

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 15th April, 2003

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Annual Report and Accounts of Pharmacy and Poisons Board for the year ended 30th June, 1997, and the certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Pharmacy and Poisons Board for the year ended 30th June, 1998, and the certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Pharmacy and Poisons Board for the year ended June, 1999 Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Pharmacy and Poisons Board for the year ended 30th June, 2000, and the certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Medical Practitioners and Dentists Board for the year ended 30th June, 1999, and the certificate thereon by the Auditor-General

(Corporations).

Annual Report and Accounts of Medical Practitioners and Dentists Board for the year ended 30th June, 2000, and the certificate thereon by the Auditor-General (Corporations).

*(By the Assistant Minister for
Health (Mr. Konchella) on
behalf of the Minister for Health)*

ORAL ANSWERS TO QUESTIONS

Question No.198

UTILIZATION OF TARDA REVENUE

Mr. J. Nyagah asked the Minister of State, Office of the Vice-President and Ministry of National Reconstruction:-

(a) how much of the TARDA revenue will be spent in the districts of Mbeere, Machakos, Kitui and Mwingi for their development activities in the next three years;

and,

(b) how much has been spent in these districts during the last three years.

Mr. Deputy Speaker: Is anyone here from the Office of the Vice-President and Ministry of National Reconstruction? We will leave this Question until the end then. Let us move on to the next Question.

Question No.162

GOVERNMENT POSITION ON ASYLUM SEEKERS

Mr. Billow asked the Minister for Home Affairs:-

(a) what the Government position is on asylum seekers from strife-torn countries; and,

(b) if he is aware that Palestinian nationals are denied entry into Kenya.

The Minister for Home Affairs (Mr. Awori): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Kenya's policy on asylum seekers is governed by the Geneva Convention of 1951 and the OAU Convention of 1969.

(b) The Government does not deny Palestinians entry into the country provided they meet all the immigration requirements.

Mr. Billow: Mr. Deputy Speaker, Sir, the conventions that the Minister mentioned do exist. However, what we have seen is that asylum seekers in this country do suffer immense problems when trying to get asylum in Kenya. The UNHCR is a UN body that is responsible for screening and taking care of refugees. However, they also have a very cumbersome and bureaucratic process. In the process, asylum seekers spent many years in custody before they get asylum.

Mr. Deputy Speaker, Sir, a good example that was even given by the media a couple of weeks ago, was the case of four Iraqis who came to seek asylum here in Kenya. They spent two years in police cells; between Milimani and Parklands police stations. We do remember that they went to court last month seeking to be deported rather than spent their lives in custody---

Mr. Deputy Speaker: Order! Mr. Billow, I have been patient. I have allowed you to express yourself. Please, ask your supplementary question.

Mr. Billow: Mr. Deputy Speaker, Sir, could we have an assurance from the Minister that he will take action to ensure that the Immigration officers at the airport and other places comply with the OAU and UN conventions with regard to asylum seekers in this country, so that they get asylum when they apply for it within the fastest time possible rather than subject them to suffering?

Mr. Awori: Mr. Deputy Speaker, Sir, our Immigration officers are very conversant with all the conventions in so far as the asylum seekers are concerned. The hon. Member alluded to the Iraqis who have been in the police cells for the last four years. Those were not asylum seekers. Asylum seekers do not sneak into the country with firearms and various things. The Iraqis that he is referring to were not asylum seekers. They came in illegally. They were charged in the court of law and convicted. They served the conviction and they were sent back to their country of origin. But since we have got no contact with the Iraqi authorities, we sent them to Jordan. The Jordanians rejected them and, therefore, they came back here.

As to the question of looking after refugees or asylum seekers, very soon I intend to bring here a Refugee Bill which, I hope, will be passed by this Parliament. The Refugee Bill will make Kenya actually own the refugees. We will take over the responsibilities of the UNHCR. I can assure you that all conventions will be observed as, indeed, they are being observed even today.

Dr. Godana: On a point of order, Mr. Deputy Speaker, Sir. I heard the Minister say we have no contact with the Iraqi government and that they had to sent those Iraqis to Jordan. I am surprised he

said so because there is an Iraqi diplomatic mission here. It has always been there, even at the material time. In the order to say, as a Government, they had no contact with the Government of Iraq when, in fact, we are hosting their diplomatic mission here?

Mr. Awori: Mr. Deputy Speaker, Sir, when I talked of contact there, I meant that we could not release the Iraqis to the Embassy here. We had to take them to their country of origin. Of course, as the former Minister for Foreign Affairs and International Co-operation knows, there is no way in which we could have flown into Iraq.

Mr. Sungu: Mr. Deputy Speaker, Sir, while appreciating the Government's concern for the security of Kenyans, noting that some of these asylum seekers come from particularly bad areas like Palestine, where there are so many cases of suicide bombing, will the Minister agree with me that there is a need to protect Kenyans from immigrants from such areas? What security measures has the Minister put in place to ensure that undesirable elements, who could bring insecurity to Kenya, are kept out?

Mr. Awori: Mr. Deputy Speaker, Sir, this country does not discriminate against anybody nor does it label one country or another as dangerous. If a person meets the immigration requirements, he or she will be admitted. If a Palestinian comes in here and his travelling papers are in order, there is not much we can do about it. As most people know, Palestinians do get travelling papers from Egypt and other countries because Palestine is not a state; it is an authority. We cannot accept any documents from an authority unless they are a state. Until Palestine becomes a state, its citizens will have to use papers for other countries. When they do so, it will not matter whether a Palestinian was a bomber somewhere because he will be accepted here.

Dr. Godana: On a point of order, Mr. Deputy Speaker, Sir. This is a very serious matter! This is a Minister of Government saying that Palestine is an authority and we cannot accept papers from them and yet this Government accepted the credentials of the Palestinian representative to the OAU in Addis Ababa to act as an ambassador of that authority in that country. Is he order?

Mr. Awori: I am perfectly in order. We accepted his credentials. We showed courtesy. The former Minister for Foreign Affairs and International Co-operation knows very well that Palestine is not a state and that it is moving towards being a state. We cannot accept them directly. Even when the Palestinian Ambassador came here, he had to carry another country's papers.

Dr. Galgalo: Mr. Deputy Speaker, Sir, is the Minister aware of a racket involving his officers and UNHCR officers, whereby asylum seekers interested in travelling to a third country have to pay over US\$10,000 before they get assistance?

Mr. Awori: Mr. Deputy Speaker, Sir, I will be very happy to take serious action if the hon. Member can give me the evidence. It is possible that this is happening, but I am not aware of it. Nobody has brought any evidence that this is happening.

Mr. Billow: Mr. Deputy Speaker, Sir, there is clearly a bias towards a number of Muslim countries, particularly Palestine and Pakistan. For instance if you are a businessman applying for a visa for Nairobi in Pakistan, you are told you have to send your application to the Principal Immigration Officer in Nairobi for acceptance. We are told that application forms from some of these Muslim countries, like Pakistan and Palestine, are sent to the US and Israeli embassies for verification. Could the Minister explain why, as a sovereign nation, we have to subject our verification process for visa applications to other countries like the US and Israel?

Mr. Awori: Mr. Deputy Speaker, Sir, that is entirely incorrect. We would never use another state to take care of our [Mr. Awori] affairs. We are a full sovereign state. That is all hearsay.

AWARD OF BURSARIES TO GIRLS' SCHOOLS

Mr. Korir asked the Minister for Education, Science and Technology whether, in view of the fact that the Government allocated Kshs10 million to support affirmative action through enhanced bursaries to 69 girls schools, he could list the schools and the districts in which they are situated and also indicate how much each school received.

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

The following 69 schools in 69 districts in the---

An hon. Member: Can we know who he is?

Mr. Deputy Speaker: Order! This Assistant Minister has answered Questions before. Continue, Mr. Assistant Minister!

Dr. Galgalo: But his shirt is not buttoned!

Mr. Deputy Speaker: Order, Dr. Galgalo!

The Assistant Minister for Education, Science and Technology (Dr. Mwiria): The reason it is not buttoned is because the neck is bigger than the shirt!

(Laughter)

Mr. Deputy Speaker: Mr. Assistant Minister, you do not have to exchange words with the other hon. Members? Just address the Chair and proceed. But now your tie is properly in place.

Continue.

The Assistant Minister for Education, Science and Technology (Dr. Mwiria): The following 69 schools in 69 districts in the country received additional support for the girl child education in the financial year 2002/2003. I will name the district and the school.

District	School
Kakamega	Lirhandanda
Bungoma	Eluhya
Vihiga	Ebusiratsi
Busia	Kisoko

Mr. Deputy Speaker: Order, Mr. Assistant Minister! I see that there are 69 schools. You cannot read all of that. You may lay those papers on the Table of the House.

Dr. Mwiria: Thank you, Mr. Deputy Speaker, Sir, for coming in handy.

Mr. Deputy Speaker: Just lay the documents on the table.

*(Dr. Mwiria laid the documents
on the Table)*

Dr. Mwiria: Mr. Deputy Speaker, Sir, I need some training.

Mr. Deputy Speaker: You are okay. You are doing very well.

Mr. Korir: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for a very comprehensive answer. This bursary only touches on girls' schools while ignoring those who are in mixed schools. Could the Assistant Minister also consider those girls in mixed secondary schools so that they can also benefit from this programme?

Dr. Mwiria: The next phase of this programme is for mixed secondary schools.

In fact, we realised that Ijara District, which does not have a girls' secondary school, did not benefit. So the next phase of the programme will be for mixed schools.

Mr. Sambu: Mr. Deputy Speaker, Sir, could the Ministry consider bringing a Bill for enactment by the House for the distribution of bursaries so that all funds allocated for bursaries are distributed equitably to the constituencies by the constituency committees to the needy children other than the case now where headmasters or head teachers are the ones considering them case by case? Could he consider bringing a Bill for enactment by the House for the distribution of bursary funds through the constituencies?

Dr. Mwiria: Mr. Deputy Speaker, Sir, we shall be happy to consider that suggestion.

Mr. Serut: Mr. Deputy Speaker, Sir, whereas we appreciate the teachers list which the Assistant Minister has given---

(Some hon. Members whistled)

Mr. Deputy Speaker: Order, hon. Members! If any hon. Member is found to be whistling, he will be out of order, disorderly and will be excluded from the House!

Hon. Members: It is Mr. Wanjala!

Mr. Deputy Speaker: Continue, Mr. Serut!

Mr. Serut: Whereas we appreciate the list given by the Assistant Minister, of the 69 girls secondary schools, could he tell this House what criteria was used to determine which schools should be given this money because, according to this list, some of the districts were excluded?

Dr. Mwiria: Mr. Deputy Speaker, Sir, it would not be true to say that some districts were excluded. All the 69 districts benefitted at one time.

Mr. Rotino: Mr. Deputy Speaker, Sir, West Pokot District has three girls' schools. What criteria was used to identify the schools to which the money was allocated?

Dr. Mwiria: Mr. Deputy Speaker, Sir, the schools that benefitted from the funds were identified by the District Education Officers (DEOs). They were asked to identify the schools on the basis of those schools with the most needy girls.

Mr. Khamisi: Mr. Deputy Speaker, Sir, could the Assistant Minister assure this House that, in future, Members of Parliament will be involved in the identification of schools to benefit from these funds?

Dr. Mwiria: Mr. Deputy Speaker, Sir, we are democratic. So, we will certainly be interested in including Members of Parliament in the selection panel.

Mr. Deputy Speaker: Could you ask the last question, Mr. Korir?

Mr. Korir: I do not have any other question, Sir.

Question No.272

MEASURES TO PRESERVE RIVER
UASO NYIRO

Mr. Deputy Speaker: Mr. Lesrima, the Minister for Water Resources Management and Development has requested that your Question be deferred until tomorrow. Is that okay with you?

Mr. Lesrima: It is okay, Sir.

Mr. Deputy Speaker: Very well. The Question is deferred to tomorrow afternoon.

(Question deferred)

Let us proceed to Mr. Leshore's Question.

Question No.171

IMPLEMENTATION OF RURAL ELECTRIFICATION PROGRAMME
IN SAMBURU

Mr. Leshore asked the Minister for Energy:-

- (a) when he is going to provide electricity to Wamba and Archers' Post Towns in Samburu East under the Rural Electrification Programme (REP);
- (b) since Samburu is semi-arid, whether he has considered the introduction of solar or wind energy to supplement the electrification programme in that region; and,
- (c) how much money has been earmarked in the 2003/2004 Budget for this programme.

The Minister for Energy (Mr. Ochilo-Ayacko): Mr. Deputy Speaker, Sir, I beg to reply.

(a) The cost of supplying power to Wamba and Archers' Post is approximately Kshs200 million, and the Government is making efforts to secure funding for the project. If our efforts towards that end become successful, we will give a time-frame for implementation of the project.

(b) The Government has considered the important role that the renewable energy technologies such as solar and wind could play in providing cheaper energy to rural areas, which include semi-arid areas like Samburu East. In this regard, the Government is currently developing a national wind atlas to guide investment in wind energy.

(c) Allocation in the year 2003/2004 Budget will be made in the Budget that will be presented to this House in the month of June. So, I am not in a position to reveal the amount right now. However, the Government budgetary allocation for rural electrification, which is realised from the 5 per cent rural electrification programme levy, is far below the demand due to high operations and maintenance cost of existing REP schemes. The Ministry is, however, addressing this problem, and also looking for external funding to finance such schemes.

Mr. Leshore: Mr. Deputy Speaker, Sir, I would like to thank the Minister for his frank reply. Samburu East is one of the constituencies which have not benefitted from the REP since I joined Parliament. So, could the Minister now consider to include the Wamba/Archers' Post Programme in the 2003/2004 Budget?

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, we are really sympathetic to this particular area. I want to assure the hon. Member that, in future Budgets, we will consider such disadvantaged areas.

Mr. Wanjala: Mr. Deputy Speaker, Sir, most parts of this country do not have electricity. Under the National Rainbow Coalition (NARC) Government, Kenyans, especially graduates from our polytechnics, are committed to undertaking development projects.

So, could the Minister consider providing each constituency with a certain amount of money for electrification in every Budget?

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, that is a good question. We are currently considering the most equitable way of ensuring that rural electrification is realised. The only impediment that we face is that our current electricity generation has an excess capacity of only 300 megawatts. So, we need to invest heavily in electricity generation and equally invest in the area of electricity distribution.

Dr. Ali: Mr. Deputy Speaker, Sir, could the Minister consider providing solar sets or generators to schools and hospitals in areas which are far away from the national grid? In the health

sector, you cannot undertake anything without lighting.

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, a policy framework is being worked out, and very soon areas which are not supplied with electricity, because of the heavy cost involved, will be considered. Secondly, there are plans to try stand-alone generators and see whether they can mitigate the situation.

Mr. Deputy Speaker: Could you ask the last question, Mr. Leshore?

Mr. Leshore: Mr. Deputy Speaker, Sir, could the Minister agree that, because of corruption, the REP did not reach areas such as Samburu East? Could he also assure the House that, under his administration at the Ministry, he will ensure that the programme reaches such areas?

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, it is not due to corruption that the REP has not reached Samburu East. We know that corruption has been prevalent in the energy sub-sector. However, the main reason for electricity not having reached that area is the economics involved. There should be adequate demand for electricity in Samburu East and adequate funds to put up the lines to reach that needy area.

Mr. Leshore: On a point of order, Mr. Deputy Speaker, Sir. Could the Minister tell us how far he has gone with solar and wind research?

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, in the last half of this year, the Ministry will receive a report that is being prepared by a specialised group. Thereafter, I will come up with a comprehensive statement on the issue.

Mr. Deputy Speaker: Very well. Let us proceed to Mr. Ndambuki's Question.

Question No.282

ELECTRIFICATION OF COFFEE FACTORIES

Mr. Ndambuki asked the Minister for Energy:-

- (a) whether he could explain how the Kshs600 million which was given by the European Union for electrification of various coffee factories in the country was utilised;
- (b) what the implementation status of the programme is; and,
- (c) whether he could table a list of all the affected factories in the country, showing the amount spent on each.

The Minister for Energy (Mr. Ochilo-Ayacko): Mr. Deputy Speaker, Sir, I beg to reply.

(a) A total of Kshs375 million, and not Kshs600 million, was granted by the European Union for the Coffee Factories Rural Electrification Programme, Phase I. A further Kshs500 million has been allocated to Phase II of the programme, but a financing agreement has not yet been signed.

(b) Phase I of the programme targeted 168 factories which were selected on the basis of least-cost approach, whereby the estimated cost of extending electricity to a factory was set at a maximum of Kshs2.8 million. Out of the 168 selected factories, 57 have been connected and a total of Kshs125 million has been spent, whereas 59 were disqualified on the basis of being already on supply or not being operational. The implementation work on the remaining 52 factories is in progress, and is expected to be complete by December, 2003.

Annex I of my written reply to the Question shows the 168 factories that were identified for rural electrification. Annex II shows the 57 factories that have already been connected, with the amount spent on each indicated against the name of the factory. Annex III shows the 59 factories that were declared ineligible. Annex IV shows the 52 factories whose implementation work is in progress. The estimated cost of connection is shown against the name of each factory.

Mr. Deputy Speaker, Sir, I beg to table the annexes.

(Mr. Ochilo-Ayacko laid the documents on the Table)

Mr. Ndambuki: Mr. Deputy Speaker, Sir, I do not see names of some factories in the list, especially those that are covered under Kithangathini Co-operative Society. They are Uvete, Kithangathini and Kivani which were on the list of factories to be provided with electricity in that programme. Again, the amount of money that was given in the beginning was not Kshs375 million but Kshs600 million.

Mr. Deputy Speaker, Sir, I know there was a problem and the programme did not continue because some factories were provided with electricity and they were not on the list!

Mr. Deputy Speaker: Mr. Ndambuki, ask your question! Are you asking a question or answering?

Mr. Ndambuki: Mr. Deputy Speaker, Sir, my question is this: What happened to the factories that I have mentioned; that is, Uvete, Kithangathini and Kivani, which were earmarked to be provided with electricity under that programme?

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, I am glad the hon. Member is throwing more light on some monies that are not shown in our records. I am reading from Government records which state that Kshs375 million was set aside for the programme. An agreement has not yet been made on the further Kshs600 million. The factories that were intended for electrification are in this annexure. The ones that are not in this annexure were excluded by those who were planning then. I am sure it was the party to which the former Minister belonged!

Mr. Angwenyi: Mr. Deputy Speaker, Sir, there is no project which has been more abused in this country than the STABEX electrification project. The decision-makers abused their offices and corruptly extended rural electrification to areas where they came from. What is the Minister going to do to rectify the situation, so that he can extend rural electrification to areas in Gusiiland like Nyanyaigwa, Nyaumite and others, which were cut off from benefitting from that programme?

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, I am thankful to Mr. Angwenyi because he is aware of the people who abused that programme. I have had occasion to listen to Mr. Angwenyi in my office and I will be more open, on behalf of the Government, to other Members who still feel aggrieved by the way the programme was drawn. We will continue with the programme the way it is, because it is still under contract and it is being implemented. But other disbursements and agreements will be more equitable and available to regions which were denied electricity in the past.

Mr. J.P. Mutiso: Mr. Deputy Speaker, Sir, the Rural Electrification Programme is very important in this country. I would like to request the Minister to consider waiving the 10 per cent required as contribution by the beneficiaries.

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, that request is being considered by the Government, except that it would be correct to point out that, the rural electrification exercise is a very expensive affair. Providing electricity on a one-kilometre stretch costs nearly Kshs1 million. Sharing of cost between the utilities and the public is invited, but we are currently finding a middle ground through which the poor parts of this country could be provided with electricity.

Mr. Ndambuki: Mr. Deputy Speaker, Sir, because there is some money remaining, and some of those factories that I have mentioned have done wiring and incurred costs, could the Minister consider providing electricity to them because they met the conditions that were given?

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, I indicated that some of the injustices of the past will be redressed by the current Government.

I believe my office is open to Mr. Ndambuki. He could come and be attended to.

*Question No.039*WHEREABOUTS OF NAIROBI
MAYORAL CHAIN

Mr. Mwenje asked the Minister for Local Government:-

- (a) whether he could inform the House the whereabouts of the Nairobi Mayoral chain which was stolen three years ago and when it will be handed over to Nairobi City Council; and,
- (b) what action he has taken to have the culprits apprehended.

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

(a) I still stand by the answer I gave to this House. The mayoral chain has never been recovered.

(b) After investigations, three Nairobi City Council employees were charged in court for the offence of stealing the mayoral chain. The case is still pending in court.

Mr. Mwenje: Mr. Deputy Speaker, Sir, you will agree with me that the Ministry of Local Government is either reluctant to answer this Question or it is not competent to do so. That is because even after your ruling that they should go back and bring a proper answer, and you advised them on what to do, they still did not take it seriously! I want to quote the current Minister for Local Government in the HANSARD of 7th August, 2002. He---

I mean the Minister at that time---

Hon. Members: Who?

Mr. Mwenje: By that time, whoever was the Minister for Local Government said clearly and I quote from the HANSARD:-

"Although the chain was recovered, it is in the possession of the police. It is still an exhibit. The law would not allow it to be given out while the case is pending in court, and then returned later. Identification of this chain is important to the case. Therefore, it has to be kept intact."

That is what was said by the Minister. By that time---

Mr. Deputy Speaker: Ask your question now!

Mr. Mwenje: I am coming to the question, but it is important to clarify that Mr. Maitha who was then the Shadow Minister for Local Government said:-

"We are aware that the Ministry of Local Government is helping the mayors to tarnish the name of the Opposition. In fact, he cannot authorise the purchase of a new mayoral chain if the old chain is already found."

That is a quotation from what Mr. Maitha said. That shows that the chain was found and the Assistant Minister is now authorising more money to buy a new chain! Could she now tell us, in view of the reply given last year, and in view of what the Minister himself said last year, where the chain is and why she is authorising more money to buy a new chain?

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to impute improper motives on the Minister that, since he contributed in last year's Question, he had a motive of seeking funds---

Mr. Deputy Speaker: Order, Mr. Angwenyi! It is you who is now imputing improper motives! I did not hear Mr. Mwenje impute any improper motives! It is you who is now imputing improper motives!

Mrs. Tett: Mr. Deputy Speaker, Sir, we have not authorised any money to purchase the mayoral chain. The money was authorised by the previous Government! I have a Ministerial

Statement from the then Minister for Local Government, Mr. Uhuru Kenyatta, who actually said: "The stolen mayoral chain was alleged to have been recovered and handed over to the police." The word there is "alleged" and it is in a Ministerial Statement!

Mr. Deputy Speaker: Order hon. Members! Mrs. Tett, what do you have to say about the Ministerial Statement in the HANSARD of 7th August, 2002, which was quoted by Mr. Mwenje? It was issued by the former Assistant Minister for Local Government, Mr. Kiangoi, and he stated that although the mayoral chain had been recovered, it was in the possession of the police, and was still an exhibit.

Mrs. Tett: Mr. Deputy Speaker, Sir, I have a copy of the said HANSARD, and it states:-
"--- I may say that the chain was allegedly found because, although it was recovered, it is in the possession of the police. It is still an exhibit".

This means that this was an allegation.

Mr. Deputy Speaker: Order, hon. Members! Let us hear from Mr. Sasura, who was in the Ministry of Local Government then.

Mr. Sasura: Mr. Deputy Speaker, Sir, I want to correct you. I was not in the Ministry of Local Government then. I was an Assistant Minister for Energy, and a deputy to Mr. Raila when he was a Minister in the former KANU Government.

However, theft of mayoral chains is not confined to Nairobi City. There was a time when the mayoral chain in Embu Municipality was stolen. Basically, I believe mayoral chains are stolen because of their worth. They are made of gold. Could the Assistant Minister consider making mayoral chains out of cheap materials such as aluminium, copper or iron, which will not attract thieves?

Mrs. Tett: Mr. Deputy Speaker, Sir, that is a point taken. However, I would like Mr. Mwenje to tell me if he knows where the Nairobi mayoral chain is. He seems to know where it is.

Mr. Deputy Speaker: Order, Madam Assistant Minister! You are out of order! Could you respond to Mr. Sasura's question.

Mrs. Tett: Mr. Deputy Speaker, Sir, Mr. Sasura's idea is a brilliant one. We might even use wood to make mayoral chains!

Mr. Wanjala: On a point of order, Mr. Deputy Speaker, Sir. You have heard clearly from Mr. Mwenje and from the Assistant Minister. This is a supreme House, and the Assistant Minister cannot come here with allegations. She should always come here with facts.

Although the former Minister for Local Government did not hand over everything because he was desperate after losing as a Presidential candidate---

Mr. Deputy Speaker: Mr. Wanjala, you stood on a point of order, but up to now I have not heard a point of order in your statement. Therefore, you are overruled.

Mr. Wanjala: Mr. Deputy Speaker, Sir, I want to raise my point of order.

Mr. Deputy Speaker: Order, Mr. Wanjala! When you stand on a point or order, you should raise a point of order.

Mr. Shitanda: Mr. Deputy Speaker, Sir, it is emerging that some senior officers in the Ministry of Local Government know more about the Nairobi mayoral chain than we know. The Assistant Minister's reply has misled the House, and has indicated that there is much more in the Ministry of Local Government than the House is being told. Could the Assistant Minister undertake to go and investigate this matter further, and then come back and report her findings to this House?

Mr. Deputy Speaker, Sir, it appears that somebody in the Ministry of Local Government knows more than what we in this House have been told.

Mrs. Tett: Mr. Deputy Speaker, Sir, this case is with the police. I really do not know what else I can do. I am an Assistant Minister for Local Government and not a policeman or the Commissioner of Police. I really do not know what to do.

Mr. Kajembe: Mr. Deputy Speaker, Sir, the Assistant Minister does not know the whereabouts of the mayoral chain. Again, she has told this House that the Ministry has not approved funds to buy a new chain. Will the Ministry approve funds in future to buy a new chain or not? If not, what is the position of the Ministry?

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

Mr. Deputy Speaker: Order, Mr. Sungu! Let the Assistant Minister answer Mr. Kajembe's question.

Mrs. Tett: Mr. Deputy Speaker, Sir, Mr. Kajembe's question is a different Question. Kshs10 million was remitted to South Africa to buy another chain. That is a different Question and I do not know whether you want me to tackle it as well.

Mr. Deputy Speaker: Madam Assistant Minister, this is an important matter. I think you should answer Mr. Kajembe's question. Even if it is a different Question, and you have the answer to it, go ahead and answer it!

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

Order, hon. Members! Why can you not let the Assistant Minister answer Mr. Kajembe's question?

Madam Assistant Minister, would you like the question to be repeated?

Mr. Kajembe: Mr. Deputy Speaker, Sir, the Assistant Minister wants me to repeat the question.

Mr. Deputy Speaker: Go ahead!

Mr. Kajembe: Mr. Deputy Speaker, Sir, now that the Ministry does not know the whereabouts of the mayoral chain, will it approve some funds to buy a new chain for the Mayor of Nairobi or not? If not, what is the position of the Ministry on the issue?

Mrs. Tett: Mr. Deputy Speaker, Sir, I have already said that if need be, we will buy a wooden mayoral chain.

Mr. Sungu: On a point of order, Mr. Deputy Speaker, Sir. The Kenya National Assembly is a House with records. Whatever is said in this House goes to the Kenya National Archives for use by posterity. Mr. Mwenje stated clearly that the HANSARD of 7th August, 2002 states that the former Minister for Local Government admitted that the mayoral chain, worth over Kshs150 million, had been recovered. There were also Press reports to that effect.

This matter cannot be glossed over. It must be cleared today because it appears as if it is being covered up. I want to seek the Chair's guidance on how we will resolve the issue. It had been admitted in this House that the mayoral chain had been recovered, but that admission is being denied today. Are we going anywhere? I need the Chair's guidance on the issue.

Mr. Deputy Speaker: Order, Mr. Sungu! I am also confused because, from the HANSARD I am reading, it is indicated that Kshs10 million was remitted to South Africa last year to buy a mayoral chain. Now, we have been told that the Ministry will consider buying a wooden mayoral chain. Is this the same chain or not? Can we get this clarification? Kshs10 million was sent to South Africa to buy a chain, and now the Assistant Minister has said that the Ministry is considering buying a wooden chain. Is this the same chain? How many chains are we talking about?

Mr. Mwenje: Mr. Deputy Speaker, Sir, I am afraid to say that the Assistant Minister is not serious. She cannot joke with public funds. Kshs10 million was given to the former Mayor of Nairobi to buy a mayoral chain in London, and the money is deposited in an individual's account. The Assistant Minister has said that the Ministry will consider buying a wooden mayoral chain. These are public

funds!

We have clearly stated that the mayoral chain is in the country, and the Assistant Minister has continued to play around with public funds. We need to be given direction on the issue. If necessary, this issue should be referred to the relevant Departmental Committee, so that it can be investigated. It is now very clear that the Ministry of Local Government is covering up the issue.

Mrs. Tett: Mr. Deputy Speaker, Sir, we are trying to do our level best to find out what exactly happened to the mayoral chain, and where the Kshs10 million went to. The money was not remitted by the current Government, but by the former Government.

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

Mr. Deputy Speaker: Order, hon. Members! Will everybody else sit down except the Assistant Minister? Mrs. Tett, finish what you were saying.

Mrs. Tett: Mr. Deputy Speaker, Sir, I am collecting information about the Kshs10 million. I want to know where it went to and how the tender for the purchase of the mayoral chain was awarded.

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

Mr. Deputy Speaker: Order, hon. Members! I asked the Assistant Minister to finish answering the question. She must be heard. Mrs. Tett, finish answering the question and nobody should raise a point of order now.

Mrs. Tett: Mr. Deputy Speaker, Sir, if the previous Government could not find the chain, we are trying our best--- I have the Ministerial Statement which I can table here, in which they said that the chain was allegedly found. I would like to inform the House that they did not find it.

Mr. Omingo: On a point of order, Mr. Deputy Speaker, Sir. Is it in order to continuously grill the Assistant Minister who has been unable to answer this Question, when in fact, the people who sanctioned the money under the Government in which the chain was stolen still sit here? Mr. Uhuru is here! Is it in order to do that?

Mr. Deputy Speaker: Order, hon. Members! We ought to move! We cannot stay here talking about this chain. But Madam Assistant Minister, are you satisfied, under the circumstances, that the issue of the money to buy a new chain has been resolved? How do you expect us to resolve this matter? Are you satisfied that, that Question is satisfactorily answered?

Mrs. Tett: Mr. Deputy Speaker, Sir, I have answered the Question on the lost mayoral chain. I have said that the police are investigating the matter. But the Kshs10 million is a different Question and, maybe, when it is asked, I will have---

Mr. Mwenje: Mr. Deputy Speaker, Sir, I would like to request the Chair to direct that this matter be dealt with by the relevant Departmental Committee. The Chair will agree with me, just like anybody else in this House, that this House is being taken for a ride. We cannot be taken for a ride after having been given authority by our people. We are supposed to query when their money is stolen. I would like to request the Chair to direct that this matter be now dealt with by the relevant Departmental Committee so that it can be investigated. The Commissioner of Police and the Minister who has deliberately refused to come to this House to answer this Question---

Mr. Deputy Speaker: Order, Mr. Mwenje! Finish!

Mr. Mwenje: Mr. Deputy Speaker, Sir, I would like you to direct that the matter be dealt with by the relevant Departmental Committee.

Mr. Deputy Speaker: And it is so ordered!

(Applause)

Let us now move on to the next Question by Mr. Twaha!

Question No.189

ANNUAL GOVERNMENT EXPENDITURE
ON KADHI'S COURTS

Mr. Twaha asked the Minister for Justice and Constitutional Affairs how much money the Kadhi's Courts cost the Government annually.

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Thank you, Mr. Deputy Speaker, Sir.

I beg to reply.

The courts do not receive separate funding from that of the Judiciary. All funds are channelled through the courts under which the Kadhis operate. It is, therefore, not possible to quantify how much money goes to the Kadhi's Courts.

Mr. Twaha: Thank you, Mr. Deputy Speaker, Sir. The Kadhi's Courts deal mainly with marriage, divorce and inheritance cases. Could the Assistant Minister inform and confirm to this House and the country, in general, that the Kadhi's Courts are very useful institutions to the Muslim community, very harmless to non-Muslims and the rest of the country and cost the Government next to nothing?

Mr. Githae: Thank you, Mr. Deputy Speaker, Sir. It is on record that the Kadhi's Courts have been doing a very commendable job in this country.

(Applause)

They use very simple procedures and do not have a lot of formalities like it is the case in the other courts. Therefore, even people who are not well versed in the law can appear before the court, prosecute their cases and be heard. Therefore, I would like to say that the Kadhi's Courts do a very commendable job. These courts do not apply to any other person who is not a Muslim. They only apply in cases where the two parties profess the Islamic faith.

Mr. Haji: Mr. Deputy Speaker, Sir, is the hon. Assistant Minister also aware that none of these Kadhis, including the Chief Kadhi, is given a vehicle? The Chief Kadhi is forced to travel in buses and, therefore, diminishing his status as the Chief Kadhi in this country.

Mr. Githae: Mr. Deputy Speaker, Sir, Kadhi's Courts are subordinate to the High Court. Even our magistrates are not allocated Government vehicles, but the Judiciary has its own vehicles. Whenever a kadhi or the Chief Kadhi wants to use a Government vehicle to visit a particular place, the vehicles are available from the pool. This is what any other magistrate would do in a similar situation.

Mr. Sasura: Mr. Deputy Speaker, Sir, in view of the fact that the Kadhi's Courts do not infringe on any other religion's rights in this country, and in view of the fact that the Assistant Minister has conceded to the fact that the Kadhi's Courts do a very good job; and considering the fact that in the draft Constitution, there is a proposal that the Kadhi's Courts be entrenched in the Constitution, could the Assistant Minister give a categorical statement, after consulting with the Minister, that at the National Constitutional Conference, the Government and not the delegates, will have no objection to the Kadhi's Courts being entrenched in the Constitution?

Mr. Deputy Speaker: Mr. Sasura, are you talking about the National Constitutional

Conference which is coming?

Mr. Sasura: No, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Which one are you referring to?

Mr. Sasura: Mr. Deputy Speaker, Sir, maybe, you were not listening to me!

Mr. Deputy Speaker: I was listening!

Mr. Sasura: Mr. Deputy Speaker, Sir, I was not talking about the National Constitutional Conference which is about to be held. I was just asking the Assistant Minister the effect of entrenching the Kadhi's Courts in the Constitution from the Government's point of view.

Mr. Deputy Speaker: You were a chief! You have already gone round!

Mr. Githae: Mr. Deputy Speaker, Sir, I do not know what the hon. Member wants me to say because the Kadhi's Courts are entrenched in the current Constitution. Section 66 of our Constitution is very clear. These courts are entrenched in the present Constitution.

Mr. Deputy Speaker: For the second time, Mr. J. Nyagah's Question!

*(Mr. Michuki sat in the
Opposition side)*

Mr. J. Nyagah: On a point of order, Mr. Deputy Speaker, Sir. Is Mr. Michuki in order to sit in the Opposition side whereas in Commonwealth practice, a Minister should not go to the Opposition side, but instead, it is the Members of the Opposition who should move to the Government side?

Mr. Deputy Speaker: Order! Mr. Michuki, it is quite in order! You can sit there as long as you want!

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

Mr. Deputy Speaker: Order! Mr. Omingo, this is Question Time! I am not going to allow these interruptions!

Question No.198

UTILIZATION OF TARDA REVENUE

Mr. J. Nyagah asked the Minister of State, Office of the Vice-President:-

(a) how much of the TARDA revenue will be spent in the districts of Mbeere, Machakos, Kitui and Mwingi for their development activities in the next three years; and,

(b) how much has been spent in these districts during the last three years.

The Minister of State, Office of the Vice-President and Ministry of National Reconstruction (Mrs. Kilimo): Mr. Deputy Speaker, Sir, I would like to apologise to this House for not being available the first time this Question was asked.

I beg to reply.

(a) The revenue going to be spent by TARDA in the four districts will be Kshs472,679,300 tabulated as follows:-

	<u>Kshs</u>	<u>Distric</u>
Mbeere	14,556,000	
Machakos	69,690,100	
Kitui	510,600	Mwingi
		387,922,600

(b) In the last three years, from 1999 to the year 2000, TARDA spent Kshs63,391,600 on

various projects in the four districts of Mbeere, Machakos, Mwingi and Kitui, tabulated as follows:-

<u>District</u>	<u>Kshs</u>		
Mbeere	9,085,000		
Machakos	26,397,300	Mwingi	27,061,500
Kitui	847,800		

This makes the said total of Kshs63,391,600.

Mr. J. Nyagah: Mr. Deputy Speaker, Sir, TARDA is broke because KenGen does not pay it. Could the Minister, given the fact that TARDA is owed over Kshs3 billion, which was supposed to be used in our area, order KenGen to pay this amount of money to TARDA so that it can be spent in our districts? Instead of engaging in tree-planting programmes, it can carry out real projects in our areas.

Mrs. Kilimo: Mr. Deputy Speaker, Sir, we are looking into that possibility. In due course, we hope to achieve what the hon. Member of Parliament has asked.

Mr. Ndambuki: Mr. Deputy Speaker, Sir, we know and we have been told that KenGen does not exist. Could the Minister consider transferring all the assets which were taken from TARDA so that these districts can benefit?

Mrs. Kilimo: Mr. Deputy Speaker, Sir, I thought I had answered that question by saying that we are looking into it. In fact, it would be good if we managed to get all our assets back. It was just on lease to Kenya Power and Lighting Company (KPLC) and we are working on it.

Maj-Gen. Nkaiserry: Mr. Deputy Speaker, Sir, since TARDA has development projects in Kajiado District, how much money is it going to use on them?

Mrs. Kilimo: Mr. Deputy Speaker, Sir, what we have in Kajiado District is Ewaso-Nyiro South Development Authority (ENSDA).

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to say that Kajiado District will get money from ENSDA when in fact we know that money has been set aside in the Budget for those districts? Why not give Kajiado District its share?

Mrs. Kilimo: Mr. Deputy Speaker, Sir, there are some activities that we undertake in Ewaso-Nyiro South Development Authority and the question of Ewaso-Nyiro South Development Authority does not arise. We are talking about TARDA and whether we are sharing the money with them or not, that is an internal matter. However, we will see where we can chip in if the other authority is not able to make its contribution to the people living within the river basin.

Mr. Muturi: Mr. Deputy Speaker, Sir, the four districts, and indeed the others which have not been included here and fall under the TARDA, share a common climatic condition. Whereas we appreciate the amount of money that is being spent in our sister districts of Kitui, Machakos and Mwingi, could the Minister consider when, and if KenGen or the dams of Masinga or Kiambere, revert to TARDA from KenGen, spending similar amounts of money in the other districts which are not included here such as Makueni and Mbere so that we can have balanced development?

Maj-Gen. Nkaiserry: On a point of order, Mr. Deputy Speaker, Sir. I think my question was not answered because I think the Minister is either ignorant---

Mr. Deputy Speaker: No! I will take your point. Could you let the Minister answer the Question?

Mrs. Kilimo: Thank you, Mr. Deputy Speaker, Sir. I am sure that when we get the money owed to us by KPLC, Kshs3.1 billion, we shall be able to develop the regions mentioned.

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

Mr. Deputy Speaker: I have finished that particular Question but Maj-Gen. Nkaiserry has a

point which has not been answered?

Maj-Gen. Nkaiserry: Mr. Deputy Speaker, Sir, I think my question was not answered. I said that TARDA also covers Kajiado District since Athi River originates from Ngong Hills. We have activities, especially at Emali, which are being handled by TARDA and which are raising a lot of money for TARDA. Why does the Ministry not consider ploughing back a little bit of that money to develop Kajiado District development activities?

Mrs. Kilimo: Mr. Deputy Speaker, Sir, we have not been able to plough that money back to Kajiado District because KPLC has not been paying us the 2 per cent contribution which they are supposed to pay us from the sale of power.

QUESTIONS BY PRIVATE NOTICE

ROLE OF CACCS

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

What is the purpose of Constituency AIDS Control Committees (CACCS) since the HIV/AIDS funds are now being channelled through the Community-Based Organisations (CBOs)?

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, I wish to seek the indulgence of the House to have this Question deferred because we are having new developments with regard to the handling of these issues of HIV/AIDS and I would like to report this matter to the House on Thursday.

Mr. Deputy Speaker: Is that okay, Mr. Obwocha?

Mr. Obwocha: Mr. Deputy Speaker, Sir, let us be honest in this House. You know that this House will adjourn on Thursday!

Hon. Members: No!

Mr. Obwocha: Mr. Deputy Speaker, Sir, even if the House will not have adjourned, you said that this is a very serious matter. We are losing 700 people per day. We want to know whether the CACCS are still existing under the National Aids Control Council (NACC) and if we are going to receive funding. This is not an issue of postponing everyday.

Mr. Deputy Speaker: Mr. Obwocha, I did actually order that this Question be deferred. Now, it has appeared again and the Assistant Minister has asked for it to be deferred further. When I was asking for the Question to be deferred, I underlined the seriousness of the matter in view of the many deaths occurring every day in this country because of the HIV/AIDS pandemic. Now, Thursday is not a long way ahead since it is just the day after tomorrow. So, why do you not let the Assistant Minister come with a complete answer on Thursday? Is that okay, Mr. Obwocha?

Mr. Obwocha: Mr. Deputy Speaker, Sir, I would rather he comes with a Ministerial Statement.

Mr. Deputy Speaker: No! Let the Assistant Minister come with a reply to the Question because it has already been asked. Mr. Assistant Minister, the Question is deferred to Thursday.

Mr. Obwocha: Okay, Mr. Deputy Speaker, Sir. I will oblige.

(Question deferred)

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

INVASION OF PRIVATE FARM IN VIPINGO

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

(a) What urgent measures has the Minister taken to restore law and order in Bahari after wananchi invaded a private farm in Vipingo on Sunday 14th March, 2003 and several of them were arrested and detained in police custody?

(b) What action will the Minister take to check the rising discontent among wananchi as a result of inequalities in land allocations in Bahari?

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

(a) Measures taken to restore law and order in Bahari include: One, the arrest of 241 suspects on 14th march, 2003 and arraigning them in court on Monday, 17th March, 2003. Two, intensified police patrols in the area and lastly, sensitisation of the public not to take the law into their own hands but use the right channels in airing their grievances on land matters.

(b) The Government, through the Ministry of Lands and Settlement, is in the process of settling squatters using legally established procedures. The Government is also sensitising and educating the public on the need to respect private property.

Mr. Khamisi: Mr. Deputy Speaker, Sir, at the time of the invasion, the police announced that they were looking for 12 ring-leaders. So far, only one has been arrested and arraigned in court. Could the Assistant Minister tell this House why the rest have not been arrested?

Mr. Tarus: Mr. Deputy Speaker, Sir, they are still being sought by the police.

Mr. J.M. Mutiso: Mr. Deputy Speaker, Sir, the Assistant Minister has told us that 241 suspects were arrested in that fiasco. He has also alluded that there are legally established procedures to settle squatters. Could he enumerate those procedures used by the Government to settle squatters?

Mr. Tarus: Mr. Deputy Speaker, Sir, the procedures of settling squatters are in the purview of the Ministry of Lands and Settlement.

Mr. L.B. Maitha: Mr. Deputy Speaker, Sir, the issue of land tension is not only restricted to Bahari, but it has even spilled over to Malindi. Now that the Assistant Minister has given an undertaking that the Ministry of Lands and Settlement has started settling squatters, of which I know it has not, could he tell us exactly when this process will start because it is becoming a boiling pot?

Mr. Tarus: Mr. Deputy Speaker, Sir, perhaps, it is important for me to give them the background so that they can know that, indeed, the Government has started the process of settling squatters. Following the invasion and setting on fire of crops belonging to Vipingo Sisal Estate on Friday, 14th March, 2003, 241 suspects were arrested and taken to court. Since the invasion, constant patrols have been put in place in the affected areas and so far, no other damages or disturbance have been realised. There have also been intensified campaigns and advice to wananchi not to take the law into their hands. Nevertheless, the Government, through dialogue with Vipingo Sisal Estate, has made it possible for the company to donate the underlisted parcels for squatter settlement:-

- (i) Kapeja, 120 acres for 211 squatters.
- (ii) Kathinuni, 367 hectares for 530 squatters.
- (iii) Hurani, 35.7 hectares for 130 squatters.
- (iv) Vipingo Centre, 263 hectares for 552 squatters.
- (v) Takaungu, 102 hectares for 186 squatters.

Mr. Kajembe: Mr. Deputy Speaker, Sir, is the Assistant Minister aware that among those squatters who have been arrested, those who compromised the police were released, and the ones who did not compromise the police are still in the cells? What is he doing to ensure that those who were released by compromising the police are arrested?

Mr. Tarus: Mr. Deputy Speaker, Sir, I am not aware that people were released after inducing the police. But, definitely, that is illegal. We shall investigate those allegations.

Mr. Khamisi: Mr. Deputy Speaker, Sir, Mtwapa, Kikambala and Vipingo areas have become insecure and some of the invaders are responsible for that insecurity. Could the Assistant Minister consider providing more patrols, which are lacking, and also add more personnel at Kijipo Police Station to deal with that situation?

Mr. Tarus: Mr. Deputy Speaker, Sir, we shall consider that.

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

DEATH OF LIVESTOCK IN LAISAMIS

(Mr. Ngoyoni) to ask the Minister for Water Resources Management and Development:-

- (a) Is the Minister aware that in the year 2000, about 7,000 animals comprising goats, cattle, camels and dogs died *en masse* after drinking water from Korgi Borehole?
- (b) Is he further aware that the deaths were as a result of activities of Amoco Oil Exploration Company that left behind poisonous chemicals that were swept into the well by the *El-Nino* rains?
- (c) What action has the Minister taken to safeguard water points and also ensure that the affected farmers are compensated?

Mr. Deputy Speaker: Mr. Ngoyoni is not there and the Minister has requested that the Question be deferred. So, I defer this Question until tomorrow afternoon.

(Question deferred)

Next Question, Dr. Kuti!

MEASURES TO STREAMLINE LIVESTOCK MARKETING IN ISIOLO

Dr. Kuti: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Agriculture and Livestock the following Question by Private Notice.

- (a) Is the Minister aware that there is no yardstick used to gauge the price of animals at Isiolo Market?
- (b) What measures is the Minister taking to safeguard farmers from rip-off by middlemen?
- (c) When will an abattoir be put up at Isiolo to improve livestock marketing and reduce the said rip-off?

The Assistant Minister for Agriculture and Livestock Development (Mr. Munyao): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Livestock trade was liberalised in 1987. Livestock marketing is, therefore, based on the principles of willing seller, willing buyer, or preferably by private treaty.

(b) The Ministry has taken the following measures to safeguard farmers from any form of unfair trade:-

One, to encourage the farmers to form livestock marketing associations and join co-operative societies to effectively exploit the principle of economics of scale. A Livestock Marketing Council has been registered as an umbrella body.

Two, a comprehensive livestock marketing information network is in the process of being developed to create awareness to both producers and consumers on price regimes.

(c) Since livestock trade is liberalised, it follows that the development of abattoirs is purely a

private sector business. The Ministry's responsibility is only to ensure that the abattoirs meet acceptable standards.

Dr. Kuti: Mr. Deputy Speaker, Sir, I am surprised by the answer given by the Assistant Minister. We know that even in liberalised markets, goods have to have measurable units. I think the Government has ignored the plight of pastoralists. They toil very hard and do not make any profit from their sweat. If a herder, who has toiled very hard for five-years, takes his five year old heifer to the market, town dwellers, who are middlemen, capitalise on his ignorance to rip him off. I thought it is the business of the Government to protect these primary producers. I am surprised that the Government does not put into account the plight of the livestock farmers. Could the Assistant Minister consider putting in place measures by which the livestock could be weighed so as to protect farmers from that rip-off?

Mr. Munyao: Mr. Deputy Speaker, Sir, the Chair and the House will agree that the hon. Member is trying to ask me to put a square peg in a round hall. Animals cannot be likened to a bag of maize which you can determine its price. Some of these livestock are bought on the way. Once you have liberalised the livestock market, it is so difficult to control the prices.

Mr. Koech: Mr. Deputy Speaker, Sir, since the Government does not assist farmers in building the abattoirs, what plans does the Ministry have to assist the farmers by giving them some incentives like credit facilities to enable them build abattoirs?

Mr. Munyao: Mr. Deputy Speaker, Sir, first, let me declare my interest. I am a pastoralist and I keep livestock. The Government is very keen to assist livestock farmers. That is why we are encouraging and making public pronouncements to the investors to lure them to invest in abattoirs in Wajir, Isiolo and other areas. Then we can ferry all that meat to the market.

We have also organised seminars to encourage farmers to strengthen their organizations to that they can stabilise their prices.

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

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

Mr. Deputy Speaker: Sorry! Mr. Koech, you had asked a question! Now, let me give this chance to Dr. B. Galgalo.

Dr. Galgalo: Thank you, Mr. Deputy Speaker, Sir. The construction of abattoirs and revival of the Kenya Meat Commission (KMC) is in the NARC manifesto. The Assistant Minister has told us that there are no such plans to revive the KMC; it is for the private investors to move in. That is simply to tell us that they were not truthful to us in their promises during election time. That point put aside, we know that there are several organisations of livestock farmers. Could the Assistant Minister consider giving credit facilities to farmers' associations in those areas so that they could purchase animals rather than relying on middlemen who are taking advantage of them?

Mr. Munyao: Mr. Deputy Speaker, Sir, what the hon. Member is saying is surely in the NARC manifesto, and that is very true. When we said so, we did not mean that we will physically join the lower nut and bolt and all that, but we will encourage and get investors to invest in putting up better abattoirs, including opening up the KMC. Discussions are under way, because our interest is to serve Kenyans in all constituencies as a top-notch priority in our Government. We are, therefore, interested to have that put in place. We are now requesting farmers, particularly those in areas where more animals can be fattened, like the north eastern region--- In this region, land is big and somebody who wants to fatten animals should go to the AFC to buy more animals, fatten them, and sell them because we want individuals to have money. We do not want to treat them like KANU did.

Dr. Galgalo: On a point of order, Mr. Deputy Speaker, Sir. He has not answered my question!

Mr. Deputy Speaker: Order, Dr. G. Galgalo! You can follow him up to his office!

Dr. Kuti: Mr. Deputy Speaker, Sir, concerning the issue of information, it should be a

very important thing if the farmers got information at their homes out there. I wish the hon. Assistant Minister could be given an opportunity to travel to those areas to find out whether it is possible to pass information to those people who keep moving from place to place. Could the Assistant Minister tell us how this information network could be passed to those people?

Mr. Munyao: Mr. Deputy Speaker, Sir, if I want to pass information, I do not have to go there. God did not come to the world; he sent his Son. We have got fully trained extension officers in those areas who are doing this kind of work, creating awareness and meeting with farmers. If the hon. Member wants me to accompany him and travel there, I will be happy to do so.

Dr. Kuti: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to talk about extension officers when I am sure that they really need to be taken to those areas? The extension officers are based in the district and divisional headquarters! I am talking about farmers who are in Masagala or Tabaka, who keep moving from place to place. These extension workers do not have vehicles and they are not facilitated. Is he aware of what is happening in that part of the country?

Mr. Deputy Speaker: Okay. Dr. Kuti, your point has been heard. Let the Assistant Minister now respond.

Mr. Munyao: Mr. Deputy Speaker, Sir, that is also another good point if the extension officers are not there. Let the hon. Member give us information about the geography of that place so that tomorrow or next week, we will send extension officers there.

Mr. Bahari: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House that liberalization means abdication of responsibilities? I thought that, in marginal areas, governments the world over have a responsibility of making sure investments are jump-started in those areas?

Mr. Munyao: Mr. Deputy Speaker, Sir, if you understood the point of order like I did, it is more or less a question. However, the NARC Government is so concerned about those areas and that is why we have gone ahead to prepare our officers to discuss with farmers to see whether they could come up with very strong organizations to discuss about pricing of animals and every other issue.

Mr. Deputy Speaker: Hon. Members, we are about to end Question Time.
Next Question, Mr. Wario's!

AMENDMENT OF NOMINATED COUNCILLORS' LIST

(**Mr. Wario**) to ask the Minister for Local Government:-

(a) Why did the Minister amend the list of nominated councillors submitted to him by the Electoral Commission of Kenya (ECK) for gazettelement?

(b) What is the legality of the councillors who were not vetted by the ECK?

(c) What action has the Minister taken to address the anomaly?

Mr. Deputy Speaker: It seems Mr. Wario is not here. This matter has come up now and again; either Mr. Wario is not there, or someone else is not there. The Chair will drop this Question.

The Question is dropped! If you want to pursue it further, ask your Question.

Mr. Billow: On a point of order, Mr. Deputy Speaker, Sir. The Chair gave a ruling that the Minister must be in the House today to answer this Question.

Mr. Deputy Speaker: That is not the Question! Mr. Billow, the Assistant Minister is here. Is that not the Assistant Minister for Local Government?

Mr. Billow: You asked for the Minister to be here in the House!

Mr. Deputy Speaker: Order, Mr. Billow! Look at the HANSARD! I said this, and I repeat---

(Mr. Billow stoop up in his place)

Sit down, Mr. Billow! If you look at the Standing Orders, the definition of the word "Minister" is given and it includes an Assistant Minister. I never said that the Minister comes to the House in person. It is an hon. Member who said that. The Chair ruled that an Assistant Minister is a Minister. But that is besides the point. We have not even reached the point of asking the Minister to reply. The Questioner is not there! Therefore, the Question is dropped.

(Question dropped)

Next Question, Mr. Chepkitony!

REDUCTION OF GRAZING FEES IN
FOREST RESERVES

Mr. Chepkitony: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Environment, Natural Resources and Wildlife the following Question by Private Notice.

(a) Why has the Minister levied exorbitant and a punitive fee of Kshs42 per cow per month for grazing in the forest reserve?

(b) Could he consider reducing these charges from Kshs42 to the previous rate of Kshs3 per cow per month in order to cultivate the goodwill of the people in helping to conserve the forest reserve?

Mr. Deputy Speaker: Mr. Chepkitony, I have got a request from the Minister for Environment, Natural Resources and Wildlife that we defer this Question to Thursday afternoon. Is that okay with you?

An hon. Member: But he is not here!

Mr. Deputy Speaker: Yes, he is not here and that is why he has requested for a deferment.

Mr. Chepkitony: The Question is deferred until when, Mr. Deputy Speaker, Sir?

Mr. Deputy Speaker: To Thursday afternoon. Is it okay with you?

Mr. Chepkitony: It is okay!

Mr. Deputy Speaker: Thank you.

(Question deferred)

COMMUNICATION FROM
THE CHAIR

CKRC PRE-CONFERENCE WORKSHOP

Mr. Deputy Speaker: Hon. Members, as you are aware, the National Constitutional Conference will be held as from Monday 28th April, 2003, at the Bomas of Kenya. The Constitution of Kenya Review Commission (CKRC) has in the meantime organized a three-day pre-conference workshop for all hon. Members from Tuesday, 22nd April, 2003, at Leisure Lodge, Diani, Mombasa.

I have approved the programme after consultation with the Chairman of the Select Committee, hon. Muite, and I have further requested the Clerk to avail copies of the programme to all hon. Members.

The office of the Clerk and the Secretary to the CKRC are co-ordinating travel arrangements and hon. Members are advised to collect their tickets from Room 163 before they break for the Easter Holidays on Thursday, 17th April, 2003. The workshop ends on Friday, the 25th April, 2003, to enable hon. Members to travel back to Nairobi for National Constitutional Conference.

I therefore appeal to all hon. Members to attend to this important workshop. The Constitutional Review Commissioners will take hon. Members through the Draft Constitution Bill and the report thereon by the Commission.

POINTS OF ORDER

MISAPPROPRIATION OF KFF MONEY BY OFFICIALS

Mr. Khamasi: On a point of order, Mr. Deputy Speaker, Sir. I stand on a point of order to seek a Ministerial Statement from the Minister in charge of sports regarding the current position of Kenya Football Federation (KFF). The KFF has been given a 12-months notice by Kenya Revenue Authority to pay up statutory deductions amounting to Kshs1.7 million, understandably misappropriated by the officials of KFF. The bank account has been frozen and, therefore, it cannot operate. This means that the Harambee Stars Team which is preparing for the African Cup of Nations Qualifiers cannot proceed. Could the Minister tell this House whether he is going to order the arrest of the KFF officials concerned and have them prosecuted, and tell the House the fate of the Harambee Stars Team, which is likely to miss the premier tournament of the continent?

STATUS OF MUSIC INDUSTRY IN KENYA

Mr. J. Nyagah: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Justice and Constitutional Affairs. Could he issue a statement on the status of the music industry in so far as it affects payments to local musicians? What action will he take to ensure that there is fairness in the industry in order to guarantee the growth of the music industry and ensure that the role of the Music Copyright Society of Kenya is fair, given the raw deal the musicians are getting?

GOVERNMENT POSITION ON MURUMBI ART COLLECTION

Mr. Mganga: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister for Home Affairs under whose docket the National Museums of Kenya and the National Archives fall. There have been reports that the Murumbi art collections have been carted away, ready for shipment to the UK. This collection includes invaluable and priceless items such as spears, sculptures, carvings and even documents on proceedings of the Lancaster House Constitution Talks on the Independence of Kenya. Could the Minister issue a statement explaining the Government position on the Murumbi art collection? Could he also assure this House that the Legal Notice that was issued in the mid-1970s prohibiting the removal of the art collection from Mr. Murumbi's house will not only be adhered to, but implemented?

Mr. Deputy Speaker: By the way, the Minister for Justice and Constitutional Affairs is here. I assume that he has taken note of the request by Mr. J. Nyagah for a Ministerial Statement?

The Assistant Minister for Justice and Constitutional Affairs (Mr. Githae): Yes, Mr. Deputy Speaker, Sir. We took note of it and we will issue a Ministerial Statement.

Mr. Deputy Speaker: Very well. What about the point of order raised by Mr. Khamasi about the KFF? The Minister for Gender, Sports, Culture and Social Services is not here. I think I would like some assistance from one of the Ministers to pass that on to him. Prof. Anyang'-Nyong'o, would you pass that information? Would you also pass the information to the Minister for Home Affairs with regard to Mr. Murumbi's art collection?

The Minister for Planning and National Development (Prof. Anyang'-Nyong'o): Mr. Deputy Speaker, Sir, I will accordingly inform them.

Mr. Deputy Speaker: Very well.

STATEMENT ON THE SOMAIA SAGA

Mr. Muite: Mr. Deputy Speaker, Sir, I rise on a point of order to request for a Ministerial Statement from the Minister for Justice and Constitutional Affairs on the Somaia saga. The Controller and Auditor-General confirms that when he sent his officers to go and see whether the equipment had been imported or not, they found the equipment had not been imported. Is this letter that was subsequently written by a Permanent Secretary in the Office of the President confirming the equipment was delivered genuine or not? Since the 1986 Commonwealth Games, and given all the transactions by Somaia, is it the Government's position that they have investigated and found no sufficient evidence on which to take Mr. Somaia to court? Is it the Government position then that they will give him a clean bill of health in Kenya by extraditing him to Tanzania? We want all these matters clarified in a Ministerial Statement to this House.

(Applause)

Mr. Deputy Speaker: Mr. Minister, are you able to say anything?

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Deputy Speaker, Sir, we do know that this matter of Mr. Somaia is causing a lot of excitement in this country. It is not the intention of the NARC Government to give Mr. Somaia a clean bill of health.

However, I would like to assure the hon. Member that we shall investigate the issues he has raised and I will be in a position to make a statement to this House on Thursday.

Mr. Obwocha: On a point of order, Mr. Deputy Speaker, Sir. I am not challenging the Minister because what we want is the truth. However, now that both the Leader of Government Business and his deputy are not here, pursuant to the notion that there is collective responsibility, could one of the Ministers always pretend to be the Leader of Government Business when the two are not there?

Mr. Deputy Speaker: This House does not approve of pretence!

Mr. Obwocha: I am asking that because the Chair asked any of the Minister to help. I think you should direct that because of collective responsibility, one of them should pretend to be the Leader of Government Business.

Mr. Deputy Speaker: I got someone to help readily in the name of Prof. Anyang'-Nyong'o.

MINISTERIAL STATEMENT

CONSUMPTION OF ILLICIT BREWS

The Assistant Minister, Office of the President (Mr. Tarus): Mr. Deputy Speaker, Sir, I

wish to issue a Ministerial Statement on illicit brews, which was sought by Mr. Muiruri on 2nd April, 2003. The Government has made efforts since Independence to control brewing and consumption of alcoholic beverages. This has been done by legislation through the Liquor Licensing Act, Cap.121; the Traditional Liquor Act, Cap.122; the Trade Licensing Act, Cap.497, and the Food, Drugs and Chemical Substances Act, Cap.254. The Government has also promoted public education for members of the public on dangers of illicit brews. This has been done through spirited campaigns by the Provincial Administration, civil society, religious organisations and law enforcement agents. However, despite these efforts to eradicate brewing and consumption of illicit brews, there has been an overall increase in their consumption due to a number of factors; namely, they are relatively cheaper in prices, penalties against offenders are not deterrent enough, high poverty and unemployment levels, poor enforcement of legislation by licensing agencies like the Administration Police, Judiciary, Department of Trade, and quality control agencies like the Government Chemist, Ministry of Health, the Kenya Bureau of Standards and Ministry of Trade and Industry.

Mr. Deputy Speaker, Sir, I am aware that many Kenyans are exposed to grave risks arising out of the new generation of alcoholic brews which are produced in mass quantities and do not comply with the health requirements. Others are a dilution of industrial alcohol which contains ethanol and methanol.

Mr. Deputy Speaker, Sir, in view of these developments, the Government is committed to reversing this trend. The Government will seriously address the underlying causes that enhance and promote the consumption of illicit brews. The Government will further harmonise certification in various licensing and regulatory bodies.

Mr. Deputy Speaker, Sir, initial action has already started to address the issue of harmful brews through the formation of a committee comprising of licensing and regulatory agencies under the Ministry of Trade and Industry. Legal provisions for the control of the industry will be reviewed to ensure compliance with public health concerns. Given the efforts and resources that have been utilised in the fight against illicit brews, it is evident that banning of these brews has not worked. There is need to approach the issue from a new perspective based on past experience.

Apart from reviving the economy, a major public education campaign will also be undertaken to sensitise and educate people on the side effects of these brews. The problem of illicit brews should not be left to the Government alone. There is need for a multi-sectoral approach, involving political leaders, religious organisations and civil society.

Thank you, Mr. Deputy Speaker, Sir.

BILL

Second Reading

THE ANTI-CORRUPTION AND ECONOMIC CRIMES BILL

*(The Minister for Justice and
Constitutional Affairs on 10.4.2003)*

*(Resumption of Debate interrupted
on 10.4.2003)*

Mr. Deputy Speaker: Who was on the Floor? Mr. Choge.

Mr. Choge: Mr. Deputy Speaker, Sir, as I was telling the House, envisaged in the Bill is strict

liability. This will ensure that ignorance, impassivity or passiveness will not afford a defence. One must be responsible for his or her office in whatever circumstances. Under part 5, both criminal and civil proceedings are merged. There is a summary procedure envisaged. You will observe that the usual technicalities associated with recoveries are removed or substantially lessened. This Bill will penetrate hitherto very difficult areas. We have areas such as the Roads Department within the Ministry of Roads, Public Works and Housing. We also have areas such as the motor vehicle registry and the various land registries in the Republic which are prone to excessive abuse and are beehives of corruption.

The Judiciary, as has been pointed out by the Minister for Justice and Constitutional Affairs, is one area where the Bill will be very useful. You will observe, under Clause 44, the Bill attempts to deal with any unexplained assets which may come into possession of a culprit who may be reasonably suspected to have been involved in corruption. In this case, I would like to draw your kind attention to one issue which happened last week, whereby, instead of giving a ruling on a substantiative application, a High Court Judge decided to connive with the litigant in this case. The Judge gave a ruling which had not been canvassed for and which had not been argued. You wonder where he got the facts to give a ruling, if it is not corruption in this particular case. Envisaged under this Bill is a situation whereby such hitherto no-go zones will be accessed by the new law.

With those remarks, I beg to second the Bill.

(Question proposed)

Mr. M. Kariuki: Thank you, Mr. Deputy Speaker, Sir. I rise to support this Bill. This particular Bill overcomes the challenges that were posed by the attempted amendment to the Constitution. I think this is a better improvement on the former ones which were withdrawn by the Minister for Justice and Constitutional Affairs. It is important to realise that we cannot fight corruption unless there is political goodwill to do so. Our first anti-corruption law was enacted in 1956 during the colonial era. Throughout this time we have attempted to fight corruption, but we have not been able to overcome it. We require more than the law in fighting corruption. This should be demonstrated by the person at the helm of the nation.

I welcome the gesture by the President that he will be the first to declare his wealth when the Anti-Corruption and Economic Crimes Bill is passed. This is where things should begin. The political goodwill should begin from the President and trickle down to the Ministers, Members of Parliament and other persons who enjoy security of tenure under the Constitution. This is what has been lacking in the Kenya Anti-Corruption Authority (KACA) which was disbanded because there was no political goodwill. It turned out that the State was out to kill it. It surely did so through the Gachiengo decision.

I have looked at the various provisions of this particular Act. Before I go into the specific provisions of it, I would like to address one issue that the Minister of Justice and Constitutional Affairs brought up. He said that he has suspended the war on anti-corruption in the Judiciary to enable them to create an internal mechanism to weed out corrupt judges and magistrates. It is my humble view that any attempt to clean the Judiciary from within will not work. I am aware that the Chief Justice did announce that a Committee has been set up, chaired by the former director of KACA, Justice Ringera. We need an authority outside the Judiciary to be able to clean up our Judiciary. Already, there are murmurs in the Judiciary that any attempts to clean it from within will lead to witch-hunting, and I entirely agree. Right now, we need to ensure that we continue the war where we left it after the former Chief Justice Chunga resigned. It appears that the clean-up exercise by the Minister rested with the resignation of Mr. Chunga.

It is my humble submission that this Judiciary is tainted by corruption and the war against the Judiciary has to continue. We know that judges enjoy security of tenure, but there is sufficient

evidence to have tribunals created against them. In my earlier contribution in this House, I did mention that many judges in this country are beneficiaries of unlawful acquisition of land. That is documented in the Public Accounts Committee reports which have been filed in this particular House and I would urge the Minister to continue from there. If any judge has been involved in dishonourable conduct, like unlawful acquisition of land, and we are aware that some of them have even gone to court to try and protect what they have unlawfully acquired, I think the battle should continue from there rather than wait for three months for the Judiciary to put its House in order. It has always had the time.

We had the Kwach Report which made propositions as to how the Judiciary can be improved, but that was not to be. I disagree with the hon. Minister as far as this particular Tribunal set-up by the Judiciary is concerned. I think we have much more to do and I would call upon him to continue with the battle where he left it, upon the resignation of Justice Chunga. We need to do much more to keep our Judiciary upright. This is relevant because all these laws that we are passing here have to be implemented by the Judiciary. At the end of the day, it is not what we say as legislators that becomes law; it is what interpretation is given by the court to what we pass here. The Judiciary becomes very critical in terms of implementing the letter and spirit of this particular Bill. It is important that we give precedence to ensuring that the Judiciary is indeed clean.

Mr. Deputy Speaker, Sir, I am aware that there have been experiences from other jurisdictions. I am particularly aware that Hong Kong has had to pass an anti-corruption legislation. I am aware that the first thing they did was to put the Judiciary in shape. Any person who had previously served in the Judiciary was not to be appointed to be a magistrate in an anti-corruption court. If we are to realise the fruits that are likely to come with this anti-corruption legislation, it is important that the Minister for Justice and Constitutional Affairs begins to think of the kind of special courts that he will set up to implement this particular Bill. I would propose very strongly that we have a special training for magistrates and prosecutors in anti-corruption law so that we begin afresh. Picking a magistrate who, for all intents and purposes, has been receiving bribes left, right and centre at the time that he sat in the Judiciary and trying to re-invent that particular magistrate to be an anti-corruption magistrate will be an exercise in futility. So, it is important that we create a proper environment under which this particular legislation will be implemented. We have to train our people afresh and to look for people of integrity. We have to give these particular magistrates security of tenure. I say so with tremendous respect. I know that if these magistrates apply the law independently, they will become very unpopular in this particular court. The Judicial Service Commission (JSC), which may also be a subject to this anti-corruption law, may find that there is need not to promote that particular magistrate. So, these particular magistrates require to enjoy some security of tenure of some sort, so that they are not harassed in the execution of their duties. There is need to adequately remunerate them to safeguard them from the temptation of having to receive bribes in the process of stamping out corruption.

Mr. Deputy Speaker, Sir, I would also like to make some observations relating to the work of Parliament in vetting the appointments of the officers proposed in this Bill. Clauses 5 and 14 of the Bill refer to the appointments being referred to a Committee of Parliament. We do not have such a Committee. So, we are putting the cart before the horse. If Parliament is to vet the names, I would submit that Parliament needs to have a vetting committee in place. There is no point in tabling a list of names before this House and then say that Parliament has approved them. We need a committee that will interview the particular individuals proposed for these particular offices. We should look at their curriculum vitae and question them, so that at the end of the day, we can say that we have approved the appointment one or two persons. We can, however, not do that in the manner in which we are today constituted. We should, therefore, put in place a parliamentary vetting committee to deal with this kind of appointments. I submit that the Powers and Privileges Committee is not meant for that kind of job. So, there is, really, a lacuna in our establishment, and I look forward to us setting up a vetting committee not only for vetting appointments under this particular legislation, but also for

vetting all other appointments of public officers and those who hold constitutional offices.

I have looked at Clause 13 of the Bill, which states the kind of persons and bodies from which the officers will be picked. I propose that in addition to the bodies stated therein, the International Commission of Jurists (ICJ) and the Kenya Human Rights Commission be added to the list of the proposed bodies that will participate in the appointment of those officers. I have no quarrel with nomination by FIDA. However, members of FIDA are also members of the Law Society of Kenya (LSK). So, it would be a duplication to say that both the LSK and FIDA will nominate people to the Board. As far as I know, members of FIDA are also members of the LSK. I would propose, therefore, that FIDA be, in fact, dropped and the ICJ and the Kenya Human Rights Commission be added to the list of nominating bodies.

Mr. Deputy Speaker, Sir, the history of our Judiciary is rather a sad chapter. In the last two years, we have had very interesting developments in our Court of Appeal, where accusations of bribery were traded among the top-most judges of this Republic. We are aware that one judge did, in fact, accuse his colleagues of corruption. That accusation is contained in a judgement he made. His colleagues also did accuse him of receiving bribes. If corruption can take place at the highest court of this land, then how much more is it taking place at the lower ranks of the magistracy and the High Court? It is interesting to note that even after those accusations were made by the judges, no attempt has been made to investigate those three judges who seemed to accuse each other of corruption and bribery. I would rather the Minister for Justice and Constitutional Affairs now gets up and starts investigating those three judges who accused each other of corruption. Unless we deal with corruption right from the top of Judiciary, we will not be able to deal with corruption amongst the magistrates.

I am also aware that a judge of the Court of Appeal is on record as having delivered two contradictory judgements on the same case. In one judgement, the judge agreed with a colleague of his, and in the other judgement, he dissented. In both cases, he did sign the judgements. There is no greater evidence of corruption than this. How dare a judge of the Court of Appeal sign two contradictory judgements in the same court? These matters have not been investigated. That is why my faith in a judicial committee to investigate corruption is actually very low. I do not think that at any one time, Justice Ringera, through his committee, is going to bring down the Judges of Appeal who have been suspected of taking part in corruption. So, in order to strengthen our judicial appointments, we need to, in fact, have a mechanism for vetting all public appointments. I hope that this will be provided for in the new Constitution. A vetting committee of Parliament that should deal with appointments in this particular case should also be empowered to deal with the appointments of all constitutional office holders, particularly judges and the Commissioner of Police.

Mr. Deputy Speaker, Sir, in order for corruption cases to be investigated effectively, we must empower our police force and other arms of the Government concerned with investigations. I am aware that the Police Act intends to create a very independent police force, but it has failed to do so. So, we need to amend the Police Act to enable investigating officers to be fortified against any possible harassment. I am saying so because the proposed Anti-Corruption Commission will not be able to function unless it will have very competent investigators. Such investigators will need special training. Also, special standards will have to be set in respect of their conduct. So, I propose that we empower the police force to become stronger in the conduct of investigations, so that even if the proposed commission will have to pick some of them for its purpose, it will find them useful in the discharge of its mandate as proposed in this Bill

I wish to also observe that the anti-corruption strategy is part of the larger strategy to fight poverty. We know that our people have been impoverished because the resources of this country have been plundered by a few powerful people in the previous regime. Therefore, it is important that we have a legislation, and much more than it, political goodwill to be able to fight corruption, so that the resources of this nation can trickle down to the grassroots level, where the majority of our people are

found. I have in mind the many individuals whose names have been tabled before this House as having been responsible for the looting of our resources.

The other day we had a list of people from the National Social Security Fund (NSSF) who are said to have facilitated the looting of millions of shillings of public funds, and yet no action is being taken against them. If we had in place a proper anti-corruption strategy, and the necessary political goodwill, it would have been possible for the Government to save a lot of this country's public resources. Therefore, we have to look at this legislation within the greater framework of a strategy for the economic revival of this country, to ensure that our national resources are well protected. At the end of the day, the person who suffers most from corruption is the poor person. Wherever a bribe has to be traded, at least, a few people gain, but the majority lose. That is how we have run down our country. Therefore, I embrace the provisions of this particular Bill to the extent that it deals with economic crimes. Those who plunder this country must, at the end of the day, face the law. In that regard, I also welcome the provisions relating to restitution. It is not enough to imprison corrupt persons. It is much more important that restitution be made of the loot that they have taken from the country. So, these particular provisions are quite in order, and I welcome them.

Mr. Deputy Speaker, Sir, we have had the culture of corruption for many years. Therefore, our people will require a lot of civic education in order to change their attitudes towards corruption.

We have, in fact, gone on to kind of create heroes out of corrupt people. The people who have money and go to Harambees and give billions of shillings are held in high esteem. That is the kind of problem that we have. The culture of corruption has made us slaves of our own minds. We cannot liberate ourselves. Therefore, it would be important for us to provide in this Bill provisions for continuous civic education. That way, people will be able to change their ways, move away from the culture of corruption and embrace ideals of integrity.

Mr. Deputy Speaker, Sir, before I conclude, I would like to make a few observations on the role of the Attorney-General. I know that the Gachiengo case dealt with that. I would like in passing, to address myself to a Ministerial Statement which was issued by the Minister for Justice and Constitutional Affairs. I would like to disagree very much with the observations of the Minister relating to whether, in fact, the Attorney-General is a Member of the Cabinet. I think the Constitution is quite clear. The Attorney-General is not a Member of the Cabinet. I think we can say it as plainly as that! I think the Minister was trying to be polite with his colleague. The Attorney-General is, in fact, the Chief Legal Advisor to the Government. But as far as Section 17 of the Constitution, where the Cabinet is set up, is concerned, he is not one of the Ministers or Assistant Ministers. Besides, he may appear in the Cabinet as an *ex-officio* Member, invited by the President to give advice. But he is, indeed, a public officer and not a Cabinet Member. He is not a politician. The Cabinet is about political decision-making for the country. He can only avail himself there once invited. But he cannot vote or discuss policy matters. I would, therefore, like to clarify that, in my view of the law, the Attorney-General must continue to be a public officer. He is not a Member of the Cabinet. I would respectively agree with whoever raised that question, that he should not be flying a flag! That is because he is not a Cabinet Minister in the real sense of a Cabinet Minister. That way, under Section 26, we have a technocrat who is supposed to deal with the prosecution of criminal offences. He is supposed to apply his legal mind and expertise in advising the Government on how to go about that job.

In this particular Bill, the Advisory Board and the Authority created thereunder, in my humble submission, are properly there. That is because they can execute their duties without much hindrance by the Attorney-General. I would only like to observe that, as much as we have put the provisions to ensure that they apply their minds independently without any form of interference, and the fact that there has to be a vetting committee of the House, it is important that at the time of appointment, we look for persons of high integrity. As I observed earlier, it would even be of much more importance

to look for people outside the mainstream and ensure that, the people that we pick have never been tainted by the establishment. I think, if those policies are observed, we will be able to come up with a legislation that will be able to help this country rise to greater heights of prosperity, ensure that our people's resources are protected, and there is no danger whatsoever that the looters will get away scot-free.

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

The Assistant Minister for Trade and Industry (Mr. Miriti): Mr. Deputy Speaker, Sir, I rise to support this Bill. During the campaigns, most Parliamentarians promised Kenyans change. They promised Kenyans change in governance, change from poverty to prosperity and change from a corrupt Government to a Government of persons of integrity. I know there are many with vested interests, who would like to see the past institutional arrangements and policies continue. I am aware that this Bill has created a lot of anxiety in certain ranks. But this is a Bill of liberation. It is a Bill which is out to liberate Kenyans out of poverty. It is a Bill which is out to liberate Kenyans from thieves and looters. It is a Bill which is out to liberate Kenyans from thieves of public funds.

When you look at the section on the functions of the institutions which are created by this Bill, it is very well drafted. The institutions are very well catered for, so that those people who have been harassing others in this country will now face the music! I am happy with Clause 4(i)(e) which says that the Bill is going to examine the practices and procedures of public bodies in order to facilitate the discovery of corrupt practices. In that area, if you look at the institutions like the police force, you will find that there is a lot of corruption there. If you go to the archives of the police, you will find that there are so many files; thousands and thousands of files, which are pending under investigations. Most of those files are pending because the complainants have failed to produce something. You will find some files dating as far back as the 70s, 80s and 90s. I hope that the Commission, once established, will look into that. That is because you will find very serious cases of murder and robbery with violence are still pending and nobody has ever been arrested.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, there is a lot of corruption which has been going on. I wish this Bill was there. If you look at the Judiciary in places like Nithi Constituency--- I will give an example of a petition case which was filed after the 1997 general elections. The petitioner, with fabricated information, succeeded in court. Every person and voter from Nithi Constituency knows how much the judge was given! It is public knowledge that the petition went through just because the judge, who was handling the case, was given Kshs300,000 only! That way, the sitting Member of Parliament lost his seat!

There are other instances of corruption which have taken place because there has not been any law to take such people to court. For example, in Nithi Constituency, a sitting Member of Parliament was a member of the Roads Committee and he awarded tenders to his own company and he was responsible for constructing the roads. The Member of Parliament constructed and inspected the roads, and wrote his own cheques! I am sure once this Bill goes through, such malpractices will not be seen again in Kenya.

Mr. Temporary Deputy Speaker, Sir, Clause 4(1)(h)(ii) of the Bill provides for the recovery of property which has been taken by people, whether in or outside Kenya. Once the Bill is passed, Kenya will get millions of dollars from abroad. The Bill will also look into what took place before its enactment. A lot of money has been siphoned out by looters and deposited in foreign bank accounts.

We have Kenyans who have bought properties abroad, and I am sure that once this Bill is passed, we will bring all those properties back to Kenya.

In Clause 4(2), the Bill empowers the National Assembly to institute investigations. I am happy about this clause because it is not just the proposed Commission which will decide which cases to handle, but any hon. Member of Parliament will be able to raise an issue here, and it will be investigated. That gives a very open approach to investigations. However, in Clause 6(1) and (2), the proposed director is given the power to appoint one of his assistant directors as his deputy. At the same time, he is given powers to revoke such an appointment. This gives room for compromise and corruption because the assistant director, who will be appointed as the deputy director, will have to dance to the tune of the proposed director. Therefore, I would suggest that the deputy director, who will be one of the assistant directors, be appointed by the Commission or by the Advisory Board rather than by the director. The situation will cause conflict and open room for corruption because the assistant directors will be competing to be appointed by the director to the position of the deputy, and if one does not support the director, this means he will be removed from office.

Clause 13(2)(ix) provides that members of the Advisory Board will be nominated by the Association of Professional Societies in East Africa. I am not very sure whether this association also has members from the other East African countries, namely, Tanzania and Uganda. If there are, I do not know whether any of them would qualify to be a member of the Advisory Board.

The clause should have been specific and talk about the Kenyan members of the Association of Professional Societies in East Africa.

Mr. Temporary Deputy Speaker, Sir, the definition of economic crimes should also have included the element of bouncing cheques. We know that many bouncing cheques have been issued to the Government by public officers and businessmen. The other day, we witnessed an incident where City Hall officers took money and issued cheques which later bounced. The definition of economic crimes should address the issue of bouncing cheques because it is a very serious issue in Kenya today. In my constituency, many timber merchants have been exploited by businessmen from Nairobi through the issuance of bouncing cheques. The businessmen issue bouncing cheques and once the issue is reported to the relevant authorities, you find that the businessmen have already corrupted the authorities, and the merchants have nowhere to go. I want to suggest the introduction of very tough penalties on anybody who issues a bouncing cheque.

I am sure this Bill will take care of tendering procedures. Just the other day, we passed the Supplementary Estimates. We approved the Supplementary Estimates in the month of April, 2003, and purchases have to be done before June. In the former regime, Government officers had been waiting up to the eleventh hour, and did last minute purchases. This created a lot of room for corruption and theft of public funds. This Bill will take care of tendering procedures. Coffee and tea farmers in Meru South District have lost a lot of money through theft and corruption. Corruption has been practised in Government offices and also through brokers. I am happy because this Bill will ensure that such practices will not be there again.

Finally, I want to say that this Bill is very well drafted. I want to congratulate the Minister for Justice and Constitutional Affairs for bringing the Bill early enough. It is the only saviour for Kenyans. It will empower Kenyans and protect them from the looters.

With those few remarks, I beg to support.

Mr. M. Kilonzo: Thank you, Mr. Temporary Deputy Speaker, Sir. First of all, I wish to congratulate the Minister for Justice and Constitutional Affairs for the manner in which he has drafted and presented the Bill. As you will have noticed, support for the Bill is coming from both sides of the House. I believe that with that spirit, this House has the potential to truly galvanise and revolutionise the country through legislation that is both bi-partisan and well-meaning for the ills it seeks to cure.

The first thing I wish to do is to again thank the Minister for accepting the recommendations

the Official Opposition made, that there should not be piecemeal amendments to the Constitution, which has led to the Bill being brought to the House as an ordinary Bill. We deeply appreciate this, and I can assure the Minister and the Government that in that spirit, we will work together to make sure that law that is suitable for this country is formulated.

Mr. Temporary Deputy Speaker, Sir, I would also like to take this opportunity to, again, congratulate the Government for setting up a Cabinet Committee on corruption. The Minister has said that there is such a committee. I am extremely exhilarated by that because this means that issues on corruption can be narrowed down and discussed at the highest possible level, and where legislation is required, it is tabled in this House speedily.

Mr. Temporary Deputy Speaker, Sir, I also welcome the views or obvious acknowledgement that this country does not need two Attorney-Generals. Therefore, prosecution of offences under this Bill will be vested in the Attorney-General. Again, this is a recommendation which we made when we debated the previous legislation. We are extremely grateful that the Government has taken these recommendations in step.

At the same time, I would like to welcome the proposal that both the Anti-Corruption Authority and its directors will have power to institute civil proceedings for recovery of such redress as members of the public who have been victims of corruption or corrupt tendencies will have suffered. Similarly, the introduction of parliamentary approval of appointments is welcome.

Mr. Temporary Deputy Speaker, Sir, I would like to join my learned friend, Mr. Kariuki, in saying that the Parliamentary Committee should be set up as soon as possible so that when these appointments are made, they can be discussed. In the same spirit, the Official Opposition accepts and welcomes the idea of quarterly reports by the Commission. The Opposition also welcomes other introductions in the Bill, which I will not go into and which have made it a truly dramatic departure from previous drafting of legislation for the country. Having said that, it is also fair that the Minister and the Government understands that we also have proposals which would make this law even better. This is because we recognise, and I urge this House to note, that it is not the elimination of corruption alone which will change the economy of this country. In addition to introducing and passing this law on corruption, I strongly believe that Government policies in this country should be consistent. This will ensure that we do not end up with the sort of confusing signals that we have experienced, for example, the case of Mr. Somaia and, of course, Prof. Meme and several other people in the country. This is where some Government Ministers defend these people, while others initiate their arrest. Therefore, it is my firm conviction that coupled with proper law on corruption, it is essential that we be consistent as a country, on this particular policy.

Having made those remarks, I would like to raise one very fundamental issue. This is with regard to the actual implementation of this law. It is important for us to note, as hon. Members have stated, that once we pass this law, it will be interpreted and implemented by the Judiciary. You heard the hon. Minister express his frustrations with the Judiciary regarding the implementation of laws against corruption and others. This country is well aware of the bleeding that has taken place in the public mind regarding corruption and the perceived inability of the Judiciary to, in fact, seem to be implementing a law against accountability and transparency.

With your kind permission, this brings me to the fact that Section 65 of our Constitution expressly empowers this House to establish special courts with special jurisdictions for special purposes. I would like to say something and draw from the example of Italy. This country established special courts for dealing with the Mafia because of their shenanigans which are similar to the corruption that is in this country.

Mr. Temporary Deputy Speaker, Sir, the same example has been followed in Hong Kong, as my colleague, Mr. Kariuki, has said. This country has special courts for handling corruption. I have personally forwarded to the Minister a copy of the 1988 Indian Prevention of Corruption Act. This

Act was passed in 1988, implemented and amended in 1996. Under that legislation, India, which is a very large country; many times the size of our country both in size as well as population, has managed to control corruption.

Italy and Hong Kong have established special courts to deal with corruption. It is in that light that I urge the Minister and the Government to accept the amendments which the Official Opposition will propose on the establishment of special magistrates for purposes of hearing cases of corruption, when we bring this Bill to the Committee Stage. We would like to make this proposal after very careful thought.

The Chair will notice that the former Chief Justice established some special courts, which he called "Anti-Corruption Courts" and appointed some magistrates to run them, unknown to the Kenyan public that those courts were pure window-dressing as far as I am concerned. This is for the simple reason that they did not have the blessings of this House under Section 65 of the Constitution. It is essential, and must become very clear to this country, that if we will eradicate corruption, you cannot arrest Justice Oguk and take him to his colleague for prosecution. It is not possible to take him from a chamber in the High Court Building and transfer him to another room in the same building. The person who is supposed to hear his case is his junior or subordinate because magistrates who are currently hearing corruption cases in this country are appointed under the Magistrates Court Act. These magistrates are juniors to High Court Judges. To make matters worse, these are magistrates who have left their law training and joined the Public Service to become magistrates. They aspire to be elevated and, in fact, the majority of our judges have been promoted from magistrate positions. Therefore, if you ask a magistrate to convict a senior Government official or a senior public officer, and at the same time he reports to the Chief Justice, under the Magistrates Court Act; at the same time he reports to his superiors for his personal needs, including salary, car or stationery, it would be impossible for the perception that, that magistrate is actually interested in corruption. He is interested in his promotion and career growth. I dare say that under the present structure of magistrates merely appointed by the Chief Justice out of the mainstream of the magistracy, even if we pass this law in this country, apply butter on it, add a little cream on it and even salt it, this legislation will still face the same problems that we have faced in the past. I have quoted Italy which does not apply common law.

I have quoted two countries, namely Hong Kong and India which use the common law which we use. These countries have seen the need to establish special courts for purposes of dealing with corruption.

I do not believe that I can emphasise enough that we have the authority in this House, under Section 65 of the Constitution. It does not do any purpose whatsoever for an hon. Member in this House to rise up and continue criticising the administration of corruption cases when we have not seized the opportunity to use Section 65 of our Constitution to establish the special jurisdictions which I am talking about. Therefore, I will welcome the Government reaction to the proposals which we will make at the Committee Stage. This is because, under this legislation, the section talks about Parliament and it gives us that power. We should not wait and be promised a new Bill for establishing special courts. This is our opportunity, and we will present it during the Committee Stage so that the country can, once and for all, remove the actual management of corruption cases from the usual day-to-day administration of the Judiciary to a jurisdiction that Parliament can control under Section 65, by enhancing that power or reducing it.

Mr. Temporary Deputy Speaker, Sir, with your kind permission, I would briefly like to highlight weaknesses and problems that are in the Bill. We will also be suggesting at the Committee Stage that they be addressed. One, the Bill, again for some reason I do not know, does not have a commencement date. We will be proposing that Clause 1 be looked at and a commencement date be expressly provided, for the reason that Clauses 44, 52, and 53 actually relate to the commencement of the Act itself and, we should not leave it in doubt, nor should we suggest that it be left for

interpretation, under the Interpretation and General Clauses Act.

Mr. Temporary Deputy Speaker, Sir, the other area is the definition of "Public Body". I believe that time has come that the co-operative societies be brought into the definition of "Public Body" because, as hon. Members are aware, it has now been proven that the co-operative societies of this country hold the largest amounts of assets anywhere in the African continent. When I saw it, it was a figure in excess of Kshs60 billion. It is also true that in co-operative societies, particularly at the management level of the local level, there is an enormous amount of corruption that takes place. I think we should expressly include the co-operative societies in the definition of "Public Body". The interpretation of "Public Body" has been defined in page 314. I think that they should be included in this body so that we can capture a very large segment of the administration of public resources in this country.

The second one is tribunals. Although I am sure the Minister will say, when he mentions the Government - including Cabinet - under the same definition, that tribunals are included, it is my firm belief that it is far better to declare that tribunals, like those which deal with rent and arbitration, of whatever nature are also covered by the definition.

Mr. Temporary Deputy Speaker, Sir, again, I am extremely perplexed to see that in an effort to bring this law, the Minister has not carefully considered the proposals we have made; that to use the expression "unexplained assets", is clearly to welcome confrontation with the Constitution, which clearly provides that a Kenyan citizen has a right to be prosecuted in our law courts without saying anything altogether. I called it in the past "the right to silence," but the use of the words "unexplained assets" will invite a direct confrontation with the interpretation of the Constitution with regard to the right to remain silent as recognised by Section 77.

Therefore, I have written to the Minister and I have suggested to him, just as I will at the Committee Stage, that the words "unexplained assets" be replaced with the word "suspect", because if you use the word "suspect" then the burden of proof still remains with the prosecution and it does not appear to be shifting to the accused person. It is a reasonable request that will make sure that this Act does not go back again to the Judiciary, and with our lawyers, who seem to have the capacity to dandle around with legislation, it is not shot down arbitrarily in a place where hon. Members will not be in that particular court to explain why they used the expression "unexplained assets". I want to remind the Government Members across the aisle that it is important when passing legislation to ask yourself: "How would I feel if it was me in the dock?" It escapes people many times that if you do not ask yourself that question, you could likely be sitting on a pedestal of success at the moment, or on a pedestal of feeling that you are so good that you cannot get better, but one day you or a friend of yours would have to be told: "Look, we think you have unexplained assets. Can you explain?" At that point in time you will be in the dock and then you will see the unfairness of a law that appears to be shifting the burden of proof from the prosecution to the accused person.

Mr. Temporary Deputy Speaker Sir, the other thing that has given me a lot of concern, because I mentioned it severally, is Section 23. It is the one that authorises the Commission by notice, in writing, to require a person reasonably suspected of corruption or economic crime to furnish, within a reasonable time specified in the notice, a written statement enumerating his assets and wealth. That in itself is not a problem. Being anti-corruption as we are, we accept it. However, if you look at Section 27, and again I have written to the Minister on this point, it states as follows:-

"Anything provided by a person pursuant to a requirement under the foregoing provisions of this Part, or obtained on a search of premises, may be taken and retained by the Commission for such time as is reasonable for the purposes of the investigation concerned and is admissible in evidence in a prosecution of any person, including the person who produced it or from whom it was obtained, for an offence."

Mr. Temporary Deputy Speaker Sir, I take the liberty of reading to this august House the

provision of Section 77(7) of the Constitution which states as follows:-

"No person who is tried for a criminal offence shall be compelled to give evidence at the trial".

That means, and I say it without the fear of contradiction, that the moment a Kenyan citizen is asked under Section 23 to provide a list of assets and he fails to do so, he actually commits an offence. If you look at Section 23(2), he commits an offence if he does not supply that statement. Therefore, at that point in time, he is compelled to supply a list of his assets. Then under Section 27, he is told: "The evidence you supplied to us under compelling circumstances and under threat of committing an offence under Section 23 is now admissible in evidence." I am afraid to say that when and if this becomes law, it will be the first clause to be shot down by even the special magistrates we are establishing, because it means that the evidence procured under Section 23 under the other risk of committing an offence becomes automatically admissible against the person who gave it, and it is a direct confrontation with Section 76(7) of the Constitution which I have read out.

Mr. Temporary Deputy Speaker, Sir, therefore, as I have suggested to the Minister, it is important that he expunges these two sections, but that will change the character of this law which I like. My recommendation is that under Section 77, when such evidence is required to be produced, then the consent of the accused person must be obtained. And that is one of the amendments we will be proposing at the Committee Stage, that that material is admissible in evidence with the consent of the accused. If you do not do that, most of what we are doing in this Bill will be a waste of time because it will be shot down by the judges and particularly the lawyers. A lot of them enjoy this sort of thing. I always have done it for the last 30 years, and it has been a lot of fun shooting down legislation from Parliament. But I do not want it to happen now that I am a Member of Parliament.

Mr. Temporary Deputy Speaker, Sir, with your kind permission, I would like to offer that experience of so many years, to make sure that if there is any gap in the law, then it be accidental but not because of oversight. That is why I made these recommendations to the Minister when we come to the Committee Stage.

Mr. Temporary Deputy Speaker, Sir, one of the attractive things about this Bill, and the reason I supported it so much, is that unlike the Kenya Anti-Corruption Authority legislation that was shot down by the court, these investigators have now been expressly declared to be police officers for purposes of investigation. It is an attractive thing and I urge the House to adopt these proposals by the Minister, so that it will no longer be possible for judges to say, "only the Commissioner of Police is empowered to investigate". Therefore, it is a reasonable proposal.

The next thing that gives me extreme concern, Mr. Temporary Deputy Speaker, Sir, is Clause 44(3), particularly at page 343. That clause is introducing the definition of corrupt conduct.

"In this section, "corrupt conduct" means:-

- (a) conduct constituting corruption or economic crime; or
- (b) conduct that took place before this Act came into operation and which-
 - (i) at the time constituted an offence."

Again, Mr. Temporary Deputy Speaker, Sir, Section 77(4) of the Constitution says:-

"No person shall be held to be guilty of a criminal offence on account of an act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed".

I urge this august House to kindly consider the provisions of Section 77(4) of the Constitution and carefully drive around it. If the word "before" appears in this Act, I will be dancing around very much together with my learned friends in the corridors of the court.

Clause 44(3) talks about conduct that took place before this Act came into operation. I

would have no problem with that, if we were not introducing the idea of economic crime. The hon. Minister, being a lawyer of long-standing, knows that, that expression in Kenya has never before been defined or put in our legislation. The possibility that the judges will say that this is a new offence is so high. Indeed, if I was sitting as a judge and I had a person in front of me accused of economic crime, and the conduct took place before, say, yesterday, because this is not law yet, I would say this is a new offence. The definition is contained in this new Bill and, therefore, we should be very careful in using that expression. Again, I have written to the hon. Minister and I have suggested that, either he expunges the entire Clause 44(3)(b), or he uses his wonderful draughtsmen in this law, to find a way of driving around the provisions of Section 77(4) of the Constitution that I have read to you.

The same thing applies at page 347 and this is Clause 52(1)(b) which says:-

"In this section, "corrupt conduct" means-

(b) conduct that took place before this Act came into operation and which-

(i) at the time, constituted an offence."

This clause is talking about conduct that took place before this Act came into operation. It is not saying before the offence of economic crime was defined. So, therefore, by combining the entire Act to cover both corruption and economic crimes, we are putting that section in direct confrontation with Section 77(4) of the Constitution.

Mr. Temporary Deputy Speaker, Sir, with your kind permission, again, at page 351, the same problem occurs; Clause 53(7)(b). It also says "conduct that took place before this Act came into operation". Fortunately, this House is aware of the problems that we faced with regard to the Donde Bill on what appears to be retroactivity.

Mr. Temporary Deputy Speaker, Sir, there are a few other minor amendments that I would bring out during the Committee Stage. But I would like to mention particularly Clause 68. Clause 68 is very well drafted, but it makes a terrible mistake in some subsection (1), where it says:-

"This section applies with respect to offences or suspected offences under the repealed Act committed before this Act came into operation."

Again, this Bill is not dealing with corruption alone. It has introduced a new crime called "economic crime". Subsection 2 says:-

"This Act, other than Part IV, applies, with any necessary modifications with respect to offences described in subsection (1) and, for that purpose, such offences shall be deemed to be corruption or economic crimes."

It will not stand a chance in a court of law. Therefore, for those reasons, it must be understood that we are asking the Government, and the Minister particularly, to consider the proposed amendments from the Official Opposition when the situation arises because this is a good law.

In conclusion, I want to mention one final thing about unexplained assets. I have not come across any law in the world which allows the state to appear to be attaching the so-called unexplained assets. The only countries that have attempted that is the racketeering law in the United States of America and Singapore. However, even in those cases, the governments there have made sure that the law only comes into operation after you have been convicted and not before you have been convicted. It is for those reasons, that I welcome this legislation and urge the Minister to consider the proposals that we have put forward for amendment of the Bill. For the first time, since 1957, this country will truly have a law that can fight corruption, and KANU will be there to join NARC to make sure that, that law is passed.

With those few remarks, I beg to support.

The Minister for Planning and National Development (Prof. Anyang'-Nyong'o). Thank you, Mr. Temporary Deputy Speaker, Sir. I also stand to support the Bill that the Minister for Justice and Constitutional Affairs has moved---

QUORUM

Mr. Choge: On a point of order, Mr. Temporary Deputy Speaker, Sir. It appears the House has no quorum.

The Temporary Deputy Speaker (Mr. Khamisi): Since there is no quorum, I direct that the Division Bell be rung for the next five minutes.

(The Division Bell was rung)

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

[Mr. Deputy Speaker took the Chair]

ADJOURNMENT

Mr. Deputy Speaker: Order! Hon. Members, as you can see the House has no quorum. I can count only 23 hon. Members present as of now. I have no other alternative under the Standing Orders but to adjourn the House until tomorrow, Wednesday, 16th April, 2003, at 9.00 a.m.

The House rose at 5.30 p.m.