

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 9th October, 2007

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Report of the Departmental Committee on Finance, Planning and Trade on the Appointment of Members of the Board of the Privatisation Commission.

(By Dr. Oburu)

Annual Report and Accounts of the Kenya National Assurance Company (2001) for the year ended 31st December, 2006, and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Health
(Dr. Machage) on behalf of the
Minister for Finance)*

ORAL ANSWERS TO QUESTIONS

Question No.482

LIST OF PEOPLE ALLOCATED

LAND AT BARARGET

Mr. Bett asked the Minister for Lands:-

- (a) whether he could table the list of people recently allocated land at Bararget in Nakuru District; and,
- (b) what criteria was used to allocate the said land.

The Assistant Minister for Lands (Mr. Kamama): Mr. Speaker, Sir, I beg to reply.

- (a) I am not able to forward the names of the people recently allocated land at Bararget Settlement Scheme in Nakuru District because no recent allocation has been done to the scheme.
- (b) As in (a) above, the issue of the criteria used does not arise.

Mr. Bett: Mr. Speaker, Sir, I am not satisfied with the answer given by the Assistant Minister. Nevertheless, there was balloting which was conducted in Molo three months ago, purportedly to allocate land in Bararget Settlement Scheme, whereas the Assistant Minister has

said that there was none.

If there were other allocations before then, how much land has been given out at Bararget Forest?

Mr. Kamama: Mr. Speaker, Sir, at Bararget, we are settling allottees from the Likia Extension Group. The process is ongoing, but it is not complete. When we are through with this process, we will advise those who are concerned or those who want to get information on this matter.

Mr. Cheboi: Mr. Speaker, Sir, Bararget Settlement Scheme is in my constituency. The people who were settled there are the land clashes victims who had been evicted from Lare. Recently, the Ministry of Lands acquired a property from hon. Njenga Karume and they specifically said that they were going to resettle those people from Likia.

Could the Assistant Minister confirm that the people from Likia will be settled on the former Njenga Karume's farm and the land in Bararget Settlement Scheme will be used to settle the squatters that are in Kuresoi Constituency, who came from Lare, and the other squatters from around that area, who have not benefited from such settlements? We should not have people from outside the district.

Mr. Kamama: Mr. Speaker, Sir, the hon. Member for Kuresoi knows very well that His Excellency the President issued over 12,000 title deeds around 2005. We have assisted the people of Kuresoi Constituency in particular. On the issue of settling squatters, I want to confirm to the House that there are many squatters in Nakuru District, specifically in Molo and Kuresoi.

We will take care of these squatters. We have many schemes at the moment, for example, Kivulini Scheme and others. We will take care of the Likia and the Lare people that he has talked about.

Mr. Angwenyi: Mr. Speaker, Sir, the Assistant Minister has said that he will take care of the squatters in Nakuru District. When will he take care of the squatters in Kisii District? When the Assistant Minister is settling these squatters, could he consider settling squatters from Kisii District?

Mr. Kamama: Mr. Speaker, Sir, we have officers in several districts in Kisii, like Mugirango and the rest. If any hon. Member has a problem with anything to do with squatters, he should forward that request through the District Land Adjudication Officer and the Provincial Administration in the particular district.

Mr. Bett: Mr. Speaker, Sir, I have no other question, but the Assistant Minister has not given us the list of the persons who have been allocated land in the scheme. That is the crux of the matter. There are complaints that the exercise is selective and one-sided.

We would want to know the people whom he has said are being allocated land either in Bararget, former Njenga Karume's land or in Kivulini Scheme.

Mr. Kamama: Mr. Speaker, Sir, I have just said that the list is being compiled and once the Minister approves it, I will be in a position to table it in this House.

Question No.480

FAILURE TO ACCOUNT FOR FUNDS FOR
CONSTRUCTION OF SAMBURU DO'S OFFICE

Mr. Rai asked the Minister of State, for Administration and National Security:-

(a) whether he is aware that a sum of Kshs194,844.90 meant for the construction of the District Officer's office in Samburu Division has not been

accounted for since 2003;

(b) who the contractor awarded the tender was; and,

(c) what measures he is taking to restore the confidence of the community and ensure the amount in question is accounted for.

The Assistant Minister, Office of the President (Mr. Kingi): Mr. Speaker, Sir, before I reply, I want to apologise in that there is a typing error in part (a) of my written answer. Part (a) should read "I am not aware" and not "I am aware", as it is written.

Mr. Speaker, Sir, I beg to reply.

(a) I am not aware.

(b) The tender, which was a labour contract, was awarded to a Mr. M.N. Mjomba.

(c) The District Commissioners (DCs) for Kwale and Kinango have been instructed to immediately institute a technical committee of competent officers to undertake investigations into the expenditure of funds raised by the community with a view to establishing whether or not there may have been some misappropriation during the construction of the office.

We will take the appropriate action once the committee tables the report.

Mr. Rai: Mr. Speaker, Sir, the exercise of constructing this DO's office was done in 2001. When the community was not satisfied with what was happening because of interference by the then DO, a probe committee was formed and a report was tabled on 2nd September, 2003. One of the recommendations of the committee was that there was a shortage of about Kshs194,000, and part of this money had actually been taken by the DO.

When this issue was raised, the DO was transferred and promoted by this Government. Since 2003, the Assistant Minister is telling me that they have now constituted a team of investigating officers. When is the team going to finalise its work and cause this money to be recovered?

Mr. Kingi: Mr. Speaker, Sir, we have given the DCs two weeks within which to carry out the exercise.

Mr. Sambu: Mr. Speaker, Sir, when the Constituencies Development Funds (CDF) are allocated to the constituencies, we get reports from the CDF Committees and the District Development Officers (DDOs). These reports are even posted at the chief's offices. This House has tried to bring the Fiscal Analysis Bill so that Government officers can account for the funds which have been allocated and which are to be used for specific projects.

Could the Assistant Minister instruct all the DCs and all the departmental heads in the districts to be posting to the chiefs' offices the amounts which have been approved for projects and amounts which have been approved at the end of each financial year?

Mr. Kingi: Mr. Speaker, Sir, that is a good suggestion and we will do that.

Mr. Rai: Mr. Speaker, Sir, could the Assistant Minister explain to the House the purpose of this inordinate delay? This matter was raised by the community in 2003. I have a report which I wish to table before the House. The Assistant Minister should tell us when this money will be recovered and sent back to the DO's office, Samburu, for the construction of this particular office.

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

Mr. Kingi: Mr. Speaker, Sir, we will look at the document. However, the office in question was undertaken through a joint effort by the Government and the community. The community raised Kshs450,000 and the Government contributed Kshs200,000. The money that was contributed by the Government has been properly accounted for. It is the money that was contributed by the community that we have a problem with. That is why we have instructed the

DCs to appoint a technical committee to look into the matter and table a report that will advise us on the way forward.

Question No.488

ADOPTION OF RECOMMENDATIONS OF
MWANGOVYA COMMISSION

Mr. Ojaamong asked the Minister for Administration and National Security:-

(a) when the Government will adopt the recommendations of the Joseph Mwangovya Commission which was constituted to determine the boundaries of Teso, Mt. Elgon, Bungoma and Busia Districts; and,

(b) whether he could table the report of the Commission.

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

(a) District boundaries raise emotive feelings between communities. Due to this sensitive nature of boundaries, the Government did not, and has no intention of implementing the recommendations of the Mwangovya Commission.

(b) The Committee completed its work and a report was handed over to the appointing authority to study before implementation. As I have already said, we have looked at it and we have no intention of implementing the recommendations therein.

Mr. Ojaamong: Mr. Speaker, Sir, first, I must thank the Assistant Minister for being forthright. What is causing the problem is that the Government wants the Luhya people to sit on the Teso people who are a minority in Busia District. The district headquarters which is being occupied by the Busia District Commissioner and Government officials is in Teso and belongs to the Teso people. Now, that the President recently created Teso South District and the people of Teso want to move to Busia, what arrangements does the Ministry have to ensure that the Busia people leave Busia Town, so that the Teso people go back to their offices?

Mr. Speaker: How does that help you?

Mr. Kingi: Mr. Speaker, Sir, as I have already said, it is no longer fashionable to appoint a committee to determine the boundaries of any given district. Nowadays, we ask the communities, through their leaders, to sit together and decide on any new boundaries, be they administrative or any other. I would advise the leaders in those districts to sit together and decide on the new boundaries of the districts, so that we can use them as the way forward.

Mr. Ahenda: Mr. Speaker, Sir, this Government has got the tendency of setting up commissions after commissions using public funds. You heard the Minister say that he has no intention, to either make the report public or to implement it. What was the rationale of the Government spending millions of shillings on this Commission and then keep the report in its drawers?

Mr. Kingi: Mr. Speaker, Sir, this is something that was done before this Government came to power. It is no longer fashionable to appoint a committee to determine the boundaries of any given district. Nowadays, we do it through the leaders of communities.

Mr. Sungu: On a point of order, Mr. Speaker, Sir. The hon. Member for Amagoro has asked a specific Question as an hon. Member of this House. Is the Assistant Minister in order to decline to table that report? In the name of transparency and accountability, he can, at least, table that report as requested. He cannot decline. Is he in order?

Mr. Speaker: He is perfectly in order! He cannot table a document he has not adopted and

accepted. He said he will not accept it. So, it is not his document!

Mr. Karaba: Mr. Speaker, Sir, it is true that the Government normally spends a lot of money on these commissions. There are commissions that are personal. There was one in Kirinyaga where Archbishop Gitari was almost killed by thugs and a commission was constituted. However, we have never heard from that commission. Could the Assistant Minister tell us how many commissions have been constituted using Government funds? How many reports of those commissions have been tabled here?

Mr. Speaker: What did you say about the commission in Kirinyaga?

Mr. Karaba: Mr. Speaker, Sir, I said Archbishop Gitari was almost killed by thugs in Kirinyaga District and an inquiry was instituted by the then Government. However, to date, the report of that commission has never been tabled here. We are fearing that similar things can happen, especially now that elections are around the corner.

Mr. Kingi: Mr. Speaker, Sir, I think the question of how many commissions have been appointed is a totally different one from what I am handling now. If the hon. Member wants to know how many commissions have been appointed by this Government, let him file a proper Question and we will bring the answer to Parliament.

Mr. Ojaamong: Mr. Speaker, Sir, I know the Assistant Minister knows the whole scenario on the ground. We have Teso people in Bungoma district. They are living under tyranny. We have those living in Busia District---

The Assistant Minister for Foreign Affairs (Mr. Wetangula): On a point of order, Mr. Speaker, Sir. Is the hon. Member in order to stand here and whip ethnic hatred? The people of Teso live in Bungoma District which is my district. There is no tyranny going on there at all. Is the hon. Member in order to inflame the feelings of Kenyans on ethnic lines when we, as leaders, are supposed to bring people together and encourage Kenyans to live anywhere and everywhere they wish to live?

Mr. Speaker: Order, hon. Members. This is a very serious issue. I cannot foresee and neither is this desirable that a community should be rounded up from wherever they are and live in one locality. It is not feasible. It is not desirable and I think it is abhorrent. I think all Kenyans must be free to live anywhere and everywhere, and do so, as free citizens.

Members of Parliament, I said last week: Although we have imminent elections, that is no excuse to use language that can cause trouble. I think we must be very responsible, particularly at this time. Even those saying *Majimbo* and whatever that means, I cannot foresee a state where *Majimbo* will be introduced to remove Kenyans from wherever they are. It is not feasible, desirable or practical.

Mr. Angwenyi: On a point of information, Mr. Speaker, Sir!

Mr. Speaker: Are you informing me? I am very well informed.

Mr. Ojaamong: Mr. Speaker, Sir, now that the Government cannot determine the boundaries, could the Assistant Minister give the people an opportunity by way of a referendum, to decide where they want to belong?

Mr. Kingi: Mr. Speaker, Sir, I think the people of Kenya are free to live anywhere. I have some Teso living in Kilifi. I cannot understand what the hon. Member is saying. In any case---

Mr. Mwandawiro: On a point of order, Mr. Speaker, Sir. We cannot belittle this Question by the hon. Member of Amagoro, while the Government is brewing trouble in the country. Right now, they are creating districts like Taita and Taveta districts without defined boundaries. Is it in order for him to belittle this Question?

Mr. Speaker: Order! Mr. Mwandawiro, were you in this House last week? It was just last week that I talked about political hysteria, which apparently, has afflicted you very badly.

(Laughter)

So, could you, please, cool down?

Mr. Kingi: Mr. Speaker, Sir, I think the districts we are creating are supposed to bring services closer to the people. You can imagine that the people of Taveta used to travel about 150 kilometres in order to see their District Commissioner. Now we have sent their DC there, so that they can be served as nearer as possible. I do not think that this will cause any kind of animosity.

Mr. Ojaamong: On a point of order, Mr. Speaker, Sir. The Assistant Minister has said that they are creating districts in order to bring services closer to the people. Is he in order to mislead the House when Busia District headquarters is inside Teso? Which services is the Government taking closer to Busia and the district headquarters in is Teso?

Mr. Speaker: If I may just ask a very simple question. A town is a town. It has properties, buildings, schools, hospitals, police stations and Government institutions. Do the Teso own those things as a community rather than as individuals?

Mr. Ojaamong: Mr. Speaker, Sir, most of the properties in town belong to the Teso. The Government offices were meant for Teso. So, instead of the Vice-President's people moving to Busia, they have remained squatting there. They have outlived their usefulness and welcome in that place. We want to occupy those offices now that we have a district; Teso South District.

Mr. Speaker: What exactly is bothering you? What is it you want? Let me get it right. If the private buildings are owned by Teso and they have not been expelled or taken away from them, what is the problem?

Mr. Ojaamong: Mr. Speaker, Sir, the problem is that these people have moved almost a kilometre into Teso. We want them---

Mr. Speaker: Who are these people?

Mr. Ojaamong: The people of Busia District.

An hon. Member: Are they Kenyans?

Mr. Ojaamong: Mr. Speaker, Sir, it is just like Kenya having its capital city in Kampala. Is that workable?

Mr. Speaker: Order! If Kampala was part of the Republic of Kenya, then legitimately, Kenya could have a capital there. There is no comparison between the sovereign states of Kenya and Uganda and the administrative districts of Busia and Teso. They are administrative units; they are not sovereign. They are not independent.

Mr. Ojaamong: Mr. Speaker, Sir, maybe you cannot understand the confusion. The OCPD Busia is inside Teso. The OCPD Teso has been told not to move here. The OCPD Busia cannot give security to the people of Teso who are living around that area. Those people have been left at the mercy of criminals. There are so many inconveniences.

The people of Busia cannot repair the roads where the district headquarters is. So, the people who are suffering are those I represent in Parliament. There is conflict between Government sectors---

Mr. Speaker: Could I just get this right? Is Busia a municipality? There must be something that is disturbing the hon. Member. I would like to find out what it is, so that he can be helped. Is it a municipality?

Prof. Ojiambo: Mr. Speaker, Sir, the hon. Member is misleading the House about Busia and Teso districts. The people living in Busia Town are neither Teso nor Busia people. They are Kenyan people.

Mr. Speaker: Order, hon. Members. I am tempted to leave this issue because we are going

in circles. Can we leave it?

Mr. Bett: Mr. Speaker, Sir, I think I have a solution. There are, indeed, problems on boundaries when new districts are created. Would I be in order to request the Government to translate every constituency in this country to be a district, so that there is no problem concerning boundaries?

Mr. Speaker: Would that solve your problem?

Hon. Members: Yes!

Mr. Bett: It would solve the problem.

Mr. Omondi: Mr. Speaker, Sir, we had a similar problem with Nyahururu and Laikipia districts. However, it was resolved. Could the Assistant Minister tell us how that problem was resolved?

Mr. Speaker: Order, hon. Members! Mr. Omondi, for the record, Nyahururu is still the headquarters of Nyandarua District although it is in Laikipia, and that is a fact. I will leave this matter now!

Question No.484

PAYMENT OF HARDSHIP ALLOWANCE
TO PUBLIC OFFICERS IN
SUBA DISTRICT

Mr. Syongo asked the Minister of State for Public Service when payment of hardship allowance for public officers serving in Suba District will commence.

The Assistant Minister, Ministry of State for Public Service (Mr. Mganga): Mr. Speaker, Sir, I beg to reply.

A team of officers from the Permanent Public Remuneration Review Board, Teachers Service Commission (TSC) and the Ministry of Planning and National Development was sent to Suba District from 23rd to 26th September, 2007, to assess whether the district should be gazetted as a hardship area to qualify for hardship allowance. The team has now presented a report, which is being analyzed. Once the process is over, the necessary action will be taken immediately. Suffice it so say, currently, teachers working in Mfangano and Rusinga Islands of Suba District are being paid a hardship allowance by the TSC. The Government is, therefore, looking for ways of harmonising the hardship allowance payable to teachers and civil servants once the area is found to qualify for the same.

Thank you.

Mr. Syongo: Mr. Speaker, Sir, while I thank the Assistant Minister for that answer, that team was sent only after the Question was raised in Parliament, yet the issue has been there for a long time. Indeed, the Assistant Minister showed me a report last year recommending commencement of payment of hardship allowances with effect from last financial year, which was later changed to June, 2007. When, specifically, can the Assistant Minister assure this House that the hardship allowances will be harmonised, so that some civil servants are not discriminated against, rather than giving a vague answer that action will be taken immediately?

Mr. Mganga: Mr. Speaker, Sir, the Government does not discriminate against any district with regard to hardship allowance. However, a proper process has to be followed to determine whether a district, town or location should be placed under hardship allowance category.

So, as I have said, a team was sent to the district, and I am glad that the hon. Member acknowledges that. That is how seriously I took the issue when it was raised. Therefore, I think in the next two or three weeks, we should be through and the gazettelement will be put in place, so that

we can start paying hardship allowance to all public servants in Suba District.

Mr. Maore: Mr. Speaker, Sir, the Assistant Minister is talking about sending a team specifically after a Question was raised. Could he undertake to have all the districts covered by the Arid and Semi-Arid Lands (ASAL) programme, which are very well known to the Central Bureau of Statistics (CBS), the Ministry of Planning and National Development, his Ministry and the Ministry of State for Special Programmes---

Could he categorise all public servants without discrimination, or without waiting for these discretionary measures that are not efficient?

Mr. Mganga: Mr. Speaker, Sir, let me say that there was an element of human error while we were planing to review the situation in a number of districts that had been mapped out for review. A Question was raised at the time but the exercise was not necessarily triggered by the Question. I would also like to mention that it is not a question of discretion. It is out of a need based on certain clear situations that are looked at by this Committee. Let me also add that, while we are reviewing this situation, the Government is also taking serious measures to develop certain areas that have been hardship areas before, so that sometime in the near future, that tag of "hardship" could be removed from some of those areas.

Mr. Sambu: Mr. Speaker, Sir, when implementing payment of hardship allowance, the Government is not fair as the Assistant Minister claims. In the old Nandi South District and Nandi North District, when they implemented the payment of hardship allowance to teachers and other civil servants in Nandi South, people living below the escarpment, they discriminated against the people in the Nandi North District who also live below the escarpment which had a landslide recently. If they do not want to be seen as discriminating, could they pay hardship allowance to all civil servants in the Nandi Districts living below the escapement?

Mr. Mganga: Mr. Speaker, Sir, some of those omissions could be purely due to human error. What he has said applies to many other areas, including my own constituency where hardship allowance was being paid to teachers in the whole of Tausa Division and three schools were left out, because there was a mistake by the officer who was on the ground to enumerate the schools in that area.

With respect to the issue the hon. Member has raised, I undertake to have the anomaly corrected.

(Applause)

Mr. Syongo: Mr. Speaker, Sir, Suba District, like Kuria District, is outside the end of the world. The cost of manufactured items has more than doubled in Nairobi. Being the rainy season, those districts are completely cut off from the rest of the country for lack of infrastructure. Even electricity penetration is virtually zero per cent. As a result, civil servants do not report to work until very late on Tuesdays, and they take off on Thursdays to purchase goods which are not available. This means that they provide their services for only three days in a week. Could the Assistant Minister specifically confirm that he will gazette Suba District, like Kuria District, in two to three weeks as he has promised this House?

Mr. Mganga: Mr. Speaker, Sir, first, let me say that Suba District receives a fair amount of rainfall which encourages agricultural activities, particularly Gwassu Division which produces a lot of maize. So, I think the first thing for the area residents is to take advantage of the rainfall every time it occurs.

Mr. Syongo: On a point of order, Mr. Speaker, Sir. There is no question about it; it is true! We produce more quantities of fish as well as maize than anybody else in that region. But, because of lack of infrastructure, we have enormous difficulties accessing markets, and that is why the cost of items is so high. I think the Assistant Minister needs to take this matter seriously because,

obviously, he is not listening to what I am saying.

Mr. Speaker: You just did not seem to like his argument. That is all! But, because it is the end of the term, I will leave you alone.

Mr. Mganga: Mr. Speaker, Sir, the hon. Member did not wait for me to finish. I was going to say better things, but he was in a hurry to cut me off.

Be that as it may, I wish to confirm to him that following the report that has been presented to us, we shall gazette Suba District in the time period that I have indicated.

Mr. Ogur: On a point of order, Mr. Speaker, Sir. Nyatike was enjoying that privilege of hardship allowance until it was stopped in 1992 without any notice. It was as if we had become rich. We became poorer! We experience floods and drought all the time! There was absolutely nothing! They withdrew that privilege without telling us anything! Now, when this Assistant Minister came in, he did not know! But he should have known what is affecting me in Nyatike. The area became poorer. Now, could the Assistant Minister reinstate the hardship allowance to Nyatike immediately, now that I have reminded him?

Thank you.

Mr. Mganga: Mr. Speaker, Sir, I thought I had already dealt with the last question. But since you have allowed the hon. Member to raise another issue, I want to confirm that I am aware of that problem in Nyatike and, in fact, even in Kuria District! The same will be done.

(Applause)

Mr. Speaker: Very well. Next Question by the Member for Samburu West, Mr. Lesrima!

Question No.055

NUMBER OF EARLY CHILDHOOD
DEVELOPMENT TRAINING
CENTRES IN KENYA

Mr. Lesrima asked the Minister for Education:-

(a) how many early childhood development training centres there are in Kenya;

(b) what plans the Government has to employ trainers and teachers for early childhood development; and,

(c) when the Ministry will start paying salaries to early childhood development teachers.

The Assistant Minister for Education (Dr. Mwiria): Mr. Speaker, Sir, I beg the indulgence of this House. We need more information on that matter, which touches on the Teachers Service Commission (TSC). Apparently, they did not give us the information they should have given us. So, I would like to request that we answer it on Tuesday next week.

Mr. Speaker: What is your reaction, Mr. Lesrima!

Mr. Lesrima: Mr. Speaker, Sir, I have no objection, as long as the House is not dissolved.

(Laughter)

Mr. Speaker: Are you privy to some information I do not know?

Mr. Lesrima: Mr. Speaker, Sir, I assume that the House will still be sitting on Tuesday next week. I have no objection.

(Loud consultations)

Mr. Speaker: Order! Order! Order, hon. Members! Order! Business will continue! Until this moment, the House was very, very orderly. What has happened that we have now become disorderly? Whatever it is, the House must continue to be orderly!

Next Question by the Member for Mumias, Mr. Osundwa!

Question No.489

GOVERNMENT DIRECTIVE ON RELEASE
OF WITHHELD CERTIFICATES

Mr. Osundwa asked the Minister for Education whether he could confirm that the Government has issued a directive that all school heads should release withheld certificates of students with fees balances.

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

The Government has not issued a directive that all school heads should release withheld certificates of students with fees balances. However, the Ministry is currently collecting data from all secondary schools on the total number of withheld certificates and fee balances. By the end of October, that exercise will be finalized. It is then that the Ministry will take the decision with a view of assessing those students who are unable to clear their balances and seek appropriate support.

Mr. Osundwa: Mr. Speaker, Sir, this Government does not seem to take issues relating to the youth seriously. There has been recruitment in various Government units throughout the year, and the youth have been turned away because they do not have certificates. They are withheld.

Could the Assistant Minister confirm that, indeed, at the end of this month, which is October, the Ministry will order the release of those certificates? At that time, the recruitment in various Government units will almost be over!

Dr. Mwiria: Mr. Speaker, Sir, by the end of October, we will have enough information as to which certificates should be released without payment of fees balances as well as the number of students to be supported. I cannot confirm that we will order the release of the certificates because we are analyzing the data to find out which certificates will be released without the parents paying the fees balances. Until we do that analysis, I cannot, for sure, confirm what the hon. Member is asking for.

Mr. Waithaka: Thank you, Mr. Speaker, Sir. Usually, when students are taken to Form I, they are around 13 or 14 years old. Therefore, they are not capable of entering into a legally binding contract. So, it is actually the parents who enter into an agreement with the school. Why should the student be made to suffer because of the fault of his parents? What would happen if the parent, who took that child to school and entered into a contract, died? Why are you penalizing the students who are not privy to the contracts signed between the schools and the parent?

Hon. Members: Why? Why?

Dr. Mwiria: Mr. Speaker, Sir, if it is found, through the information that we have requested for, that some parents of some students who owe schools some money have died, those certificates will be released. The reason why certificates are not released when fees are not paid is not to punish the students. There are many parents who can afford to pay, but they do not pay. That is really the problem. To the extent that it is the parents who pay school fees, I think we should also be fair to headteachers. What do you do with headteachers who have to manage schools in a

situation where majority of parents, even those who can afford to pay fees, do not pay? A good number of them do not pay fees! It is to protect them and ensure that some of the school programmes also run smoothly.

So, it is not in the interest of the Ministry to punish poor kids. It is to ensure that schools are managed properly. Whatever partnership or support we can get from parents to support ongoing school programmes is appreciated.

Mr. Sambu: Mr. Speaker, Sir, I am surprised at how this Assistant Minister is knocking out his President by denying him the votes of the youth!

Hon. Members: Yes!

Mr. Sambu: Mr. Speaker, Sir, the poor student could not force his parents to generate the money to pay the fees. In any case, he is agitating in support of headteachers. Most of those headteachers have got records that are not good. They are fond of misusing school fees. Could the Assistant Minister direct, because this House has passed a Motion directing the headmasters to release the certificates, particularly Form IV certificates, to release them? Yes or no?

Dr. Mwiria: Mr. Speaker, Sir, I wish it was just as simple as "yes" or "no"! But because it is not, I cannot respond to that kind of statement. All I can say is that, after the analysis of the data that we will get from schools, we will make decisions regarding which parents will be exempted from paying school fees balances. There will be a directive from the Ministry directing that those certificates be released.

Mr. Lesrima: Mr. Speaker, Sir, as you are aware, it is the poor parents who are unable to pay fees. The outstanding fees, as of to date, amounts to Kshs16 billion. In fact, there is no way those poor parents will be able to pay that debt. Could the Assistant Minister consider writing off those monies through the Government's budgetary arrangement? There is no way that, that money will ever be paid!

Dr. Mwiria: Mr. Speaker, Sir, I am not aware that the majority who have not paid school fees are poor parents. But I am aware, as the hon. Member is, that many Kenyans like free things. There are many parents who can afford to pay, but they do not want to pay! Even if you give them a window of opportunity, they will not pay! That is why, in the letter we sent to schools, we asked Boards of Governors (BOGs) and Parents/Teachers Associations (PTAs) to sit, look through the cases of students and identify the economic status of the parents who have not paid fees. It is only on that basis that you can determine who is needy and who is not, in the face of a situation where you are faced with many people who like free things. So, that is why we think we should study that data.

Mr. Kombe: On a point of order, Mr. Speaker, Sir. I remember that it was a Presidential decree, during a public rally, where the President made it clear that all certificates should be released immediately! Is the Assistant Minister in order to refuse to implement the Presidential decree?

(Applause)

Mr. Speaker: The hon. Member for Magarini Constituency, what is a decree, by the way?

Mr. Kombe: Mr. Speaker, Sir, it was a Presidential directive that he releases the certificates without any conditions, but the Assistant Minister is refusing to do so! Why is he doing so?

Mr. Speaker: So, you meant a directive and not a decree? Did you mean, therefore, a directive and not a decree?

Mr. Kombe: Mr. Speaker, Sir, a Presidential decree and directive are all the same!

Mr. Speaker: Order! I am worried about the law and records of the House. The hon. Member for Magarini Constituency, where in the Constitution is a provision for a decree?

Mr. Kombe: Mr. Speaker, Sir, it was a directive which was made during a public rally. It was made publicly!

Mr. Speaker: Then, you are probably now on safer grounds! Earlier on, you were totally out of order! Was there any such directive?

Dr. Mwiria: Mr. Speaker, Sir, it must be that the hon. Member is privy to information I am not aware of. He must be attending public rallies that all of us are not attending. I think from the confusion between "decree" and "directive," it is quite clear the hon. Member knows clearly that he is talking neither about a directive nor a decree.

Mr. Bifwoli: On a point of order, Mr. Speaker, Sir. We live in this country and we have heard the President asking head teachers to release certificates to the poor children. Now, a whole Assistant Minister, instead of defending the President's directive to the head teachers, is saying that these are rumours! A President has never said a rumour!

Mr. Speaker: Order! The problem with the two of you is that, maybe, you have not visited the Standing Orders recently. None of you, neither the Member for Magarini Constituency nor the hon. Member for Bumula Constituency, is allowed to use the name of the President as authority for whatever you say! So, both of you are out of order!

Next Question!

(Several hon. Members stood up in their places)

Order! I repeat, the law is the law! The law will have its full force and will apply to everybody!

Next Question by the hon. Member for Nakuru Town!

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

Mr. Speaker: I am sorry! I can give you the chance.

Mr. Osundwa: Thank you, Mr. Speaker, Sir. As I speak now, many students have not received their results, let alone the certificates. Head teachers are still refusing to release the results.

Could the Assistant Minister order the release of these results pending the exercise that he says he is undertaking?

Secondly, this Government has promised Kenyans free secondary education next year. Could the Assistant Minister tell us the steps he has taken to ensure this will happen, since he says it is the fees which are running secondary schools? Are they trying to hoodwink Kenyans for general election purposes?

Dr. Mwiria: Mr. Speaker, Sir, I said that after the analysis of this data at the end of this month, we will come up with conclusions regarding which parents will be exempted from paying school fees. That will also apply to the result slips that have not been released. So, I would just like to assure the hon. Member that by November, we should be addressing this matter both in terms of the release of result slips as well as which parents are going to pay the fees arrears.

About free secondary education, I think the two issues are unrelated. As the hon. Member knows, Kshs4.3 billion has already been voted for in this Parliament - he was part of the discussions of the Budget - to support that aspect of free secondary education.

Mr. Speaker: Next Question, Mr. Mirugi!

Question No.469

AMOUNT OF UNUTILIZED FUNDS RETURNED
TO TREASURY BY MINISTRIES

Mr. Mirugi asked the Minister for Finance:-

(a) whether he could list, according to Ministries, the amount of funds allocated to various Ministries in Financial Year 2006/2007 from the Consolidated Fund that had been returned to the Treasury;

(b) whether he could further list the earmarked projects whose funding was returned to Treasury; and,

(c) what the reasons for the return of funds were and what the Ministry is doing to ensure that public funds are utilized as budgeted for.

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

(a) In 2006/2007 Financial Year, a total of Kshs253,562,677,910 and Kshs85,687,177,989 was issued from the Consolidated Fund for Recurrent and Development Expenditure against the estimated amount of Kshs259,478,413,670 and Kshs103,868,700,980 respectively. A list of the Exchequer issues for the Financial Year 2006/2007 is attached herewith and I will be tabling the same.

(b) No funds have yet been returned to the Treasury in respect of unspent balances for Financial Year 2006/2007. This is usually determined and confirmed after the Controller and Auditor-General has completed the audit of the Appropriation Accounts for the Ministries. These Appropriation Accounts were due for submission to the Controller and Auditor-General by 30th September, 2007.

(c) The reasons for the return of funds to the Consolidated Fund vary from one Ministry to another. Accounting Officers are required to provide the reasons for material differences between the estimates and actual expenditure on individual items of expenditure when submitting the accounts for audit. As I indicated above, these Appropriation Accounts were due for submission on 30th September, 2007.

Mr. Mirugi: Mr. Speaker, Sir, I want to acknowledge that the Financial Year might be a bit premature, but that should not be reason enough to escape the substance of the Question. Why did the Ministries return monies to the Treasury? What practical measures has the Minister taken to streamline the financial management in this country, so that we spent money as we budgeted for?

Mr. Speaker: I thought he said that the reasons are varied and it would be difficult to know them without the whole list!

Mr. Mirugi: Mr. Speaker, Sir, I was looking for the general reasons.

Mr. Kimunya: Mr. Speaker, Sir, we have 33 Ministries and we could as well have 33 different reasons why each of them have returned their money. But the general reason would, probably, be that programmed activities have actually not taken place partly due to procurement rigidity and the timing of the programming of activities and the time they actually take place. We are moving towards programme budgeting and I indicated that when I was moving the Appropriation Bill and discussing this year's Budget, which will now be synchronised better in terms of when the activities will take place and when the monies will be required. So, we will only budget for when the activities will actually be taking place. That is the most we can do. But until we have a full report of the reasons, I am afraid, I may not be of much help to the hon. Member.

Mr. Manoti: Mr. Speaker, Sir, the reason most of the Ministries return this money to the Treasury is because the Ministry of Finance itself releases it very late. What is the Minister going to do to make sure that the Ministry disburses money early enough to the various Ministries to implement their budgets and make sure that it is spent?

Mr. Kimunya: Mr. Speaker, the Treasury can only release money after it has received it. We collect our money on a monthly basis and we release it on quarterly basis. But, in most occasions, we also release it on monthly basis, as and when, funds are available. It is a matter of

matching the two.

I believe that the main reason for the return of this money is, probably, the way the commitment and procurement process is made. We will continue monitoring them to reduce the gap. As hon. Members will observe, out of the Recurrent Vote of Kshs255 billion, only Kshs5.9 billion was returned. Out of Kshs103 billion, Kshs18 billion was returned. You can see that basically within the Development Vote that most amounts are not utilised. This is mainly because of the procurement procedures. Where there are development partner-funded projects, they, perhaps, do not come on time because of the procedures involved in that.

Mr. Speaker: Very well! Last question, Mr. Mirugi!

Mr. Mirugi: Mr. Speaker, Sir, could the Minister assure this House that the measures he has put in place are going to work to ensure that this money; the Kshs18 billion, that he mentioned, will not be returned to the Treasury again? We have so many projects that have not been financed. We need the Ministry to prioritise their work, so that this money is not returned to the Treasury.

Mr. Kimunya: Mr. Speaker, Sir, we will do our best in terms of the reforms within the financial management and working in the Ministries and monitoring their projects. We indicated that there is performance contracting that is now in place. This forces people to deliver on the promises they have made on the contracts which is the basis on which they are funded.

So, we expect to see the trend of monies being returned to the Treasury diminishing in the future. With co-operation from all hon. Members in terms of oversight and monitoring, we should be able to implement everything as planned.

Mr. Speaker: Order, hon. Members, that is the end of Question Time!

COMMUNICATION FROM THE CHAIR

OPERATIONALIZATION OF PRIVATIZATION ACT

Mr. Speaker: Hon. Members will recall the continuing issue of operationalising the Privatisation Act. We will also recollect that last week, the issue of approving officers came to this Floor. I now see the hon. Member; chair of the Committee on Finance, Planning and Trade, has tabled a report approving five of the seven names.

I just want to make a quick observation of the procedure that, that Act requires to be dealt with. A very quick look at the Act indicates that it requires the Minister to forward the names to the Committee on Finance, Planning and Trade. The committee then approves or disapproves. That is the end of the story. However, it does not seem to place the House anywhere in that issue! It is a very loose way of doing things. I cannot see a situation where a committee has held a transaction with the Minister to the total exclusion of the House. That is a very strange piece of legislation! That strange piece of legislation needs to be re-looked at very carefully.

It is my considered view that every committee is a creature of the House. It must, therefore, report to the House. The House would then either agree with it or not! No legislation should ever make a committee independent of the House. I do not think it was ever intended that way and there is no intention to make it operate that way. So, there are deficiencies there.

Hon. Members know that because of your complaints, I have taken up this issue with the Minister for Finance to make this Act operational. The Minister, in fact, promised this House and he is, on course, to operationalising this Act by 1st, November, 2007.

Now, there is no provision in the Act as to what happens after the Committee has rejected some names and what happens after that. I think this House also must be cognisant of the fact that as a matter of law, it can be dissolved any time for purposes of elections. That is a matter of law!

Whether we like the elections or not, it is a fact that we must face them. The time is now!

So, I want this matter to be dealt with quickly. Since the Act seems to have weaknesses, I must also convey to the Committee the complaints of the Minister which are also justified. Indeed, the Committee did not seek his views on why he recommended a package of seven. When the Committee was going to reject two names, they did not give the Minister audience to let them know the reasons that led him to make the recommendations. I think we should not behave that way. I think we should not act that way. There must be an interaction between the Committee and the Minister because Parliament, through its committees and Ministers, must work in harmony and as one whole.

Therefore, I direct that the committee meets with the Minister on Thursday, latest, to have a look again at the two names that have been disapproved. The Committee should either be satisfied by the Minister that they are actually worthy of nomination. If they cannot be convinced that way, they should then let the Minister know there and then. By Monday or Tuesday, another set of names will go to the Committee to be approved and forwarded to the Clerk of the National Assembly for on-ward transmission together with the ones that are already approved. I do not want anything to be a hinderance to making this Act operational. I hope this is understood.

I want to take this opportunity also to advise hon. Members that when they prepare Private Members Bills and present to this House, they must seek competent legal advice on drafting as much as possible. We have a competent person in Parliament now and the Attorney-General has always helped in drafting these Bills, so that we do not have this lacuna that can give us some problems. I hope we will work in that spirit.

Mr. Oburu and Mr. Kimunya, please, get together and get these things sorted out.

Thank you.

Mr. Maore: On a point of order, Mr. Speaker, Sir. This is the kind of package of legislation that the Government has been downloading on the internet and we passed it here without scrutinizing the details because of the pressure from the International Monetary Fund (IMF) and the World Bank. Now---

Mr. Speaker: By the way, you are wrong! If it was downloaded, then it was not by the Government. It was by the private Member who brought it.

Mr. Maore: Mr. Speaker, Sir, my argument is that as the Chair, you assist the House by directing us on what should be done in accordance with Standing Order No.1. The House is supposed to approve it and yet it was not involved. Why can we not have it delayed in its implementation so that it does not cause an acrimony and confusion in the field?

Mr. Speaker: Quite frankly, I think that inspite of the few problems in the Act, the public good is better served by its operation and you can always amend it when you have any problems. I do not think anything is fundamentally flawed. It is just a bit unclear or short-cut. The problem is, when you have Bills drafted by people who have no idea of the operations of Parliament, you always have that problem.

Mr. Muite: On a point of order, Mr. Speaker, Sir. You may recollect that the Committee on the Administration of Justice developed a vetting manual to guide Committees and this House on how to go about it when a statute requires the involvement of Parliament. We laid that report on the Table of the House together with the manual. It might succeed if the House could allocate time for it. In fact, we even travelled all the way to the United States of America (USA) to study how they go about it. I believe that if we could debate it, it might be of tremendous assistance to the House and also the various Committees.

Mr. Speaker: Quite frankly, we do not have to travel to the USA to know how to approve Kenyan names. We do not have to do that. It is unnecessary expense. We are saying that we cannot think on our own. Thank you anyway for travelling and bringing the report, but I do not think that it

is time to approve it. That will be left to the next Parliament. But quite frankly, we must have home-grown solutions, particularly to minor things.

J.M. Mutiso: Mr. Speaker, Sir, I seek your clarification on this issue. It is at the Speaker's prompting by this Committee and hon. Members that you ordered for the publication or the Minister to bring the list of the nominees. I sit in that Committee and the Minister has been complaining that the Committee has not been performing its work both in and out of this House. Today, you have said that the Committee never consulted the Minister. As a Member of that Committee, I say that we have deliberated on those issues and the Minister himself never even sent a memorandum as to what criteria he used. The Committee in its own wisdom, did its best to try and make those recommendations before this House. The position that the Committee did not take the correct position by not consulting the Minister is absolutely wrong.

Mr. Speaker: Order! I am very right, your own record proves it. Does it not? I have the Committee Report here. The Minister was never called to explain or to justify the appointments of those two people that you think are incompetent. The most natural thing to do, if you get a recommendation from me, and you look at it and think that it is not good enough, the most reasonable thing is to ask me to justify it. This is not a blame on the Committee---

(Dr. Oburu stood up in his place)

Will you sit down, Dr. Oburu?

I am just explaining how you should be doing to make these things smoother. I am not blaming the Committee. In fact, last time, I blamed the Minister and I praised you. At that time, you were quite happy and now that you have a little blame from me, you are very unhappy. What about the Minister last time? My business is not to please all the time. I may please you today and I make you very unhappy tomorrow because that is my business.

Dr. Oburu: Mr. Speaker, Sir, just to put the record right, the Committee deliberated on it and we were only given one day to do so. Last week we wrote to the Minister, through the Clerk, telling him that we were not very clear on the criteria of the nomination. At the same time, we prepared this Report on your advice. The Committee cannot act independently of Parliament, **[Dr. Oburu]** therefore, we prepared this Report. Because of the time factor, the Minister has already got a letter from the Clerk. We even sent a fax to him informing him that we were not clear on the criteria which he used in nominating them.

Mr. Speaker, Sir, I do not think that it is right to say that the Minister was not consulted or informed.

Mr. Speaker: Very well! I think I will conclude on this issue! I will take it that the five nominees accepted by the Committee are accepted and the two parties in dispute revisit the issue on thursday this week and if agreed to, then it should be sent to my office, through the Clerk for onward transmission to the Minister. We hope that at the end of the day, we will finish this issue amicably.

The hon. Member for Bomet!

POINT OF ORDER

POWER OUTAGES IN BOMET DISTRICT

Mr. Salat: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Energy. Could he explain to this House as to why Bomet District and its environs have, for the last

three days, been experiencing continued power black-outs and a major fuel shortage, thus causing undue suffering to the residents. It is affecting the provision of services at the hospitals. Some facilities have stand-by generators but there is no fuel to run them. The lives of patients in those hospitals are in great danger. The vaccines which require electricity to be preserved are also going to waste.

The shortage of this essential commodity has also affected the water supply in Bomet Town. The District Engineer this morning said that if power is not restored within the next one day, Bomet would have only one day of water storage for use. The health officials within the district will be left with no choice but to close down the restaurants and many other public places due to lack of water.

Mr. Speaker: Order! Mr. Salat, that is all you expect when there is power failure. You have been experiencing a black-out for three days. So, what is it that you want because we expect that to happen?

Mr. Salat: Mr. Speaker, Sir, what measures is the Minister taking to restore power? We also have a shortage of fuel in Bomet District. Three days without power, Bomet residents will start asking questions, especially when we are just approaching a general election. Is it that they are being sidelined, sanctioned or discriminated against? We expect the Minister to immediately restore power so that the residents of Bomet do not continue suffering.

The Minister for Planning and National Development (Mr. Obwocha): Mr. Speaker, Sir, I have an idea about what is happening, but a full statement could be given on Thursday. I regret the situation on behalf of the Minister for Energy. I know that the problem is extending up to Rongo. It is due to the current upgrading system from Chemosit to Rongo. So, we will give the Ministerial Statement on Thursday.

Mr. Speaker: Do you undertake to let--

The Minister for Planning and National Development (Mr. Obwocha): Mr. Speaker, Sir, I undertake to tell the Minister to issue the Ministerial Statement. It is a serious matter.

Mr. Speaker: It would even be better for him to rectify the problem!

The Minister for Planning and National Development (Mr. Obwocha): Mr. Speaker, Sir, I will get in touch with them straightaway.

Mr. Sungu: On a point of order, Mr. Speaker, Sir. We know that this problem is not confined to Bomet only. The whole of western Kenya has been affected, particularly on Saturday when we had a big rally at Uhuru Park; the whole of that region was dark.

(Loud consultations)

Mr. Speaker: Order! Order, hon. Members! There must be a limit to our imagining conspiracies in everything. Surely, Mr. Sungu, there must be a limit!

The Minister for Planning and National Development (Mr. Obwocha): Mr. Speaker, Sir, I can answer that one.

Mr. Speaker: No, you cannot, because we are prolonging unnecessary things. We must come to an end of these things now!

Mr. Ojaamong: On a point of order, Mr. Speaker, Sir. For the last two weeks, I have been seeking a Ministerial Statement from the Minister for Finance regarding failure by the Government to release the Constituencies Development Fund (CDF) money. On Tuesday, the Vice-President and Minister for Home Affairs promised that he would issue the Ministerial Statement today.

Mr. Speaker: Mr. Minister, the matter has been in the House!

MINISTERIAL STATEMENT

DELAY IN RELEASE OF CDF MONEY
BY MINISTRY OF FINANCE

The Minister for Finance (Mr. Kimunya): Mr. Speaker, Sir, it is true that Mr. Ojaamong sought a Ministerial Statement on the non-release of the Constituencies Development Fund (CDF) funds by the Government, and I would wish to state as follows:

As hon. Members are aware, the allocation of CDF for this financial year is Kshs10.1 billion. The total amount of money that has been released so far, in relation to the first quarter of the year, is Kshs1.5 billion. The Treasury has made arrangements to release a further Kshs500 million by the close of business yesterday, and, depending on the revenue flow, a further Kshs500 million by the end of next week. That will bring the total to Kshs2.5 billion, which is the release for the first quarter, which ended only last week.

I would also like to state that the delay in the release of CDF funds was due to the normal mismatch of revenue inflows and payments during the first quarter of every financial year. It is not, in any way, a deliberate decision by the Treasury to slow disbursement. I also wish to assure this House that the Treasury has a programme to release on time the instalments for the other quarters as scheduled.

Mr. Speaker: Very well! We must now go to business!
Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

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

THE FINANCE BILL

*(Resumption of consideration
interrupted in Committee
on 4.10.2007)*

The Temporary Deputy Chairman (Mr. Maore): Hon. Members, by the close of business last week, we had covered Clauses 2 to Clause 26. Now, we will continue from Clause 27.

Clause 27

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

THAT, Clause 27 of the Bill be amended in the proposed Section 96A(5) by adding the words "unless extended by the Court on application by the Commissioner" immediately after the words "automatically expire".

This amendment is meant to harmonise this clause with Clauses 5 and 10, to make sure that

the three clauses are exactly the same. The amendments to [**The Minister for Finance**] Clauses 5 and 10 have already been accepted by the House. So, again, this is a house-keeping issue to make sure that the three clauses read exactly the same.

(Question of the amendment proposed)

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I had a proposal to delete Clause 27 for one reason only. I do not know whether you can put your finger on it on the Order Paper.

The Temporary Deputy Chairman (Mr. Maore): It is on page 664 of the Order Paper.

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

THAT, Clause 27 be deleted.

This amendment is likely to be misused to injure business. Collection of taxes, or lack of payment of taxes, should not be made a criminal offence. We should not criminalise collection of taxes. Tax is paid at the end of the year. Usually, you declare the kind of tax that you should be paying. If you gave the Commissioner the authority to recover taxes, and even make it criminal---

Look at the amendment to the proposed Section 96A(b). It says that if it appears to the Commissioner that it is likely that the taxpayer will frustrate the recovery of tax, and if information is disclosed to the Commissioner that he is likely to transfer the money or withdraw the money or dispose of the money or property, then the Commissioner will go to court and seize the property. I suspect that the Commissioner is talking about some money in the bank. It is proposed that the Commissioner will proceed to the bank and, maybe, freeze the account. As we saw last year, the Commissioner actually directed that one of the manufacturers of a popular drink owed them Kshs1 billion. So, in such a case, he would proceed quickly and freeze the account of that industry. Definitely, that industry would collapse. Later on, it was discovered that actually, the industry did not even owe them any money. In fact, the court later on declared that, that demand was illegal.

So, this kind of power that the Commissioner wants is likely to destroy many businesses merely on some suspicion that somebody is likely to run away with money, or is likely to transfer it abroad. Those are things you cannot put your finger on. So, we do not think that this kind of power should be given to the Commissioner. The Commissioner should collect tax. If somebody fails to declare, he has all the powers to seize his property and accounts and receive the money in the normal way. This power, unless properly explained, should not be given to the Commissioner. It is likely to be misused.

The Temporary Deputy Chairman (Mr. Maore): Hon. Members, let me explain something. There is an amendment to Clause 27 by the Minister and another one by Mr. Kajwang. The difference between the two amendments is that if we are able to carry the amendment by Mr. Kajwang, which is that Clause 27 be deleted, we cannot have the Minister's amendment. So, we will start with Mr. Kajwang's amendment and dispose of it.

(Question of the amendment proposed)

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, as I indicated while moving this amendment, looking at Clause 27, together with Clauses 5 and 10, you will note that they are exactly in the same text and refer to the three tax Acts: the Value Added Tax Act, the Income Tax Act, and the Customs and Excise Act. This House has already passed Clauses 5 and 10. We are now on Clause 27, which basically touches on the third Act, and gives the same power. So, debating this amendment when we have already decided on the other two, is actually tantamount to challenging our own decision in passing the amendments to Clauses 5 and 10. So, I would urge Mr. Kajwang to withdraw his amendment on the basis that we have already set a precedent by granting that power under the VAT Act and the Customs and Excise Act, and we are now granting the same power under the Income Tax Act.

Mr. Kajwang: On a point of order, Mr. Temporary Deputy Chairman, Sir. When the Minister last moved this Bill at the Committee Stage, we were quite tired. I remember we tried to ask him to postpone this Bill, so that we can do it with very clear minds. But, of course, he proceeded and got us to pass things which we did not quite scrutinise. I, myself, did not see Clauses 5 and 7. What I saw was Clause 27. The Minister should not hope that we will support this amendment merely because we have supported others!

Could he explain to us why the Commissioner should have the powers to seize peoples' accounts and properties merely because he suspects that they are likely to transfer monies from their accounts, if some information is availed to them? If he satisfies us, we will support him!

The Temporary Deputy Chairman (Mr. Maore): Hon. Members, we are safer if I put the question on Mr. Kajwang's amendment!

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

Hon. Members: Division! Division!

The Temporary Deputy Chairman (Mr. Maore): Hamtoshi! Mmesimama wawili, watatu tu!

Hon. Members, let us now move on to Clause 28---

Mr. Ligale: On a point of order, Mr. Temporary Deputy Chairman, Sir. We have not disposed of the Minister's amendment!

The Temporary Deputy Chairman (Mr. Maore): I agree with your observation, Mr. Ligale! I will now put the Question!

*(Question, that the words to be inserted
be inserted, put and agreed to)
(Clause 27 as amended agreed to)*

Mr. Sungu: On a point of order, Mr. Temporary Deputy Chairman, Sir. This is a very important Bill. We could as well make serious mistakes, as it has just been said. I wish that you propose, then we debate. At least, give us a chance! Then, you can put the Question! As it were, the other amendment was not proposed!

The Temporary Deputy Chairman (Mr. Maore): Mr. Sungu, I do not think you are right in saying that! There has been debate!

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, but I have always---

The Temporary Deputy Chairman (Mr. Maore): Mr. Sungu, it does not mean that when you do not debate, there was no debate! There was debate!

Let us move on to Clause 28. There is an amendment by Dr. Oburu!

Dr. Oburu: Mr. Temporary Deputy Chairman, Sir, Mr. J.M. Mutiso will move the amendment.

Clause 28

Mr. J.M. Mutiso: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the Bill be amended by deleting Clause 28.

We have the due court process where the Commissioner, like any other aggrieved party, should visit the courts and the tax person should also lay his claim. Therefore, we thought that Clause 28 should be deleted because we shall be giving the Commissioner powers of the courts.

*(Question of the amendment
proposed)*

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I explained the rationale for this amendment last time. The House took the decision to delete Clause 11, which was exactly the same. There is no point in having it in one Act and not in the other. I have no objection to it being deleted.

*(Question, that the words to be left out
be left out, put and agreed to)
(Clause 28 deleted)*

Mr. Muturi: On a point of order, Mr. Temporary Deputy Chairman, Sir. I have an amendment to Clause 34. It is in the Order Paper!

The Temporary Deputy Chairman (Mr. Maore): Which page is it? It was there last week, but it is not there today! Your amendment is only on the Second Schedule on Page 664!

Mr. Muturi: Mr. Temporary Deputy Chairman, Sir, then the Office of the Clerk of the National Assembly is to blame! I know I am supposed to move that amendment on behalf of the Deputy Speaker. He wrote to the Office of the Clerk of the National Assembly!

The Minister for Justice and Constitutional Affairs (Ms. Karua): Maybe, he withdrew it!

Mr. Muturi: No! It has not been withdrawn! It was there in the Order Paper last week! This means that the Office of the Clerk of the National Assembly is the one that is derailing us!

The Temporary Deputy Chairman (Mr. Maore): Order, Mr. Muturi! The amendment by the Deputy Speaker is appearing on the Fifth Schedule, but not what you are saying! Anyway, I will put the Question for the clauses as read!

*(Clauses 29, 30, 31, 32, 33, 34, 35, 36,
37, 38, 39, 40, 41, 42, 43, 44, 45,
46, 47, 48, 49, 50, 51, 52, 53,
54, 55, 56 and 57 agreed to)*

Clause 58

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

THAT, Clause 58 of the Bill be amended by deleting the words "admitted assets" appearing immediately before the word "whichever" and substituting therefor the words "admitted liabilities."

This is, again, to clarify what will be the basis of liability for insurance companies.

(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 58 as amended agreed to)

Prof. Olweny: On a point of order, Mr. Temporary Deputy Chairman, Sir. Did you see Mr. Muturi run right from there, all the way there and exited the Chamber without even bowing to the Chair? He literally ran without bowing! When he comes back---

The Temporary Deputy Chairman (Mr. Maore): I agree with you halfway! I saw him run and bow in a hurry!

Prof. Olweny: He did not bow!

The Temporary Deputy Chairman (Mr. Maore): He did, but in a hurry!
Let us move on!

*(Clauses 59, 60, 61 and
62 agreed to)*

Clause 63

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

THAT, Clause 63---

The Temporary Deputy Chairman (Mr. Maore): Excuse me, Mr. Minister! I think we better start with hon. Kajwang's amendment.

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, it is the same thing.

The Temporary Deputy Chairman (Mr. Maore): Is it the same thing? Have you concurred with him?

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

THAT, the Bill be amended by deleting Clause 63 and replacing it with the following new clause -

Amendment of	63. Section 156 of	Section 156	the Insurance Act 156 is
of Cap.487.	amended by deleting		Subsection (2).

Mr. Temporary Deputy Chairman, Sir, the effect of my amendment is to delete the current Clause 63, but I am actually deleting the specific section, that is Subsection 2, which introduces the 60 days period. This was after an agreement with the Committee. I believe hon. Kajwang's proposal is seeking to achieve the same effect only that he is proposing that we delete the entire clause. I am, however, proposing the deletion of the offending bit. This will now leave the business of cash and carry to be a discussion between the insurance provider and the brokers rather than us regulating it through the law. That is the agreement that we had with the Committee.

(Question of the amendment proposed)

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I am grateful to the Minister because the way in which we wanted to regulate it would almost automatically interfere with brokerage so much that it would stop being a business. It would be like carrying money from this person to that person. We know that brokers assist those of us who cannot pay our premiums immediately in full. They give us some terms of paying monthly or quarterly. A broker will not have the money to give you those services if you do not allow them to enter into some arrangements with the insurance company. I am hopeful that this will protect or even help brokers to do better business.

The Temporary Deputy Chairman (Mr. Maore): So, you have now agreed with the Minister.

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, I do not think that Mr. Kajwang disagrees with the Minister. He is proposing a deletion. I am one of those people who raised the red flag on this item. I have been an insurance person and I know that it is intractable for a broker to receive premium the same day and remit it the same day to the insurance company. That way, it is impossible. No law can be made that cannot be observed or cannot be repeated. Therefore, I would want to support hon. Kajwang's proposed deletion of that entire Subsection (2) of Clause 63 so that we can then vote on that. This Parliament cannot make a law which cannot be observed by wananchi. It is impossible for a person to receive money, say, today and give it the same day. These people rely on commission. It is, therefore, not going to be possible for one to make any profit.

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, the Committee deliberated on this matter at great length and we came to the conclusion that we should not legislate commercial terms.

Let the question of insurance be a matter between the insurance company and the broker or the insured so that if an insurance broker is not honest, he will not receive any credit terms. If he is creditworthy, then the insurance company has the option. So, actually it covers all the sections. We support what the Minister has proposed.

The Temporary Deputy Chairman (Mr. Maore): I think that, in effect, hon. Kajwang withdrew his amendment! Now, we are dealing with the Minister's amendment.

(Mr. Kajwang's amendment withdrawn)

(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 63 as amended agreed to)

(Clauses 64, 65 and 66 agreed to)

Clause 67

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

THAT, Clause 67 of the Bill be amended in subclause (a) -

(a) by deleting the words "the Central Bank";

(b) by adding the word "Board" immediately after the words "Deposit Protection Fund".

Mr. Temporary Deputy Chairman, Sir, this, again, is meant to tidy up and clarifying this particular clause following our discussion with the Committee and the stakeholders after publication of the Bill.

(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 be inserted, put and agreed to)

(Clause 67 as amended agreed to)

Clause 68

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 68 be deleted

Mr. Temporary Deputy Chairman, Sir, the amendment seeks to strike off the proposed amendment to the Banking Act for the following reasons:

When the NARC Government took over power, I remember the first statement of the Minister in this House was to raise the capital base of the banks to Kshs400 million from around Kshs250 million. I am not sure whether it was Kshs200 million or Kshs250 million. Because of that, a bank called Daima Bank - I remember this very clearly - which was doing its business largely in Machakos Town, collapsed because it could not increase its capital base from Kshs200 million to Kshs400 million. It was put under statutory management. I remember that one of the shareholders of that bank is a Member of this House. One year later, the Minister actually reduced the capital base for banks from the proposed Kshs400 million to Kshs250 million. It was intended that small banks also have a stake in this business; that small is not bad and that small does not mean insolvency or instability! We all applauded that.

Mr. Temporary Deputy Chairman, Sir, some banks, which were in the range of Kshs200 million and Kshs250 million, of course, later on grew to have Kshs400 million or Kshs500 million in their capitalization. This year, the Minister decided that, in fact, they should grow to Kshs1 billion in progression from Kshs400 million, Kshs750 million to Kshs1 billion.

Mr. Temporary Deputy Chairman, Sir, I looked at the Minister's Statements which said that the only reason he was raising them to Kshs1 billion is that the banks are not complaining because the small people can deal with the microfinance institutions which now do business with a capital up to Kshs60 million. I, however, know that microfinance institutions of that type do not do banking business. They do not transact international business.

Mr. Temporary Deputy Chairman, Sir, the question I am asking the Minister is this: Why are we wiping small banks from doing business in this country? Somebody might start a bank for the Patels only and it could help them as a community. Somebody might start a bank for the Sikhs only and it could help them as Sikhs. Why are we forcing them to merge, say, the Patels and the Sikhs to have a bigger bank? Is this not a conspiracy of big banks to wipe out small banks? Who said that if you have a capital base of Kshs200 million, you are likely to collapse?

The Temporary Deputy Chairman (Mr. Maore): I think---

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, so, that is the question why I wanted this thing deleted.

The Temporary Deputy Chairman (Mr. Maore): You have made your point.

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, we are discriminating against people who actually want to run small banks. They do not want to run big banks for specific reasons, for example, there are businessmen who may decide to deal with a specific class, community or area. So, could the Minister explain to us why he thought that this is good for this economy and that we can only have Equity Bank and a few other banks and everybody else is shut out?

The Temporary Deputy Chairman (Mr. Maore): Hon. Members, let us struggle now to deal with hon. Kajwang's amendment.

(Question of the amendment proposed)

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment by hon. Kajwang on the basis that, one, we deliberated on this matter with the Committee and have agreed. Secondly, I will give the rationale for the increase in the capital requirements of the mainstream banks as opposed to the micro-finance institutions, for which this House now passed a law. The law says that anyone who wants to operate a small bank has the option through the Micro-Finance Act, where you only need Kshs20 million to operate in one area or Kshs60 million to operate on a national basis. Let us now move all the other banks to where we have higher capital requirements because the financial demands in the banks, regulatory frameworks and the compliant issues do not make sense. If your capital base is at Kshs200,000, you will not comply with the rigidity and make a decent return that will be able to put you in business. So, because we now have an avenue for the small banks, we might as well distinguish the small banks from the big banks. That is the rationale. As you know, when you are talking of an economy of Kshs2.05 trillion, you need the big banks to actually support that kind of economy. It has nothing to do with forcing people to merge. People are voluntarily merging. In fact, people call upon one another now to merge. Not just because of the capital requirements, but it makes sense to operate and to tap on the economies of scale.

Mr. Temporary Deputy Chairman, Sir, I beg the House to reject the proposal by hon. Kajwang. It is a position we had agreed on with the Departmental Committee and then we can move onto the amendment that I will be proposing.

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, I just want to support hon. Kajwang's amendment. These provisions and the amendment by the Minister are not different. It is going to have the effect of a few subjugating the majority of Kenyans as their "slaves," if you like it, because when you raise the capital base to such a high level, how many Kenyans can afford to be bankers?

One section of the Kenyan society is going to be owners of the banks and the ordinary poor Kenyans are going to remain as customers forever and will never have access to credit. On that basis, I want to urge Members of this House to support hon. Kajwang's amendment.

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I have just one issue in response to the Minister. He says that there are rigorous rules. Of course, there must be rigorous rules in banking, so that our economy is safe. He also says that it does not make business sense to run small banks. So, that is a business decision. Why do you not let somebody make a business decision? If it is a bad decision, he will lose business. He will withdraw or increase his capital base. Why do you make a law for them that they must be this or be wiped out? We do not make laws for people to make business decisions. Business decisions are for businessmen.

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

(Clause 68 deleted)

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I have not moved my amendment. We have just disposed of hon. Kajwang's amendment which was to delete Clause 68. My amendment was to delete and then amend. So, I think there is a confusion because you explained that, first of all, we dispose of that deletion and then mine was a deletion

and an amendment. I believe the Committee was waiting for my amendment.

The Temporary Deputy Chairman (Mr. Maore): Order, hon. Members! The position is that the House has deleted Clause 68. Now, it is no longer part of this Bill. So, let us move on!

(Clause 69 agreed to)

Clause 70

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

THAT, Clause 70 of the Bill be amended in subclause (5) by inserting the words "in consultation with the Bank" immediately after the words "price stability target".

(Question of the amendment proposed)

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

(Clause 70 as amended agreed to)

Clause 71

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

THAT, Clause 71 of the Bill be amended in subclause (b)(ii) by deleting the words "in consultation with the Minister" appearing in the proposed paragraph (c).

Mr. Temporary Deputy Chairman, Sir, the import of this is to basically delete the need to consult with the Minister on the appointment of the staff members into the Monetary Policy Committee.

(Question of the amendment proposed)

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

(Clause 71 as amended agreed to)

(Clause 72 agreed to)

Clause 73

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

THAT, the Bill be amended by deleting Clause 73.

(Question of the amendment proposed)

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, the Clause the Committee is seeking to delete refers to the introduction of a non-executive Chairman

of the Board of the Central Bank of Kenya and the creation of an extra Deputy Governor. So, the new structure of the Central Bank of Kenya should have a Chairman, Governor and two Deputy Governors. The sentiments of the Committee are that, that needs to come within the wider review of the Central Bank of Kenya Act. If I take that the gentleman's agreement of the Committee is holding; that the only amendment we need is on the Central Bank of Kenya Act but the Committee is not moving the amendments on the Second Schedule, then I would have no problem. I believe that is the concurrence we agreed on.

Mr. J.M. Mutiso: Mr. Temporary Deputy Chairman, Sir, after lengthy discussions with the Minister about this Clause, and the fundamental monumental impact of having a Chairman appointed by the President, the Committee said that it is going to interfere with the independence of the Central Bank of Kenya such that, if the Chairman is appointed by the President, then he is likely to favour those policies which the Executive may favour and, therefore, undermine the stability of the monetary policy. Therefore, we completely oppose, and support the deletion of that Clause.

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir---

The Temporary Deputy Chairman (Mr. Maore): Order, Mr. Minister! I will give you a chance to defend these things.

Yes, Dr. Oburu.

Dr. Oburu: On a point of order, Mr. Temporary Deputy Chairman, Sir. I stand on a point of order with regard to the Minister's remarks that this is only going to be deleted on condition that the Second Schedule will not be amended by the Committee.

There is no such arrangement. The matter should be discussed on merit. There is no condition at all!

The Temporary Deputy Chairman (Mr. Maore): Your point is clear.

Yes, hon. Angwenyi.

Mr. Angwenyi: Mr. Temporary Deputy Chairman, Sir, we dealt with this Clause last year. This House, in its wisdom, deleted this Clause from last year's Finance Bill. I wonder why the Minister brought it back without even talking to us!

So, Mr. Temporary Deputy Chairman, Sir, I support the amendment proposed by the honourable young man.

The Temporary Deputy Chairman (Mr. Maore): I believe the Minister, in his wisdom, might have thought that, maybe, you are in some lapse and you will allow him to get away with what he did not get last year. So, it is good that he repeated, to show that you are vigilant.

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I am not taking the House for a lapse. There are two issues which I want to clarify. I think an issue has been raised that the Chairman will be appointed by the President, who might then lead to an erosion of the independence. I wanted, first of all, to prevent this House from casting aspersions on the President. That, by the President appointing the Chairman, that is going to lead to the erosion of the independence of the Central Bank of Kenya.

Mr. Temporary Deputy Chairman, Sir, the Deputy Governor and five members of the Board are all appointed by the President. The Minister for Finance is also appointed by the President. The Permanent Secretary, Treasury, is appointed by the President. The fact that all those Presidential appointees currently sit and work with the Central Bank of Kenya has not eroded its independence. I just wanted, first of all, to clarify that, that is not the issue!

Mr. Gitau: Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Maore): Order, Order! You have clarified. There are points of order, first! You have to handle them!

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, the

second issue which I want to clarify---

The Temporary Deputy Chairman (Mr. Maore): Order! Hon. Gitau has the Floor.

Mr. Gitau: Mr. Temporary Deputy Chairman, Sir, the Minister is dragging us on this matter. He has not said anything new on this issue. We dealt with this issue last year. We are dealing with it the same way we dealt with it last year. Could you put the Question, Mr. Temporary Deputy Chairman, Sir, so that we could move on?

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

(Clause 73 deleted)

Mr. Wambora: Mr. Temporary Deputy Chairman, Sir---

The Temporary Deputy Chairman (Mr. Maore): Hon. Wambora, your amendment has been overtaken by events. We do not have Clause 73. So, there is nothing to amend.

Clause 74

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the Bill be amended by deleting Clause 74.

The Temporary Deputy Chairman (Mr. Maore): I think you better explain what it is. If it is the same thing, then you do not have to explain.

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, from my earlier remarks and from contributions by the various Members of the House, the Central Bank of Kenya Act is a very important act. I think the general spirit of reforms in the banking sector has been that the Central Bank of Kenya must be autonomous. It must be completely independent of the Ministry of Finance. We have said that any amendments or reviews to the Central Bank of Kenya Act should be looked at on their own. That is by looking at the principal Act. If you look at these amendments, you will actually see that they are piecemeal amendments to a very important Act. I think they should be dealt with substantially, rather than via the Finance Bill.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Maore): Okay, is there anybody else who wants to contribute? Is there anything contrary? Are you adding? I think he has argued sufficiently.

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I only want to say that, in fact, now that we have refused the creation of the Chairman--- Clause 74 refers to the Chairman- it should "die".

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

(Clause 74 deleted)

Clause 75

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the Bill be amended by deleting Clause 75.

An hon. Member: Why?

Mr. Okemo: In the same spirit! I mean I cannot repeat myself. Basically---

The Temporary Deputy Chairman (Mr. Maore): I agree with you.

Mr. Okemo: Mr. Temporary Chairman, Sir, basically, what it is doing is trying to convert the Monetary Policy Advisory Committee into a substantive Committee that will not just be an advisory, but it would actually be determining monetary policies. We say that this amendment, along with other amendments, must be looked into in the wider spectrum of the Central Bank of Kenya Act.

*(Question of the amendment
proposed)*

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment firstly, on the understanding that what hon. Okemo is seeking to delete is not what is in Clause 75. Clause 75 is very clear. It is establishing the position of two Deputy Governors. So, what hon. Okemo was saying has already been passed by this House. Clause 75 is basically introducing a second Deputy Governor for better management of the Central Bank of Kenya. That has nothing to do with the Chairman. That also has nothing to do with the Monetary Policy Committee.

So, Mr. Temporary Deputy Chairman, Sir, I think we better vote knowing that Clause 75 is relating to Deputy Governors. The Clause that related to the Monetary Policy Committee, I think, has already been passed. It was Clause 72.

The Temporary Deputy Chairman (Mr. Maore): Yes, Mr. Midiwo. *Hajaongea leo!*

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, last year, the Minister took us through many amendments. He had one year to bring the amendments on the review of the Central Bank Act. We could have helped him in that sense. He is now busy trying to unexplainedly bring in issues that do not belong to the Finance Bill. It is of no importance to this House why the CBK needs to have two Deputy Governors for that particular reason alone. For the same reason, the CBK does not also need to have two Chairmen and a Governor.

We oppose the amendment.

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, just before you put the Question, I think it is important that this House get things into proper perspective. This House has just amended the Central Bank Amendments Act this afternoon by passing Clauses 71 and 72, which refer to the CBK. So, there is no reason why we should say that we cannot amend the Central Bank Act now. What we need to know is exactly what we are amending it for. The issue we had in contention was about the Chairman but not in terms of the new structures of the CBK giving it two Deputy Governors. I think it is important, for the sake of record, that we get the matter straight.

The Temporary Deputy Chairman (Mr. Maore): I think the matter has come out clearly from the Minister and hon. Okemo. The best part of this is; what does Parliament wish to say?

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

(Clause 75 deleted)

The Temporary Deputy Chairman (Mr. Maore): The Minister's amendment does not arise.

(Clauses 76, 77 and 78 agreed to)

The Temporary Deputy Chairman (Mr. Maore): Proceed, Mr. Muite!

New Clause 78A

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

THAT, a new Clause 78A be inserted immediately after Clause 78 therefor a new clause as follows -

New 78A The Retirements Benefits Act is amended by inserting the
following new section immediately after Section 37 -

Benefits 37A. Every under retirement benefits
occupational scheme and regulations retirement made by the Minister benefits under Section
55 of schemes. this Act shall ensure that a member leaving employment
after three years of membership shall, thereupon be entitled to -

(a) a refund of his contribution together with the
investment income accrued thereon; and,
(b) payment of the employer's contribution together with the investment income accrued
thereon.

I was explaining that employees who are retrenched are denied access to their retirement benefits until they reach the age of 55. When one is retrenched at the age of between 30 and 40, when he or she has children in school, and others in universities, it cannot be right to deny the employees their retirement benefits when they most need it. If you continue being in employment, you continue to receive a salary and you are able to support your family and do your own things using the salary. Therefore, you can wait for your retirement benefits until you reach 55 years. However, where one is retrenched or dismissed or retires for whatever reasons, why would we deny those employees their retirement benefits if they want it? It has been argued that people get their benefits and they misuse the money. If your son or daughter has not become financially responsible at the age of 38 or 40, then they will never be responsible. In fact, it is their money. Indeed, those who are benched on misusing their money with *ndogo ndogo*, they will still do it even at the age of 55! So, let us allow these people to access their money and start up their business and educate their children.

The wording of this clause is clearly set out on page 664. If hon. Members, whom I am appealing to, through you, support this new clause, employees will be able to access their benefits. No employee has complained about this amendment. It is only the managers of these schemes. We should not be paternalistic by saying that they will misuse their money. The managers of these schemes want to cling on to the money of employees for as long as possible, trade with it and make a lot of money for themselves. That is why they do not want the employees who are retrenched to access the money. They want to be left with that money for many years. There is no justification. That is their money, they have worked for it and they are entitled to it.

I beg to move.

(Question of the new clause proposed)

(New clause read the First time)

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

Mr. Kajwang: Mr. Temporary Deputy Chairman, Sir, I just want to say one word in support of Mr. Muite's amendment. Remember that we are talking about a forced retirement. It is not voluntary. Immediately, you are retrenched, you do not have another source of income. The law says that you cannot, therefore, touch that money, even if you do not have an income, until you are 55 years. Essentially, it is just saying that you should die between the time you are retrenched and the time you reach 55 so that you cannot access the money, anyway. I think that is being very cruel to the person who has worked very hard to invest their money into a Retirement Benefits Scheme.

I support.

Mr. Osundwa: Mr. Temporary Deputy Chairman, Sir, I also support the amendment because there have been instances where a couple is retrenched, especially in Public Service and the family is subjected to a lot of suffering.

I support.

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to oppose the amendment, first, on the basis of technicality. This issue is not about the Finance Bill. An hon. Member cannot introduce a new clause to this Bill because this is not the Statute Law (Miscellaneous Amendment) Bill---

The Temporary Deputy Chairman (Mr. Maore): Order! Order, Mr. Minister! I think this is not an amendment to what you had raised. It is a new item that Mr. Speaker had approved and it is in the Second Reading. We cannot allow your argument that it is out of order on the basis of a technicality. It is the one I want to correct; the power to argue like that was with Mr. Speaker when he approved this amendment. It must have gone to your friend in the Cabinet, the Attorney-General. So, you better be ready with the numbers to back up your argument.

The Minister for Finance (Mr. Kimunya): Thank you, Mr. Temporary Deputy Speaker, Sir. Be that as it may, I think it is important that we understand the import of what this amendment is seeking to do. It is covering people who serve for only up to three years. So, if you serve for four years or more, you will not be entitled to recovering your money, because the amendment provides that people who serve for three years and then leave employment are the only ones who are entitled to a refund of the amount. If somebody serves for 20 years and then retires, he will not be protected by the amendment that Mr. Muite is proposing.

(Mr. Muite stood up in his place)

The Temporary Deputy Chairman (Mr. Maore): Just hold on! Mr. Muite, allow the Minister to respond!

Mr. Muite: He is misleading the House!

The Temporary Deputy Chairman (Mr. Maore): Wait! You will have a chance to correct him!

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, it basically says that every occupational retirement benefits scheme shall ensure that a member leaving employment, or membership, after three years shall thereupon be entitled to a refund. The issue here is that we have heard the cries of people. People lose a job but before they get another job, they go to the NSSF, their retirements benefit scheme, and want to withdraw what they have been saving for their future. When they get that, they use it for their immediate needs such as school fees before they get another job. By the time they retire at the age of 55, there is no pension, or amount available to them, and that is what we are trying to prevent. We want to ensure that when people retire, they do not do so and die because of desperation as they do not have money, or regular income, because they consumed it when they were active. The amendment may be popular. It may be good because people want to be paid their money, but as a nation and a Parliament, I think we must look at the welfare of society in general and ask: Do we want to protect our future?

Do we want to protect children in future when their father or mother cannot work? Do we want people who are looking for jobs to withdraw whatever retirement benefits had been put aside, consume them and then have nothing available for their children? That is the decision we have to make. Who are we protecting: The person who is desperate to get another job or their children who need to be protected in the old age of this person?

I beg to oppose and urge the House to stick to what we have. In any case, I believe the same intention can be achieved through an amendment of the Occupational Retirement Benefit Regulations to provide a window for those desperate cases. We have, indeed, already done that when people are incapacitated and cannot work any more. Such people can access their benefits. That is how we should be doing this, rather than amending a good law just for purposes of short term expediency.

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

(The new clause was read a Second Time)

*(Question, that the new clause be added
to the Bill, proposed)*

The Minister for Finance (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I beg to oppose; this does not find its place into the law for the reasons I explained during debate on its Second Reading. It is a bad clause which will interfere with a very good law. We will regret at some point when people will be looking around, because they have consumed all their money when they should have been working and by the time they attain the age of 55, there is no money available for them. This is against the background of our people, whom we know do not have a saving culture. The only way we can make them do it is through the law. Currently, we are discussing these labour-based laws, which are basically meant to encourage people to save. We have even opened up new avenues for casual workers to save through the National Social Security Fund (NSSF). We would be sending the wrong signal that as we are telling casual workers to save through the NSSF, those who are in formal employment can withdraw their benefits.

I beg to urge this House does not agree that this new clause be part of the law.

Mr. Kipchumba: Mr. Temporary Deputy Chairman, Sir, I want to support the Minister. There is going to be a very chaotic situation, if everybody who is going to quit employment at a very tender age will be able to withdraw their money. It will be very difficult to budget for it, and I think it is going to be very chaotic for the NSSF. I think we should consider whether, indeed, it is necessary for somebody to get his money at will. It is not right and I support the Minister.

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, I think the Minister is making a very utopian argument. Our people have nothing. When you are retrenched, or retired, you are faced with a situation where you cannot access any funds. Many people in this town do not come from the vicinity of Nairobi. So, people need to access their money, even if they want to go and start farming. We will re-visit the situation next year when we have a Government which wants to make people eat.

Mr. Sungu: Mr. Temporary Deputy Chairman, Sir, if this Government was serious, and had the moral authority, it would know that many people want to withdraw their money from the NSSF today because there is a lot of corruption there. Who would want to give his money, and there are millions of Kenyans doing that, and then the money is put into useless investments, in land and buildings that are not worth anything?

I support the new clause by Mr. Muite.

The Temporary Deputy Chairman (Mr. Maore): Order, Mr. Sungu! That is an extraneous argument! It does not help the cause we debating here.

The Assistant Minister for Finance (Mr. Kenneth): Mr. Temporary Deputy Chairman, Sir, I think the most important thing is to understand what pension is all about. I want to say that under the proposals on the Floor, you can access your money that you have saved or contributed by way of pension. It is the employer's portion that is proposed to be kept for you until you reach that retirement age. It is some of security or guarantee.

I, therefore, oppose this particular new clause.

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

(Several hon. Members stood up in their places)

The Temporary Deputy Chairman (Mr. Maore): You have 16 hon. Members; you are short of the number required to cause a Division. Take your seats!

(Several hon. Members stood up in their places)

Order, hon. Members! Take your seats! That is what order means!

(Mr. Midiwo stood up in his place)

Mr. Midiwo, please, take your seat!

(Clauses 79 and 80 agreed to)

Clause 81

The Temporary Deputy Chairman (Mr. Maore): There are three proposed amendments to Clause 81. I think the one by hon. Oparanya will be withdrawn. You are here! Tell us what you want!

Mr. Oparanya: Mr. Temporary Deputy Chairman, Sir, I had proposed an amendment but, unfortunately, the one who typed it made a mistake. So, I am withdrawing it so that my colleague, Prof. Olweny, brings in his amendment.

(Mr. Oparanya's amendment withdrawn)

The Temporary Deputy Chairman (Mr. Maore): Okay. Now, we go to Prof. Olweny's proposed amendment, which is--- You better follow what it reads.

An hon. Member: On what page?

The Temporary Deputy Chairman (Mr. Maore): It was submitted late. Listen to what it says:-

THAT, Clauses 81(b)(12) and 81(c)(12) be deleted.

I think, Prof. Olweny, you have some homework to do. Explain a little bit why and what it is you are deleting, so as to bring hon. Members aboard.

Prof. Olweny: Thank you, Mr. Temporary Deputy Chairman, Sir. What is being included is what I want to delete. I am proposing that Clauses 81(b)(12) and 81(c)(12) be deleted from the Bill.

Mr. Temporary Deputy Chairman, Sir, what the Minister is trying to incorporate here is the same thing we deleted last year from the Finance Bill. He is just bringing it through another door and in another form. The impact of this on the sugar industry is that it is going to make imported sugar, although he is talking about industrial sugar--- Generally, it is going to affect the whole industry. Imported sugar will be cheaper and that is going to take us back to the old days when the sugar industry had real problems. We could not tell---

The Temporary Deputy Chairman (Mr. Maore): Be brief and specific to the issues, Prof. Olweny.

Prof. Olweny: Yes, Mr. Temporary Deputy Chairman, Sir. That is what we are objecting to. I have talked to the Select Committee on Finance, Planning and Trade. It even discussed this issue with the Minister. This is the same thing he brought last year! He agreed to remove it. Now, he is bringing it through another door and in another form!

Mr. Temporary Deputy Chairman, Sir, with those few comments, I beg to move that Clauses 81(b)(12) and 81(c)(12) be deleted from the Bill.

*(Question of the amendment
proposed)*

Mr. Oparanya: Mr. Temporary Deputy Chairman, Sir, this issue was discussed here last year. It was agreed that there should be no amendment to the Sugar Development Levy because it was meant to improve the sugar sector. But, surprisingly, the Minister has now brought it back. It is affecting industrial sugar. Instead of the Minister promoting the manufacture of industrial sugar in this country, he is encouraging the importation of the same. He should have given a subsidy to Miwani Sugar Factory, which used to manufacture industrial sugar, to start manufacturing it, instead of---

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

Mr. Oparanya: Mr. Temporary Deputy Chairman, Sir, I support the amendment.

The Temporary Deputy Chairman (Mr. Maore): Hold on. Mr. Osundwa, are you raising a point of order or you want to contribute?

QUORUM

Mr. Osundwa: Mr. Temporary Deputy Chairman, Sir, I hate to interrupt such an important contribution. I do not think there is a quorum in this House. Matters regarding sugar are very crucial!

The Temporary Deputy Chairman (Mr. Maore): Order! I confirm that there is no quorum. I direct that the Division Bell be rung!

(The Division Bell was rung)
(The House resumed)
[The Temporary Deputy Chairman
(Mr. Sungu) in the Chair]

PROGRESS REPORTED

THE FINANCE BILL

Mr. Maore: Mr. Temporary Deputy Speaker, Sir, I beg to report that the deliberations of the Committee of the whole House have been interrupted due to lack of quorum.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Sungu): Hon. Members, due to lack of quorum, we are forced to adjourn. The House is, therefore, adjourned until Thursday, 11th October, 2007, at 2.30 p.m.

The House rose at 5.15 p.m.