any opportunity to change anything at this point except through an amendment.

Capt. Nakitare: Mr. Temporary Deputy Chairman, Sir, I am wondering whether hon. Biwott's contention is not a matter of administration. This does not arise at this stage. He is raising a matter of administration which is different from what we are doing.

(Clause 21 agreed to)

Clause 22

Mr. Bett: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 22 of the Bill be amended by deleting the word "taking" and substituting therefor the word "using".

(Question of the amendment proposed)

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

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

(Clause 22 as amended agreed to)

(Clauses 23, 24 and 25 agreed to)

Clause 26

Mr. Bett: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 26 of the Bill be amended-
(a) in Subclause (2)(a) by deleting the word "is" appearing immediately after the word "forest";
(b) in Subclause (3) by inserting the words "for a period of three years subject to review" immediately after the words "the owner thereof".

(Question of the amendment proposed)

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

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

(Clause 26 as amended agreed to)

(Clauses 27, 28 and 29 agreed to)

Clause 30

Mr. Bett: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 30 of the Bill be amended-
(a) in Subclause (1) by deleting the words "in as far as reasonably practicable";
(b) in Subclause (3) by deleting the words "in as far as reasonably practicable";
(c) by deleting Subclause (5) and substituting therefor the following new subclause-
(5) No arboretum, mini-forest or recreational park shall be converted to any other use unless the local authority consults the residents of the area in the jurisdiction within which such arboretum, mini-forest or recreational park is situate.

(Question of the amendment proposed)

Mr. Bahari: Mr. Temporary Deputy Chairman, Sir, I would like the Chairman of the Committee to explain what he means by "in as far as reasonably practicable".

Mr. Bett: Mr. Temporary Deputy Chairman, Sir, that is the reason why we are deleting those words.

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, I would like to seek further clarification from the Chairman of the Departmental Committee on Agriculture, Lands, and Natural Resources. What mischief is hoped to be achieved by the inclusion of the new subclause 5, which talks about the arboretum, mini-forests and the rest?

Mr. Bett: Mr. Temporary Deputy Chairman, Sir, we were hoping that every institution should create a recreational facility for the enjoyment of the people in that location.

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

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

(Clause 30 as amended agreed to)

(Clause 31 agreed to)

Clause 32

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

THAT, Clause 32 of the Bill be amended in Subclause (2) by deleting the word "valuation" and substituting therefor the words "valuer appointed by the Board on recommendation by the relevant professional body".

(Question of the amendment proposed)

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

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

(Clause 32 as amended agreed to)

Clause 33

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

THAT, the Bill be amended in Clause 33 by deleting subclause (3) and substituting

therefor the following new subclause-

(3) Where an application has been submitted under subsection

(1), a person aggrieved by the decision of the Board may appeal to the National Environment Tribunal established under the National Environmental Management and Coordination Act.

(Question of the amendment proposed)

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

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

(Clause 33 as amended agreed to)

Clause 34

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

THAT, Clause 34 of the Bill be amended-

(a) in subclause (1) by deleting the word "Board" wherever it appears and substituting therefor the words "the Minister";

(b) in subclause (3) by deleting the word "Board" substituting therefor the words "the President on the advice of the "Minister".

(Question of the amendment proposed)

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

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

(Clause 34 as amended agreed to)

*(Clauses 35, 36, 37, 38, 39,
40 and 41 agreed to)*

Clause 42

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

THAT, Clause 42 of the Bill be amended-

(a) in subclause (1) by inserting the word "such" immediately after the word "in" in the last line of the proviso;

(b) in subclause (3) by inserting the words "and consent obtained from the Commissioner of Mines" at the end of the subclause.

(Question of the amendment proposed)

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

(Clause 42 as amended agreed to)

(Clause 43 agreed to)

Clause 44

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

THAT, Clause 44 of the Bill be amended by deleting the words "exceeding twelve months" and substituting therefor the words "less than six months" and by deleting the words "exceeding five hundred thousand shillings" and substituting therefor the words "less than one hundred thousand shillings."

As you recall, in the past, courts have been imposing very little fines and sentences where minimum sentences are not provided for which do not punish the offenders enough.

(Question of the amendment proposed)

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

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

(Clause 44 as amended agreed to)

(Clause 45 agreed to)

Clause 46

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

THAT, Clause 46 of the Bill be amended by inserting the words "provided no such application shall be made where there is an existing prior agreement or licence" immediately after the word "Act."

(Question of the amendment proposed)

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

(Clause 46 as amended agreed to)

Clause 47

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

THAT, Clause 47(1) of the Bill be amended-

(a) in subclause (1) by inserting the word "such" after the words "conservation of";

(b) in subclause (2)-

(i) by deleting the word "may" and substituting therefor the word "shall";

(ii) by inserting a new subparagraph (iii) as follows-

(iii) In case of establishment of plantations under the non-resident cultivation, the non-resident shall be allowed to cultivate in the forest for a period not exceeding three years.

(Question of the amendment proposed)

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

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

(Clause 47 as amended agreed to)

(Clause 48 agreed to)

Clause 49

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

THAT, Clause 49 of the Bill be amended-

(a) in subclause (1)(a) by deleting the word "grossly;"

(b) by deleting subclause (3) and by renumbering the rest of the subclauses accordingly.

(Question of the amendment proposed)

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

(Clause 49 as amended agreed to)

Clause 50

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

THAT, Clause 50 of the Bill be amended-

(a) in subclause (1) (b) by inserting the words "suspected to have come from such forest," immediately after the word "produce;"

(b) in subclause (2)(b) by deleting the words "property" and "forest owner" and by inserting the words "proprietor" immediately after the words "rights of the."

(Question of the amendment proposed)

(Question, that the 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)

(Clause 50 as amended agreed to)

(Clause 51 agreed to)

Clause 52

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

THAT, Clause 52 of the Bill be amended –

(a) in subclause (1)(e) by deleting the word "livestock" after the expression "de-pasture;"

(b) in subclause (2) by deleting the word "exceeding" appearing immediately after the words "a fine not" and substituting therefor the words "less than" and by deleting the word "exceeding" after the words "a term not" and substituting therefor the words "less than".

(Question of the amendment proposed)

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

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

(Clause 52 as amended agreed to)

Clause 53

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

THAT, Clause 53 of the Bill be amended by deleting the words "exceeding five hundred thousand shillings" and substituting therefor the words "less than two hundred thousand shillings" and by deleting the words "exceeding five years" and substituting therefor the words "less than three years."

(Question of the amendment proposed)

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

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

(Clause 53 as amended agreed to)

Clause 54

The Temporary Deputy Chairman (Mr. Poghisio): Hon. Members, I think the first amendment here is by the Minister.

The Assistant Minister for Environment and Natural Resources (Prof. Maathai): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 54 of the Bill be amended by-

(a) deleting subclause (1)(e);

(b) inserting a new subclause (1A) as follows-

(1A) Any person who wilfully or maliciously sets fire to any private, provisional, local authority or state forest commits an offence and is liable to a fine of not less than two hundred thousand shillings or to imprisonment for a term of not less than one year or both.

(c) by deleting the paragraph appearing immediately after subclause (4)

(d) inserting the following new subclauses -

(5) The livestock detained under paragraph 50(1) shall be auctioned at the expiry of seven days if the owner does not claim them, and the proceeds of the auction shall be paid to the Service.

(6) Neither the Service nor any officer of the Service shall be liable for the injury, loss or death of any livestock seized or detained under section 50(1).

(e) renumbering subclause (5) as subclause (7).

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

THAT, Clause 54 of the Bill be further amended-

(a) in subclause (1)-

(i) in subparagraph (f) by inserting the words "or is found in possession of" after the word "makes;"

(ii) by deleting the words "exceeding one hundred thousand shillings" and substituting therefor the words "less than fifty thousand shillings" and by deleting the word "exceeding" appearing immediately after the words "a term not" and substituting therefor the words "less than."

(b) in subclause (2) by deleting the words "exceeding one million shillings" and substituting therefor the words "less than five hundred thousand shillings" and by deleting the words "exceeding ten years" and substituting therefor the words "less than three years";

(c) in subclause (5) by deleting the words "exceeding five million shillings" and inserting thereof the words "less than three million shillings;"

(d) in subclause (5) by inserting a new paragraph (d) as follows-

(d) extracts, removes, or causes to be removed, any tree, shrub or part thereof for export.

(Question of the amendment proposed)

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

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

(Clause 54 as amended agreed to)

(Clauses 55 and 56 agreed to)

Clause 57

Mr. Bett: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 57 of the Bill be amended by deleting the words "not exceeding" and
substituting therefor the words "less than."

(Question of the amendment proposed)

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

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

(Clause 57 as amended agreed to)

(Clause 58 agreed to)

Clause 59

Mr. Bett: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT the Bill be amended by deleting Clause 59.

This is because the procedure is already taken care of in the civil Procedure Code of the Laws
of Kenya.

(Question of the amendment proposed)

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

(Clause 59 deleted)

Clause 60

The Assistant Minister for Environment and Natural Resources (Prof. Maathai): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, clause 60 of the Bill be amended in subclause (2) by inserting the following new paragraph (r)-

(r) regulating charcoal production, transportation and marketing of charcoal.

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

THAT, Clause 60 of the Bill be further amended:

(a) in subclause (2) by inserting a new paragraph (r) as follows-

(r) prescribing for the manner of nomination of representatives of forest associations to Conservancy Committees;

(b) by deleting subclause (5).

(Question of the amendment proposed)

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

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

(Clause 60 as amended agreed to)

(Clause 61 agreed to)

Clause 62

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

THAT, Clause 62 of the Bill be amended by deleting the words "Kenya's obligation" and substituting therefor the words "treaties, conventions or international agreements concerning forest or forest resources to which Kenya is a party".

(Question of the amendment proposed)

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

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

(Clause 62 as amended agreed to)

(Clause 63 agreed to)

Clause 64

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

THAT, the Bill be amended by inserting the expression "and Part XII" after the expression "Part VI" and by inserting the words "as well as reference to the National Environment Tribunal" between the words "assessment" and "required" and by deleting the words "to be undertaken in relation to it".

(Question of the amendment proposed)

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

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

(Clause 64 as amended agreed to)

(Clause 65 agreed to)

Clause 66

Mr. Bett: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 66 of the Bill be amended in subclause (1)(b) by inserting the words "with the approval of the Minister" immediately after the word "shall" in the third line.

(Question of the amendment proposed)

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

(Clause 66 as amended agreed to)

Clause 67

Mr. Bett: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, clause 67 of the Bill be amended in subclause (2) by inserting the words "approval of the Minister" after the word "shall".

(Question of the amendment proposed)

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

(Clause 67 as amended agreed to)

(Clause 68 agreed to)

First Schedule

Mr. Bahari: In Part 1 on the Establishment of the Offices, it looks like this is an administrative issue---

The Temporary Deputy Chairman (Mr. Poghisio): Order, Mr. Bahari! I realise, and I think the Minister needs to know, that this is an amendment which has not been circulated. I do not think you are privy to this. He will make it and, of course, we will make a ruling on it. We will put it to a vote.

Mr. Bahari: Mr. Temporary Deputy Chairman, Sir, I request that they listen so that they do not oppose for the sake of opposing. That section establishes specific offices in the Service. Every time the Kenya Forest Service wants to establish another office, they will have to come here and amend this Schedule. I do not think that is fair to the Service. So, I wanted to propose that Parts 1 and 2, that establish those offices, be deleted and the rest of the Schedule be maintained.

Mr. Temporary Deputy Chairman (Mr. Poghisio) This is for Mr. Bahari who brought the amendment. I need to look at it and make a ruling on it because it is a drastic amendment requiring that we make a deletion.

As per the Standing Orders, no amendment shall be moved to any part of a Bill by any hon. Member other than the Minister in charge of the Bill, unless written notification thereof shall have been given to the Clerk of the National Assembly before the commencement of the sitting at which that part of the Bill is considered in Committee. In any case, it deletes all sections of the provision and it has not been circulated. I do not think I should at this juncture allow it to go through. I am sorry!

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, we quite agree with the provisions of the Standing Orders, but I think it is important that the Ministry notes that, by including this kind of offices like Forest Officer 1(A) or Forest Officer 1(B) or Senior Forest Officer as it happens in the Government, you will require to come to Parliament to amend the Act. I think it is only fair that we advise the Ministry to look at the wisdom, or lack of it, in relation to making these provisions.

The Temporary Deputy Chairman (Mr. Poghisio): Prof. Maathai, what do you have to say about that?

The Assistant Minister for Environment and Natural Resources (Prof. Maathai): Mr. Temporary Deputy Chairman, Sir, I think I actually listened to that argument, but we were thinking of the fact that by having very specific offices, then you are also able to control the budget. I have listened to your argument, but I do not know what we can do at this stage.

The Temporary Deputy Chairman (Mr. Poghisio): If a Minister wants to move an amendment, he or she can do so at any stage. If it comes from you, it will be okay.

Capt. Nakitare: Mr. Temporary Deputy Chairman, Sir, in that context, shall we be given copies so that we may know the contents of the amendment?

The Temporary Deputy Chairman (Mr. Poghisio): Yes, it can be read.

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, the recruitment of forest guards is purely an administrative matter. I am sure if they consulted with more experienced staff, they would have realised that.

The Assistant Minister for Environment and Natural Resources (Prof. Maathai): Mr. Temporary Deputy Chairman, Sir, it may be a little bit difficult because we had discussed this at the Ministry level. We had agreed on that and the feeling is that we leave the Schedule the way it is at the moment.

The Temporary Deputy Chairman (Mr. Poghisio): Does the Chairman of the Committee agree with this?

The Assistant Minister for Roads and Public Works (Mr. Kones): Yes, Mr. Temporary Deputy Chairman, Sir. However, I was wondering whether I heard Mr. Muturi correctly.

*(First, Second and Third
Schedules agreed to)*

(Title agreed to)

(Clause 1 agreed to)

The Assistant Minister for Environment and Natural Resources (Prof. Maathai): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Forests Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS

THE PUBLIC PROCUREMENT AND DISPOSAL BILL

Mr. Poghiso: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Public Procurement and Disposal Bill and has approved the same with amendments.

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Assistant Minister, Office of the President (Mr. M. Kariuki) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Public Procurement and Disposal Bill be now read the Third Time.

The Assistant Minister for Environment and Natural Resources (Prof. Maathai) seconded.

(Question proposed)

The Assistant Minister, Office of the President (Mr. M. Kariuki): Mr. Temporary Deputy Speaker, Sir, let me congratulate the Minister for bringing this Bill before the House. It is long overdue. I hope that the promotion of local industries is going to be a priority. We need to empower our people and give them priority in considering procurement.

(Question put and agreed to)

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

THE FORESTS BILL

Mr. Poghiso: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered the Forests Bill and has approved the same with amendments.

The Assistant Minister for Environment and Natural Resources (Prof. Maathai): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Assistant Minister for Trade and Industry (Mr. Miriti) seconded.

(Question proposed)

(Question put and agreed to)

The Assistant Minister for Environment and Natural Resources (Prof. Maathai): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Forests Bill be now read the Third Time.

The Minister for Finance (Mr. Mwiraria) seconded.

(Question proposed)

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, I also congratulate the Assistant Minister for the passage of this Bill that was long overdue. We do not want to hear of the forest rangers and officers scavenging in our forests and then blaming everybody around. They are now responsible and we want our forests back.

The Assistant Minister for Trade and Industry (Mr. Miriti): Mr. Temporary Deputy Speaker, Sir, I would like to congratulate the Minister for Environment and Natural Resources for the passage of this Bill. With the passage of this Bill, we will have less problems with forests and issues to do with forests will now be dealt with faster than before. Foresters will also not harass people who enter forests with authority in future.

Dr. Kibunguchy: Mr. Temporary Deputy Speaker, Sir, I also would like to join my colleagues in congratulating the Minister for the passage of this Bill. For a long time, the passage of this Bill has been an excuse for people not to do anything in our forests. I am also glad to note that local communities have been given a fairly big role in the management of our forests.

Mr. Mwandawiro: Bw. Naibu Spika wa Muda, nawaunga wenzangu mkono katika kumpongeza Waziri kwa kupitishwa kwa Mswada huu. Naomba tuzingatia kwamba jamii zinazoishi karibu na misitu zitashiriki kikamilifu katika kuhifadhi na kujifaidi kwa misitu iliyoko karibu nao.

Mr. Waithaka: Mr. Temporary Deputy Speaker, Sir, I also wish to add my voice in thanking the Minister for bringing this Bill and its successful passage in this House. I hope that wanton destruction of forests will now be a thing of the past. As we all know, our forests were actually destroyed by foresters. Now, they will not repeat the same mistake. It is a sad thing that our forests were actually destroyed by the people charged with the responsibility of taking care of them.

The Assistant Minister for Gender, Sports, Culture and Social Services (Mrs. Chelaite):

Mr. Temporary Deputy Speaker, Sir, I also would like to join my colleagues in congratulating the Minister for the passage of this Bill. I hope that, from now onwards, those communities which have suffered a lot because of the *shamba* system will now have a good guideline showing them how they should take care of our forests.

Mr. Rotino: Mr. Temporary Deputy Speaker, Sir, in congratulating the Minister for the passage of the Bill, I would like to say that it is one thing to pass a Bill and another to implement it. The Ministry should be able to implement the Bill and stop the immense corruption among the forest officers.

Capt. Nakitare: Mr. Temporary Deputy Speaker, Sir, I also would like to congratulate the Minister for Environment and Natural Resources. As we all know, this Bill will go a long way in improving forests in this country. Our forests and the ozone layer have been messed up. The environment that we now have will be supported as a result of this new Bill. I hope the Minister will promote the expansion of tree nurseries, so that seedlings are available to the communities.

(Question put and agreed to)

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

The Temporary Deputy Speaker (Mr. Khamasi): Hon. Members, let us move on to the next Order.

BILL

Second Reading

THE PRIVATISATION BILL

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Speaker, Sir, let me introduce this important Bill, which has been before this House since 2003.

Mr. Temporary Deputy Speaker Sir, State corporations were initially established to address critical development and national challenges at Independence. Through State corporations, we intended to accelerate economic and social development, redress regional economic imbalances, increase our people's participation in the economy, promote indigenous entrepreneurship and promote foreign investment. Through this strategy, we were able to mobilise both local and foreign resources for investment in the country's infrastructure and to participate directly in economic activities. There is no doubt that we reap many benefits from this strategy through the development of our country's productive capacity and creation of employment for our people and other economic resource exploitation. Nevertheless, in a changing world, this strategy has continued to experience diminishing effectiveness and can no longer be relied upon to mobilise the required resources for development in our country. Due to mismanagement, wastage and inefficiencies of parastatals, many of which have continued to operate as inefficient monopolies shielded from any form of competition and market forces, many of the parastatals have made losses over the years---

Mr. Poghisio: On a point of order, Mr. Temporary Deputy Speaker, Sir. I would like to seek your guidance. The Minister, in moving this Bill, just went straight to his notes and did not properly list the contents of the Bill before the House. Is he in order not to just even read what is provided for?

The Temporary Deputy Speaker (Mr. Khamasi): Mr. Poghisio, thank you for bringing that to my attention. Mr. Mwiraria, under our Standing Orders, you have to move the Bill in the right way. Start by saying: "I beg to move that the Bill be read a Second Time." You can then delve into your

speech.

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

THAT, the Privatisation Bill be read a Second Time.

The Temporary Deputy Speaker (Mr. Khamasi): Right! You can now proceed!

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Speaker, Sir, I want to give a brief history of how State corporations were established to address critical developmental and national challenges. It is important for the House to note that many of the parastatals that we established did achieve their objectives of promoting development and encouraging local entrepreneurship in different parts of the country. However, some of them have continued to lose their effectiveness. Many of them have continued to operate as inefficient monopolies shielded from any form of competition and market forces.

Mr. Temporary Deputy Speaker, Sir, many parastatals have accumulated huge deficits and, therefore, they have not been able to generate the kind of surpluses that investments require, if they are to be renewed and modernized as is necessary. The financial resources required to rehabilitate and modernize key parastatals to enable them to achieve levels of efficiency required to make the country's goods and services competitive, not only in the local but also in the regional and world markets, add up to a very large amount of money, between Kshs30 billion and Kshs80 billion annually over the next five years. We cannot afford to have such a large outlay just to keep parastatals running.

I want to add that, earlier, we were able to access resources from our development partners for financing infrastructure and for development needs through parastatals. Those resources are increasingly becoming scarce and are also being tied to the private sector participation. In this respect, we must look to the private sector, through privatization and other forms of public/private partnerships, to mobilize resources to meet the demand for services necessary to support the country's economic development, the nation's productive capacity and the needs of a growing population. In addition, we must ensure that the support which the Treasury gives annually to feeble, weak and inefficient parastatals is removed once and for all.

Mr. Temporary Deputy Speaker, Sir, I started by saying that the Privatization Bill was first presented to this House in November, 2003. This Bill lapsed before it was deliberated upon, and it was republished in March, 2004, when it was debated comprehensively by the House for five days in May, 2004. The latter Bill was discussed with the Finance, Planning and Trade Committee in November, 2004, and it was agreed to recast the Bill, rewrite it and present it to the House again. It is for this reason that we have redrafted the Bill to incorporate the changes proposed by the House and by the Finance, Planning and Trade Committee, as well as to address all issues raised by hon. Members on the Bill during debate in 2004.

We have made amendments to the old Bill to accommodate views of hon. Members and I will quote just a few. For instance, as proposed by the Finance, Planning and Trade Committee, the new Bill before the House has been redrafted to rearrange the clauses to enhance coherence by establishing the Privatization Commission before vesting it with duties. As proposed by the Committee, Section 4(2)(f) of the 2004 Bill has now been split, and it appears as Section 18(2)(f) and (g) to provide separately for broadening of the base of ownership in the Kenyan economy and for enhancement and development of the capital market.

During the earlier debate, there was also concern that the level of disclosure in the Bill was not sufficient. The current Bill provides for disclosure, which has been agreed upon between the Ministry and the Finance, Planning and Trade Committee, and it provides for disclosures as follows:-

Section 17(3) says:-

"The privatization programme shall be published in the Kenya Gazette".

This will be done, so that all Kenyans shall be made aware of the intended sale.

Section 30(1) says:-

"After a privatization proposal is approved by the Cabinet, the Commission shall publish a notice of the proposed privatization".

Section 30(2) states:-

"The notice shall be in at least two newspapers with a national circulation and the notice shall be published at least twice with there being at least seven days between the first and the last publication".

(2) Section 36 says:-

"When, for a privatization, it is determined to whom the assets, operational control or operations are to be transferred and on what terms, the Commission shall publish a notice in the Gazette of what has been determined".

Section 41(1) says:-

"After an agreement to give effect to a privatization becomes binding on the appropriate public entity, the Commission shall promptly publish a notice of the privatization in the Gazette".

(2) "The Notice shall set out the following:-

- (a) a description of the assets or operations being privatized;
- (b) a description, in summary form, of the transaction used to give effect to the privatization;
- (c) the names and addresses of the persons to whom the assets, operational control or operations are being transferred; and,
- (d) such other information as the Commission considers appropriate".

Mr. Temporary Deputy Speaker, Sir, there are several other items dealing with disclosure, such as Sections 15 and 28. Section 15 specifically states:-

"The Commission shall be audited in accordance with the Public Audit Act, 2003".

The audit report shall be tabled in the House and discussed by the relevant Committee of Parliament, following which the Committee's report will also be made available to the public.

In addition, the Bill provides a fairly elaborate appeals system which provides opportunities for Kenyans to challenge any sale, if irregularities are detected.

Mr. Temporary Deputy Speaker, Sir, another concern which was expressed by hon. Members was that, during privatization, the original purpose for which a corporation was established may be ignored or lost, thus opening gaps in the provision of services once a corporation has been privatized. A provision has been made under Subsection 24(a)(iv) to ensure that these concerns are adequately addressed as part of each privatization proposal. Another concern which was expressed was about the utilization of the privatization proceeds. To obviate this concern, a provision has been made under Section 24(h) to ensure that this is adequately addressed as part of the privatization proposal.

In addition, under Clause 47, it has also been indicated that the sale of direct Government equity holding will be paid into the Consolidated Fund, while the proceeds from a corporation's equity holding will be deposited into a special interest-bearing account established by the corporation to protect the erosion of its balance sheet, and will be used to liquidate the corporation's debts, meet costs of financial and organisational restructuring and pay for capital investments of the corporation. A provision has also been made under Clause 47(4) that any surplus fund will be paid into the Consolidated Fund.

Mr. Temporary Deputy Speaker, Sir, another concern which was expressed by this House was that the requirement that the Chairman of the Privatisation Commission must have a degree either in Law, Economics or Accounting was restrictive and discriminatory.

QUORUM

Mr. Rotino: On a point of order, Mr. Temporary Deputy Speaker, Sir. This Bill is very important and yet there is no quorum in the House!

The Temporary Deputy Speaker (Mr. Khamasi): It is true that we do not have a quorum now. Ring the Division Bell!

(The Division Bell was rung)

The Temporary Deputy Speaker (Mr. Khamasi): Order, Members! We have a quorum now! You may proceed, Mr. Minister!

The Minister for Finance (Mr. Mwiraria): Mr. Temporary Deputy Speaker, Sir, I was referring to the clauses in the Bill which are considered restrictive. There was a suggestion that the Chairman of the Privatisation Commission must have a degree in either Law, Economics or Accounting. In order to get rid of this objection, we have now re-drafted the clause and it now requires that the chairman must have a degree, be a person of high integrity and have, at least, ten years of high level experience in either public or private practice. This removes the restrictions that were in the initial Bill.

Mr. Deputy Temporary Speaker, Sir, with regard to the composition of the proposed commission, there was concern that some key professions were left out. There is room now under subclause 5(1)(d) to bring in any additional professional expertise required by the commission under the present law. What had been done under the old law was re-drafted as subclause 5(1)(e) to ensure that expertise in accounts, law and human resources, which will run through all the activities of the commission, are made abundantly available to the commission. We would like to emphasise that members nominated by the three institutions specified in the Bill will not be representatives of those institutions, but resource people in their areas of specialization.

Mr. Temporary Deputy Speaker, Sir, issues were raised regarding Ministerial direction over the Privatisation Fund, and the direct use of the Fund. The Privatisation Fund was to pay for the restructuring of State corporations and for consultancy retained to give advice with respect to privatisation. The relevant clause has now been removed. The commission will be financed through funds provided by the Exchequer, and funds held by the corporations concerned.

Concerns were also raised concerning Ministerial powers under the old subclause 16(1) to determine the percentage of shares to be sold to Kenyans, or a specified category of Kenyans. This has now been re-drafted so that proposals on how Kenyans are to be encouraged to participate in the transaction will be provided for under subclause 24(1) and approved as part of the privatisation proposal.

Mr. Temporary Deputy Speaker, Sir, another point that attracted a great deal of attention from hon. Members was the fact that there was a feeling that Parliament was not being given a role to play in the whole privatisation process. Under the present law, Parliament has a key role of enacting the law under which the transactions have to take place, and ensuring proper accountability by the Executive; by scrutinising the operations of the commission when the commission's reports audited by the Controller and Auditor-General are submitted to Parliament, as well as through appropriate Committees of Parliament. In this respect, in drafting the Bill, care has been taken to ensure that separation of powers between the Executive and the Legislature is maintained, so as to hold the Executive accountable for the process. It is also important, in implementing privatization, that the commission maintains the role of a principal representative and interacts with the parties interested in privatisation within the process outlined in the law and without outside interference. That way, the commission will maintain the integrity of the process and carry out its work within the time-frame

acceptable in transactions of this nature.

Mr. Temporary Deputy Speaker, Sir, under subsection 14(a), the Bill provides for the appropriation of funds to the Commission by Parliament. subsection 14(b) does not provide any appropriation of any public funds. What it does is to provide for the approval for the commission to access grants from bodies such as the Public Private Infrastructure Advisory Facility of the World Bank which are not available for appropriation through the Budget, but can be accessed for preparatory work for transactions. As in other laws, we have maintained the appointment of the chairman of the tribunal by the Executive. If the tribunal is biased and fails to make a fair decision, the aggrieved party retains the right to appeal to the High Court. We have also reviewed the proposal that the tribunal be appointed on an *ad hoc* basis. That would cause delay in resolving disputes as more time would be taken in making appointments. It would also make the process easier to abuse in the absence of any form of tenure and make it difficult to involve members in many skill-building initiatives. We have, therefore, under Section 44, maintained a five-year term for the chairman and a period of three years for the other members. To reduce costs relating to the tribunal, the allowances of the members will be determined by the workload of the tribunal.

Mr. Temporary Deputy Speaker, Sir, under the law that we are going to discuss now, we have Section 35; which deals with regulation of monopolies. That is to ensure that unregulated monopolies are not privatised. It is considered necessary for protection of consumers, especially in cases of natural monopolies where any efforts to breakup monopolies would increase costs and result in higher charges to the consumers. Pre-emptive rights are investors' legal rights which should not be forcefully taken away from them, as that would discourage investment. In addition, to the extent to which corporations privatised earlier were sold legally within the existing laws, there would be no net benefits in repossessing them, as that would likely be very expensive in terms of compensation to the current owners.

Mr. Temporary Deputy Speaker, Sir, there were also specific sections where hon. Members required clarifications. Section 6, which is now Section 20, provides for non-prescribed transactions to be implemented under the commission. That allows the Government to utilise specialised transaction capacity enacted under the commission to implement major transactions such as issuing a major mining licence to the private sector, which is not considered as a privatisation transaction. Section 8(1), which has been re-drafted, recognises that there are many activities contracted to the private sector under the procurement regulations which would be considered as privatisation under the law. The purpose of the clause is to limit the scope of the commission's mandate to ensure that it is not preoccupied by work for which provisions have been made under other laws, and for which implementation capacity is already available within the law. Provision under subsection 26 of the old law, now re-drafted as Sub-section 39(1), provides for the counter-signing of sale agreements by the Permanent Secretary to the Treasury. That is one of the other provisions that we have to contend with. That provision has been made to ensure that all financial obligations, arising from privatisation, have been fully assessed and necessary commitments made by the Treasury. Those were some of the key policy issues raised on the Privatisation Bill, 2004, when it was debated in this Parliament in May, 2004 and, subsequently, discussed in the Finance, Planning and Trade Committee. All the issues have been reviewed carefully and amendments made on the Bill before the House after taking into account the country's legal framework and all the technical aspects necessary to implement the effective and efficient privatisation transactions. That is considered necessary to maximise the benefits to be accrued from the programme.

Mr. Temporary Deputy Speaker, Sir, I have spoken at length. I have gone through most parts of the Bill because it is important for this country. At the moment, one of the development partners, the European Union, is awaiting its enactment as a condition to releasing 50 million Euros to the country. I believe it would really be in the interest of this nation if we went through the re-drafted Bill, which has taken into account most of the concerns that were expressed by hon. Members, and

approve it before we break for recess.

Let me conclude by saying that I am confident that we have addressed all the issues that were raised by hon. Members. Hon. Members also have had an opportunity to discuss this Bill. I hope they will give it their considered opinions, criticisms, suggestions and bring any amendments.

With those few remarks, I beg to move.

The Temporary Deputy Speaker (Mr. Khamasi): Who will second? His Excellency the Vice-President and Minister for Home Affairs!

The Vice-President and Minister for Home Affairs (Mr. Awori): Mr. Temporary Deputy Speaker, Sir, I beg to second the Privatisation Bill. The Minister has gone into great lengths to address the concerns that hon. Members raised when the Bill was discussed for five days. A lot of development work is awaiting the passing of this Bill. As the Minister has indicated, one of the development partners - the European Union - is waiting to see whether this Bill will be passed, so that it can release the badly-required funding. We must recognise the fact that, the Government has no business doing business!

Mr. Temporary Deputy Speaker, Sir, it is, therefore, important now to look at the private sector as an agent for reviving our economy. The fears that were raised in this House were genuine. In the past, we have had investments of the Government going into private hands for a song and this does not help our country at all. We want to have a situation whereby, if an organisation belongs to the Government but the Government does not have the ability to run it properly, then it should be privatised but there must be accountability. People must know who is buying it and at what cost. We must sell it to the very highest bidder and all this is now incorporated in the Bill. Therefore, I want to urge hon. Members of Parliament to accept the Bill as it is so that we can pass it before we go on recess next week.

With those few remarks, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Mr. Khamasi): Mr. Maore, are you the Official Opposition Responder?

Mr. Maore: No, Mr. Temporary Deputy Speaker, Sir. The Official Opposition Responder will be ready to contribute next week. I want to air my views on this Bill.

Mr. Temporary Deputy Speaker, Sir, if we talk of privatisation, this Bill should have been among the first five Bills the NARC Government should have enacted in view of very passionate views that were expressed here over the years specifically by the Minister for Planning and National Development; about the issue of privatisation. If you remember, there were very passionate adjectives used about how the then Government was able to dispose of strategic public assets to the then politically-correct for a song sometimes under very mysterious and dubious circumstances.

Mr. Temporary Deputy Speaker, Sir, you can remember very well that, just before the general elections, there was a very big debate and dance between the Investment Secretary, Treasury, the Public Investments Committee (PIC) and some other interested Members of Parliament about the attempted sale of the Kenya Re-Insurance Corporation. I remember that time I was a member of the PIC and how we had to fight a very spirited battle to stop it.

When we talk of privatisation, the issue that comes to mind very quickly is the story of valuation of the assets that we have. If you remember the Question we had, about a week ago about Safaricom, an issue whereby the interested parties, in this case, Vodafone on the one hand and MTN on the other hand, trying to do valuation of a company that they want to express interest in, is unheard of. We want express and clear clauses in this Bill that will be able to safeguard the public from the "marauding" politicians who want to "prey" on public assets in order to feather their nests.

Mr. Temporary Deputy Speaker, Sir, the other quick example that comes to my mind is the issue of Investment Corporation and Development Corporation (ICDC) that happen to hold a lot of parastatals in trust for the Government. We have several examples and I remember in the Public Accounts Committee (PAC), whereby the ICDC did surrender shares in Firestone---

Mr. Chepkitony: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for hon. Maore to refer to politicians as "marauding"?

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, I think I was just being polite. I would have called them "economic scavengers"!

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Maore! We do not use offensive language here and you know that!

Mr. Maore: Absolutely, Mr. Temporary Deputy Speaker, Sir! However, I wanted to explain to you that a scavenger is an animal that does not know how to prey. It does not use its energy. It goes to those carcasses that are already there and in this case you can have those "economic scavengers" who went to Firestone and took shares.

Mr. Chepkitony: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the word "scavenger" parliamentary in comparison to human beings?

The Temporary Deputy Speaker (Mr. Khamasi): Mr. Maore, I think hon. Chepkitony has a point. Could you be a little more polite in the manner you want to describe others?

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, usually those people who are faceless usually hide. So, they are not very fine gentlemen in town, if we can have respect and mercy for them. Anyway, let me continue.

Mr. Temporary Deputy Speaker, Sir, I was saying that the ICDC surrendered shares at less than a quarter value at Firestone and several other corporations. If we recall the issue at hand also, we are going to have a lot of other public companies that are going to be up for privatisation like Kenya Commercial Bank (KCB), National Bank of Kenya (NBK), Development Bank and the remainder of the Housing Finance Company of Kenya (HFCK). So, all these companies including Kenya Railways Corporation, Kenya Ports Authority (KPA) and Telkom Kenya and maybe even the remainder of the Kenya Airways shares to Kenyans will be affected. We want some clear guidelines whereby when we download these shares, they are taken to the public through the Nairobi Stock Exchange and not through the so-called strategic investors.

Mr. Temporary Deputy Speaker, Sir, I will not be surprised if, after we pass this Bill, the European Union (EU) instead of releasing the Kshs50 million euros, they will start saying that they want to see action. They want to see whether Britain, US or other European merchants will be allowed to have a share in KCB, NBK or these other strategic corporations and not mostly for the interest of those companies or Kenyans, but for their own shareholders. So, we want this Privatisation Bill, when it becomes an Act, to protect us from those international shylocks who will only come to scavenge on those parastatals that are making profits. You will find that in parastatals like the Kenya Railways Corporation, they want to keep a long distance, the reason being that it will require---

QUORUM

Mr. Chepkitony: On a point of order, Mr. Temporary Deputy Speaker, Sir. There is no quorum in the House!

The Temporary Deputy Speaker (Mr. Khamasi): Indeed, there is no quorum. Ring the Division Bell!

(The Division Bell was rung)

The Temporary Deputy Speaker (Mr. Khamasi): Order, hon. Members! We now have a quorum.

Mr. Maore, you can continue!

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, I was explaining the role of the Government in safeguarding public interest in public corporations. The real intention of these corporations, at first, was to ensure that the Government is able to have interest in those public firms. It is also important to note that the purpose is to create money for the Exchequer. It is important also to note that, over the years, instead of the surpluses of cheques being written to the Treasury in bonuses, they became bottomless holes in which to drain the public coffers and help those individuals who were running those corporations. The Chair will agree with me that there are no polite or civilised references to use, except that these were economic saboteurs and scavengers of the worst order.

Mr. Temporary Deputy Speaker, Sir, as we talk of public and private partnerships, the Government should note that it can never be a good entrepreneur. Governments always are good when they are regulating; creating conducive environment for free enterprise. When the Government gets involved in private business, it becomes an avenue for corruption, cronyism and all the bad virtues in business.

When we want to sell off Government shares in parastatals, at first, they have always been sold with what we call the "Executive fiat"; without making reference to Parliament, on whose legitimate authority they were founded. It is for this reason that we are delighted that a Bill is before this House to empower the Government to have legal authority with which to do what we call the initial public offers in the Nairobi Stock Exchange.

Mr. Temporary Deputy Speaker, Sir, I urge the Minister to stand firm, at the height of ultimate pressure from the British or their mothers and grandmothers who want to come and pick free shares in the Kenya Commercial Bank, Safaricom, National Bank of Kenya, Kenya Ports Authority or Kenya Airways. They should, instead, come and participate through the Nairobi Stock Exchange; competing with Kenyans, and not pretending to be strategic partners or investors when they should let Kenyans do it. We do not know whether the Kenya Government or any Kenyan companies have shares in Vodafone (UK), British Telkom or even in Magadi Soda Company where the Queen is a major shareholder. When the contract expired, there was a lot of pressure on the Government to renew it. We do not have any Kenyans who have shares in the Magadi Soda Company.

Mr. Temporary Deputy Speaker, Sir, when all is said and done, this is a good Bill. We do not mind whether it came as a result of pressure from the donors or the goodwill of the Government. But, at last, we have a Bill that will enable us to mobilise local resources for investment by Kenyans.

Mr. Temporary Deputy Speaker, Sir, my last emphasis is on the issue of indigenous entrepreneurship. Indigenous does not include the current cowboys. It includes the hawkers, *matatu* operators, vegetable vendors in *Marigiti* and those ordinary Kenyans who should walk with Kshs200 or Kshs400 and invest it in the Nairobi Stock Exchange. Kenyans need to save. The only way to have them save is to create a conducive environment where there are laws to ensure that, when you go and invest in a company that is publicly listed, you are sure the Ministry in charge will not do what they have been doing with the insurance companies. When you go to the Commissioner of Insurance, he gives a list of the companies they have cleared or licensed. You then pay for a cover for your vehicle and the following day, you are told the company has closed down. You can only hope that you are strong enough to go and buy a cover from another company. That is reckless behaviour by a regulator. We should take caution. If you license a corporation to operate, especially as a regulator, you should be able to take responsibility for its bad manners.

(Mr. Wamwere entered the Chamber)

without bowing to the Chair)

The Temporary Deputy Speaker (Mr. Khamasi): Order, Mr. Maore! Mr. Wamwere, go back to the Bar and bow to the Chair!

*(Mr. Wamwere went back to the
Bar and bowed to the Chair)*

Thank you! You may now proceed, Mr. Maore!

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, I think he was dreaming about the fiery Nakuru politics.

The issue that I was explaining is that we want to have Kenyans empowered, and not foreigners. The exercise may be foreign-induced but, at the end of the day, we want to help Kenyans.

With those remarks, I beg to support.

The Assistant Minister for Co-operative Development and Marketing (Mr. Kenneth): Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill. I rise to support the Bill and thank the Minister sincerely, for taking us through it and, indeed, for having taken note of what hon. Members had said in the previous attempt to go through the Bill. At that time, we had raised a lot of concerns. I must say that I am happy that the Ministry of Finance has taken its time and gone through what we thought were the grey areas of the Bill. We can now look forward to a process that can withstand the test of time.

Mr. Temporary Deputy Speaker, Sir, privatisation is not an easy situation for any country. It is important to appreciate that some of the institutions that we seek to privatise were started using taxpayers' money. It is, therefore, important that when these institutions are sold, the taxpayers' money is not only recovered, but it is recovered with accumulated interest for the years during which it was invested.

It is important that we look at the institutions we seek to privatise. We need to address the state in which they are, so that when we offer them for privatisation, they are not in appalling conditions whereby the highest bidder does not necessarily give us the amount that we would like to have. I would like the Minister to realise that it is important that, as we proceed on privatisation, we are also able to restructure the institutions that we want to privatise.

Mr. Temporary Deputy Speaker, Sir, the previous speaker alluded to the fact that, prior to the last elections, the Kenya Reinsurance Corporation (Kenya Re), where I was the Chief Executive, was being privatised in a rushed manner. Two years down the road, if one looks at what was going on at the Kenya Re, and consider how strong the institution is today, one can see that, with time, some of the institutions that were not well valued can actually change course and be a source of income for our Treasury.

In the case of the Kenya Re, whose privatisation I was opposed to because of the valuation, we already had in our bank account the US\$10 million that was being offered. We, indeed, had about US\$20 million in our bank accounts. Also, the company's liabilities, *viz-a-viz* its property portfolio, were less. If the company is valued today, it will fetch about six times the amount we were offered then; just two-and-half years ago. So, I hope the Minister will take advantage of the prevailing situation and make a kill.

Mr. Temporary Deputy Speaker, Sir, the position I am trying to state is that, if we put in place a well-structured system before we privatise any of our institutions, it will help the Minister to raise more funds from the exercise, than what he might get when valuation of the institutions we want to privatise is carried out immediately.

The second point that I would like to stress is: Bearing in mind that most Government

corporate bodies were started using taxpayers' money, it would be important if the same taxpayers are given the opportunity to buy those shares first. It would be important if we took a deliberate step to build our stock exchange. Our stock exchange has been very vibrant. I think it is important to off-load the shares at the stock exchange. I know that the Minister has been very supportive of the local taxpayers. Companies like National Bank of Kenya (NBK) and Kenya Commercial Bank (KCB) do not have strategic partners, but they are surviving very well at the stock exchange. They are among the blue chip companies that are doing very well in the Nairobi Stock Exchange. If you look at the shares of the NBK, they have gone up from a meagre Kshs2 per share, two-and-a-half years ago, to Kshs22 per share today. That shows a growth of about 2,000 per cent. So, I want to encourage the Minister that, as he looks into privatisation, let him think about the stock exchange. If there is any strategic partner who would like to buy shares, let him also participate through our stock exchange. It is important that we also build our stock exchange. As I said earlier, when you look at the Eastern and Central Africa Region, the Nairobi Stock Exchange (NSE) is the most vibrant. So, if we were to list more companies, we would encourage capital from the Eastern and Central Africa Region. As we try to integrate through the Common Market for Eastern and Southern Africa (COMESA), or the East African Community, it is important that we have stocks that can be taken advantage of. If we were to take advantage by placing everything in the stock exchange, we would actually make Nairobi a capital city of other capital cities. So, I want to encourage the Minister to think about it. We should use our stock exchange more openly.

Since the Minister has been very clear, and we have discussed this Bill before, I beg to support.

Mr. Mwandawiro: Ahsante sana, Bw. Naibu Spika wa Muda, kwa kunipa nafasi hii kuupinga Mswada huu kwa dhati sana. Mswada huu wa Ubinafishaji tukiupitisha, itakuwa ni sawa na kuuza mali ya umma ya wananchi wa Kenya kwa Euro 50 milioni. Sina budi kusema hivyo, hata ikiwa nitakuwa peke yangu. Mimi nafuatilia sana haya maswala kwa undani. Kwa miaka kumi, nimeshughulika sana kufanya utafiti na kuangalia ni wapi sera za ubinafsishaji; sera ambazo zinatoka katika Benki ya Dunia na Sherika la Fedha la Kimataifa, zimefaulu duniani.

Bw. Naibu Spika wa Muda, baada ya kuangalia maswala hayo kwa kirefu sana na hasa siasa-uchumi za Kiafrika, nimegundua kwamba mara nyingi tunaenda kombo kwa sababu tunatafuta suluhisho rahisi kwa maswala ambayo ni magumu sana. Ningependelea sana kama katika nchi hii, na hata Afrika, tungepata nafasi ya kujiangalia sisi wenyewe. Tujaribu kufanya utafiti na kuangalia rasilimali zetu. Tuangalie historia yetu na kujijumulisha na historia ya dunia, hasa katika enzi za utandawazi.

Hizo ndizo nadharia za kibepari, nadharia za kuja na utandawazi ambazo zinasema kwamba mali yoyote ile inayokuja na dola, lazima uchumi wa namna hiyo utaanguka; kutakuwa na ufisadi, utakwama na hautaendelea. Hizo ni nadharia za kibepari ambazo ziko hapo. Ninaona kwamba swala la kimsingi ambalo linatuhusu hapa ni kujaribu kule kuamua kwamba sisi ati kama nchi kwa sababu ya kushinikizwa na mashirika ya kifedha na wafadhili kutoka nje, na kwa sababu ya kujaribu kutafuta masuluhisho rahisi, na vile vile kwa sababu ya kufuata tu mambo ambayo yanaendelea humu duniani, sasa tunafikiria katika nchi yetu kwamba tukifanya ubinafsishaji wa mashirika ya umma, tutaukwamua huu uchumi kutoka pahali ambapo ulipo. Nikiangalia, jinsi Wabunge wengi wamesema katika mazungumzo yao, inaonekana swali ni rahisi kwamba mashirika ya umma---

(Loud consultations)

The Temporary Deputy Speaker (Mr. Khamasi): Order! Order, hon. Members! Let us hear the opposing views! Could you consult quietly?

Mr. Mwandawiro: Bw. Naibu Spika wa Muda, mashirika ya umma yameshindwa kufanya kazi kwa sababu ya sababu halisi. Kwanza, kuna wizi ndani yake, ufisadi na ukosefu wa utaalumu kwa

upande wa watu ambao wamepewa nafasi kuyaendesha hayo mashirika na sababu nyingine mbali mbali. Kwa mfano pia, Serikali haifai kuingilia hayo mashirika zaidi badala ya kuyapatia uhuru wa kuendesha mambo. Ningemuomba Waziri wa Fedha na yule wa Mipango na Maendeleo ya Kitaifa watuletee katika Bunge hili Mswada wa kurekebisha mashirika ya umma, lakini sio wa kuuu na kuangusha. Ninaamini, na historia itakuwa shahidi wangu, kwamba mashirika ya umma na mali ya dola yanaweza kurekebishwa. Tunaweza kusahihisha yale makosa ambayo yamefanywa; kama ni wizi, ufisadi, ukabila ama kuyanyima uhuru. Ninaamini hatujafanya utafiti wa kutosha.

Bw. Naibu Spika wa Muda, hata hizo nchi zenyewe ambazo zinatushinikiza eti tubinafsishe mashirika ya umma katika nchi yetu, ndani yao wenyewe, mashirika ya umma yanafanya kazi sana. Nimekaa Sweden miaka nyingi, na chemists zote ni za Serikali na zinafanya kazi. Hata pombe ya aina yoyote ile inauzwa na dola. Hata mambo ya usafirishaji yanafanywa na hawa watu. Kutokana na itikadi na msingi niliyonayo, nimejaribu kuangalia na kusoma jinsi ilivyokuwa kule Urusi kabla ya kuanguka kwa hizo dola za kikomunisti na kujaribu kulinganisha maisha ya watu na maisha ya kiuchumi katika hizo nchi na hali ilivyo sasa. Nimegundua kwamba baada ya kuanguka kwa dola za kikomunisti kule Urusi na mashirika ya umma yakabinafsishwa, Urusi, ambayo ilikuwa inatoa misaada kwa hii nchi na kote Afrika, kusomesha watu bure, ambayo ilikuwa na uchumi imara kabisa na ambayo ilikuwa inaendelea katika sayari ya hali ya juu, kisayansi na kiteknolojia, hivi leo tunashindania pamoja kupewa hela na mabepari wa kimataifa.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Khamasi): Order! Mr. Mwandawiro, you still have 24 minutes when Debate on this Motion resumes.

Hon. Members, it is now time to interrupt the business of the House. The House is, therefore, adjourned until Tuesday, 9th August, 2005 at 2.30 p.m.

The House rose at 7.30 p.m.