

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 10th May, 2000

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

(A Cellular Phone rung in the Chamber as Prayers were going on)

Mr. Speaker: Order! Mr. Maitha, I think this is the second or third time you have been found disturbing the House. To show the seriousness of this issue, I am just considering ordering you out of the House for the balance of the day, for disorderly conduct. You do not even respect Prayers.

I now order you to go out of the Chamber, keep that gadget with the Sergeant-At-Arms, and I get a report that you have done it.

(Mr. Maitha withdrew from the Chamber)

I have two communications to make, but I will do so at the end of Question Time when we have many hon. Members. It is important that all hon. Members are present here. So, we now move to the next Order.

Mr. Maitha, have you complied with my order?

Mr. Maitha: Yes, Mr. Speaker, Sir.

Mr. Speaker: Very well. Next Order!

NOTICES OF MOTIONS

LEAVE TO INTRODUCE PALM INDUSTRY BILL

Mr. Maitha: Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, this House do grant leave to introduce a Bill on an Act of Parliament entitled---

Mr. Speaker: Order! Mr. Maitha, you are totally out of order! You are moving a Motion, instead of giving notice of a Motion?

Mr. Maitha: Mr. Speaker, Sir, I am giving notice of a Motion---

Mr. Speaker: Order! Do not argue with the Chair, give notice of the Motion.

Mr. Maitha: Mr. Speaker, Sir, you look very "kali" today. That is why---

Mr. Speaker: Relax!

Mr. Maitha: Mr. Speaker, Sir, I beg to give notice of the following Motions-

LEAVE TO INTRODUCE PALM INDUSTRY BILL

THAT, this House do grant leave to introduce a Bill on an Act of Parliament entitled Palm Industry Bill in order to legalise the brewing and sale of *mnazi* brew.

LEAVE TO INTRODUCE AN AMENDMENT TO THE LOCAL GOVERNMENT ACT

THAT, in cognisance of roles played by mayors, deputy mayors and deputy chairmen of municipalities and county councils, aware that the above officers are elected by councillors and that therefore, are, not directly responsible to the public, this House calls upon the Government to introduce an amendment to the Local Government Act (Cap.280) in order to provide that the above

officers be elected directly by the public.

ORAL ANSWERS TO QUESTIONS

Question No.45

EXCELLENCE AWARD TO INSPECTOR KIPKEMBOI SANG

Dr. Ochuodho asked the Minister of State, Office of the President:-

(a) if he is aware that Inspector Joel Kipkemboi Sang was identified for an Excellence Award by the Kenya Community

Abroad (KCA) for his relentless fight against corruption; and,

(b) if he could inform the House why both Inspector Sang and the Commissioner of Police failed to appear to receive the award at a pre-arranged ceremony.

Mr. Speaker, Sir, contrary to your instructions, I have not received a written reply.

The Assistant Minister, Office of the President (Mr. Samoei): Mr. Speaker, Sir, I want to apologise to the hon. Member because he has not yet received the written reply. But the answer was dispatched from my office. However, I beg to reply.

(a) I am not aware that an organisation calling itself Kenya Community Abroad whose registration and credibility I do not have did identify one of our officers for an award.

(b) As a result of that, part "b" of the Question, does not arise.

Dr. Ochuodho: Mr. Speaker, Sir, I want, first, to thank the Chair for having allowed this Question. In fact, it was submitted some time last year. Inspector Sang, most of us in Nairobi remember him. The good askari on Jogoo Road---

Mr. Speaker: Order! Yesterday, because of that kind of story, Question Time took two-and-half hours instead of one hour. It will not occur again. So, Dr. Ochuodho, be precise in your supplementary question.

Dr. Ochuodho: Mr. Speaker, Sir, Inspector Sang is "a rare breed". It is not always that we have an askari who does a good job. He was a good traffic inspector on Jogoo Road and we thought the Government was going to promote him. However, the KCA which is an incorporated society---

Mr. Speaker: What is your supplementary question, Dr. Ochuodho?

Dr. Ochuodho: Mr. Speaker, Sir, the situation did not rise to the Commissioner of Police to allow Inspector Sang to receive the award. How can the Assistant Minister turn around and say they are not aware? Is he saying that they never received the letter from KCA? If that is so, suppose the letter was made available, would they allow Inspector Sang to receive the award?

Mr. Samoei: Mr. Speaker, Sir, Inspector Sang is not "a rare breed". We do have so many policemen who are very committed to their jobs. Indeed, we have recognised the good service Inspector Sang has given the Police Force. Indeed, we have recognised his efforts. Apart from the fact that we promoted him from the position of Sergeant to that of Inspector, His Excellency the President did confer on him the Head of State Commendation Medal in 1995 and Distinguished Service Medal in 1998. We will consider their request if they use the proper channel of writing to the Ministry, or after we have clearly known what kind of award it is, and whether that particular organisation is credible.

Mr. Kariuki: Mr. Speaker, Sir, realising that the Assistant Minister has said that Mr. Sang is not of a special breed, could he tell us how many of his type have been promoted so that we can know how many have been recognised?

Mr. Samoei: Mr. Speaker, Sir, this category of police officers are in their hundreds, and I can bring here the list of those who have been promoted and given commendation like Mr. Sang.

Dr. Ochuodho: Mr. Speaker, Sir, it is unfortunate to hear from the Assistant Minister that he does not recognise KCA while it has hosted him in Washington. However, I am glad to hear from the Assistant Minister that they do not mind Mr. Sang getting an award. However, when I approached Mr. Sang, he told me that if he went for the award he feared he might be disciplined. Could the Assistant Minister then reassure this House and Mr. Sang that he will not be disciplined when this award is made available to him? Only two other people have received this award in this country; hon. Kirwa and hon. Orengo.

Mr. Samoei: Mr. Speaker, Sir, I cannot give any assurance. To put it right, I did not say that we will allow KCA whose credibility I do not know to confer any awards, let alone Excellence Awards on any of our officers. I would not give any guarantee. Let KCA write to the Minister and we will find out its credibility and whether it is in any way in a position to confer any awards on our officers.

After all, Mr. Sang is not in the category of the persons hon. Dr. Ochuodho has mentioned.

Question No.160

BANKING FACILITIES FOR MASINGA

Col Kiluta asked the Minister for Finance:-

- (a) whether he is aware that there are no banking facilities in Masinga Constituency; and,
- (b) what plans he has to assist the wananchi access to a bank within the Constituency.

The Assistant Minister for Finance and Planning (Mr. Lomada): Mr. Speaker, Sir, I beg to reply. (a) I am not aware that there are no banking facilities in Masinga Constituency.

- (b) Although the Minister for Finance is the Licensing Authority for banks, the decision to invest--

Col. Kiluta: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister reading out the written reply he gave me, or is he reading from a different one? This is because the one I have says that he is aware, but he is now saying that he is not aware. Now, which written reply are we to follow?

Mr. Speaker: Order! Col Kiluta, you see, I neither have what you have, nor what the Assistant Minister has!

Col. Kiluta: I can offer you the one that I have!

Mr. Speaker: Order! Proceed, Mr. Lomada. (Mr. Lomada): Mr. Speaker, Sir, I beg to reply.

- (a) I am aware that there are no banking facilities in Masinga Constituency.

- (b) Although the Minister for Finance is the

Licensing Authority for banks, the decision to invest or not in a particular area rests with each individual bank.

Col. Kiluta: Mr. Speaker, Sir, as you will agree with me, these Ministers and Assistant Ministers are sick with the phrase "I am not aware." When I said last year that roads in my area were not graded, they said that they were not aware.

Mr. Speaker: Order, Col. Kiluta! What did you say?

Col. Kiluta: Mr. Speaker, Sir, I said that they are possessed with the phrase "I am not aware." Last week when I asked about whether a road had been graded, they said that they were not aware. Now, he has said that he is not aware whether there are banking facilities in Masinga Constituency. He has now said that he is aware, and bearing in mind this Question came before this House in 1997 and they promised to provide this facility, could he tell this House what they have done since that time? This is because this same Question was framed the way it is now before this House and they gave me a written reply. If he wants, I can provide the written reply.

Mr. Speaker: Order! I wish to bring to the attention of Members the provisions of Standing Orders relating to Questions, because we flout them all the time. We are taking all the time of the day on Questions because we cannot be precise and comply with the Standing Orders to the extent that out of three-and-a-half hours that we have for Business of the House, we spend two-and-a-half hours on Questions and only one hour on the Business of the House. Now, I invite every Member to look at the Standing Order No.37 as to the content of Questions and the way they should be asked. Section (3) of the Standing Order No.37 reads as follows:-

"A Question shall not contain any argument, inference, opinion, imputation, or controversial, ironical, offensive expression, or epithet."

Section (4) of the Standing Order No.37 reads as follows:-

"A Question shall not repeat in substance any Question already answered either as a Question or in the course of a debate in the current Session."

Section (1) of the Standing Order No.37 reads as follows:-

"A Question shall not be in effect a speech, or limited to give information or framed so as to suggest its own answer or to convey a particular point of view."

So, could you stand there and ask the question, so that the Assistant Minister can answer and your colleagues from both sides of the House assist you?

Mr. Kathangu: On a point of order, Mr. Speaker, Sir. Is it in order for the Chair to reflect on all that? You may appreciate that most of the time is taken up by the Chair while trying to clarify issues and make us look like small children here as we keep quiet and what-have-you!

(Laughter)

Mr. Speaker: Which Chair?

Mr. Kathangu: Mr. Speaker, Sir, your Chair!

Mr. Speaker: Order! To the best of my recollection, I have never made you look like a child, but I have also no ability to stop any Member from putting any appearance. So, please, do not drag the Chair to all these things.

(Applause)

Murathe: Mr. Speaker, Sir, I want to seek your guidance.

Mr. Speaker: Order, Mr. Murathe! There is no point of order called "point of guidance!" Please, could Mr. Lomada answer the Question?

(Mr. Murathe remained on his feet)

Order, Mr. Murathe! In fact, the whole of yesterday and the best of today's morning, Question Time has been hijacked by statements masquerading as points of order. When you stand up on a point of order, I would require you to tell me under which Standing Order you are rising up so that we become serious. Proceed, Mr. Lomada.

Mr. Murathe: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Under what Standing Order are you seeking your point of order?

Mr. Murathe: Mr. Speaker, Sir, I am not quite very clear, but---

Mr. Speaker: Order, Mr. Murathe!

Mr. Murathe: Mr. Speaker, Sir, I just wanted you to guide---

Mr. Speaker: Order! If you are not clear under which Standing Order you are rising up, the Speaker's Chambers is open for consultation by all Members. Please, do attend there and I will give you all the guidance you require.

Proceed, Mr. Lomada.

Mr. Lomada: Mr. Speaker, Sir, I am neither possessed nor is any of the Ministers or Assistant Ministers from the Ministry of Finance and Planning with the phrase, "I am not aware," as the Member said. I want to repeat the same answer I had given to the Member; that part "b" of the Question does not arise. We have said that although the Minister for Finance is the Licensing Authority for banks, the decision to invest or not in a particular area rests with each individual bank. I think that is exactly what I have said and the Member is repeating the same question and I have given him the same answer.

Mr. Muite: Mr. Speaker, Sir, does the Assistant Minister concede that this sort of situation of lack of banking services in this constituency and in other rural areas has been brought about by the failure of this Government to develop a law and a policy on banking that will require foreign banks to have only one branch in Nairobi so that indigenous banks can go to the countryside, like it happened in South East Asia? Where is our policy on banking?

Mr. Lomada: Mr. Speaker, Sir, the question of the Government coming in matters of banks does not arise. Banks are institutions that run their own affairs and, therefore, it depends on what the banks would like to do. So, in addition, I would like to say here that the decision to open any new branch in an area is determined by the ability based on a thorough feasibility study---

Mr. Keriri: On a point of order, Mr. Speaker, Sir. Mr. Muite asked for the banking policy. He did not ask who decides where the bank sets up its business.

Mr. Speaker: So, what Standing Order has been breached as a result of that reply?

Mr. Keriri: Mr. Speaker, Sir, he is not answering the question he was asked.

Mr. Speaker: Order, Mr. Keriri! Your point of order is frivolous.

Mr. Murathe: On a point of order, Mr. Speaker, Sir. I would like to bring to your attention Standing Order No.35(2), which states:-

"A Question shall be of a genuinely interrogative character, and its purpose shall be limited to seeking information or pressing for action".

Is it in order, therefore, for Government Ministers to come here with useless answers which do not serve any purpose?

Mr. Speaker: Order! First of all, I must congratulate hon. Murathe for listening to the Chair and taking the trouble to look at the Standing Orders. Nevertheless, he is also wrong in contravening the same Standing Orders by expressing an opinion on the Question. So, he is also wrong.

Mr. Lomada: Mr. Speaker, Sir, the answer I have given to the House is not useless. Therefore, the hon. Member is wrong to term it so, because it was very well researched. He should sit down and listen to the answer I am giving to the House.

(Several hon. Members rose up in their places)

Mr. Speaker: Order, hon. Members! This morning I was listening to hon. Imanyara on the Chair, bringing to the attention of the House, that it is totally out of order for hon. Members, on rising in their places begin speaking without being given permission to do so. You know what you are doing hon. Members? If you continue like that, we will completely finish the integrity of the House. So, if you have any point of order or you want to contribute, please stand, and if you are recognised, you will participate. But we cannot have it free for all.

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. You recognised hon. Ndilinge, but his chance was snatched by the Assistant Minister, lecturing us about how much research he has done. Then you forgot to revert to him.

Mr. Speaker: Thank you for reminding me. Mr. Ndilinge!

Mr. Ndilinge: Mr. Speaker, Sir, is the Minister aware that the series of robberies we have of late around Matuu, Masinga and the other local areas is because people in those areas lack banking facilities?

Mr. Lomada: Mr. Speaker, Sir, I am not aware of that.

Mr. Speaker: Next Question!

Question No.063

DEDUCTIONS FROM FORMER
LIFE-POLICY HOLDERS

Mr. Kiunjuri asked the Minister for Finance:-

(a) why the Kenya National Assurance Company is still deducting money from former life-policy holders; and,

(b) what plans he has to assist wananchi access to a bank within the constituency.

The Assistant Minister for Finance (Mr. Lomada): Mr. Speaker, Sir, I beg to request that this Question be deferred, because the answer I have is not satisfactory.

Mr. Speaker: What is your reaction, Mr. Kiunjuri?

Mr. Kiunjuri: Mr. Speaker, Sir, this Question has been lying in the Ministry's office for the last four months.

Unfortunately, the Assistant Minister stood there and abused Mr. Murathe that he is---

Mr. Speaker: Order! I asked for reaction. Do you want him to proceed with the answer he has?

Mr. Kiunjuri: Yes, he could proceed, Mr. Speaker, Sir.

Mr. Speaker: Do you want him to read an answer he is not satisfied with?

Mr. Kiunjuri: Yes, Mr. Speaker, Sir.

Mr. Speaker: The Chair declines! Question deferred!

(Question deferred)

Mr. Kiunjuri: On a point of order, Mr. Speaker, Sir. This is my fifth Question that has been deferred during this Session. I have not received any answers from the Ministers. What assurance do we have that once the Questions are deferred, they will be brought back to the House?

Mr. Speaker: You have my assurance. Next Question, Mr. Obwocha.

Question No.034

BREAKDOWN OF UNIVERSITY ADMISSIONS

Mr. Obwocha asked the Minister for Education:-

(a) if he could table a breakdown per district, of the number of students admitted to public universities during the year 1999/2000;

(b) how many students hail from Nyamira, Kisii Central and Gucha districts; and,

(c) what the Ministry is doing to improve the academic standards in the three districts.

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

(a) In the academic year 1999/2000, public universities admitted varied numbers of students from 63 districts,

totalling 8,150. Allow me to lay the list on the Table.

(Dr. Wamukoya laid the document on the Table)

(b) Further, 132, 232 and 44 students were admitted from Nyamira, Kisii Central and Gucha districts respectively.

(c) The Government in collaboration with donor agencies has put in place various programmes to improve the academic standards in the three Gusii districts and elsewhere in the country. These programmes involve intensification of schools inspection, supervision management and provision of text books to primary schools. Under the strengthening of Primary Education Project, teachers, school heads and other education personnel and stakeholders have been trained in education management skills. Kisii and Gucha districts are also among the nine pilot districts of the strengthening of Mathematics and Science in Secondary Education Project, which inservices Science and Mathematics teachers. The school-based Teacher Development Programme inservices at least three teachers from every public school. Besides these measures, my Ministry has intensified education quality assurance by setting up specialised panel inspections. As recently as March 2000, a provincial inspection panel inspected schools in Gucha District.

Mr. Obwocha: Mr. Speaker, Sir, if you had access to the document he has just tabled, it indicates that from Nairobi 857 students were admitted, Nyeri 450 and Kakamega where he comes from, 421 students.

Mr. Khamasi: No, he does not come from Kakamega!

Mr. Obwocha: Do not worry!

Mr. Speaker, Sir, from Nyamira, only 132 students were admitted. If you compare it to Nairobi, that is only an eighth. There is Tana River District where only three students went to the university. The disparity is too much. What is the Ministry doing to put in place the newly recommended system so that we do not have this issue coming up again? We believe the figures have come up because of the overburdening 8-4-4 system of education.

Dr. Wamukoya: Mr. Speaker, Sir, first I would like to state that admission to universities is dependent on qualifications of the candidates, and therefore it has nothing to do with how many students come from each district. Secondly, the Koech Report is under study, and it will be implemented as soon as everything is ready.

Mr. Twaha: Mr. Speaker, Sir, could the Assistant Minister consider lowering the minimum admission grades in marginal districts, for example, Tana River and Lamu Districts to the institutions of higher learning?

Dr. Wamukoya: Mr. Speaker, Sir, students from those disadvantaged areas are admitted with one or two points lower than the others. I also would hate to say that female students are also admitted with lower grades, which creates reverse discrimination.

Mr. Kariuki: Mr. Speaker, Sir, could the Assistant Minister confirm or deny that some of the districts are performing well because of provision of equipment while others are denied the same? Could he, therefore, confirm that Gucha District is possibly one of the districts that are discriminated against by the Government?

Dr. Wamukoya: Mr. Speaker, Sir, the question of equipment to schools has been coming up on and off. From the Sessional Paper No.12 of 1988, which introduced cost-sharing in education, the Government was not bound to supply equipment to all the schools. It only supplies equipment to those areas which are disadvantaged. Parents in the cost-sharing programme are supposed to help in equipping the rest of the schools.

Mr. Obwocha: Mr. Speaker, Sir, in Nyamira District, this Ministry has reduced the zones and, therefore, there is a reduction in school inspectors. If the Ministry wants to improve the education standards, why is it reducing the zones, instead of increasing them and the inspectors? This will enable Kenyans to have good results in the Kenya Certificate of Secondary Education (KCSE) examination.

Dr. Wamukoya: Mr. Speaker, Sir, reduction of the inspectors in schools was done appropriately in all districts of the country. But I can assure you that every location has a zone.

Mr. Anyona: Mr. Speaker, Sir, this is a matter that has caused a lot of concern in the Abagusii community and the leadership. Could the Assistant Minister tell us the real causes of the poor performance and the low education standards in Gusii Districts? Is it discrimination as a punishment?

Dr. Wamukoya: Mr. Speaker, Sir, if you looked at my list, Gusii Districts are doing better than many other districts. I do not believe that they are performing poorly, and, therefore, I have no reason to give hon. Anyona for the districts' poor performance.

LIBERALISATION OF AIRWAVES

Dr. Kulundu asked the Minister for Information, Transport and Communications what plans the Ministry has to liberalise airwaves for both radio and television.

The Minister for Information, Transport and Communications (Mr. Mudavadi): Mr. Speaker, Sir, I beg to reply.

We have already liberalised the airwaves.

Dr. Kulundu: Mr. Speaker, Sir, although Standing Order No.37 forbids me from giving an opinion, surely, the Minister's answer is very disappointing.

Mr. Speaker: Can I volunteer to tell you what you should do?

Dr. Kulundu: Yes, please.

Mr. Speaker: Can you ask the Minister whether he believes the answer?

Dr. Ochuodho: Can he answer now that he has heard the question?

Dr. Kulundu: Mr. Speaker, Sir, is the Minister aware that in his Sabatia Constituency, in Lurambi, Voi, Shinyalu and Lamu Constituencies, wananchi are still paying to radio and television licences issued by the KBC? If, indeed, the airwaves have been liberalised countrywide, why are wananchi paying for these licences? Does he believe his answer?

Mr. Mudavadi: Mr. Speaker, Sir, I believe my answer. On the issue of payment of licences to KBC, this is one of the proposals that we want to bring to this House as amendments to the KBC Act. This is because in a liberalised environment, one station cannot then be receiving resources while the others are not.

Mr. Ndicho: Thank you, Mr. Speaker, Sir. The Minister is not being honest by saying that they have liberalised the airwaves. We know that the independent radio stations that are now operating in Nairobi, are only operating within the radius of 40 kilometres. Outside the radius of 40 kilometres, it is only KBC that is operating. Is this what the Minister understands the liberalisation of airwaves to mean? When will the Ministry open up the whole country to *Kameme Radio*, *Capital FM*, *Nation FM*, *Citizen Radio* and the *Kenya Free Radio*, which is soon coming up?

Mr. Mudavadi: Mr. Speaker, Sir, it is not true that the other television and radio stations will not be heard beyond the boundaries of Nairobi. Some of them are being received outside Nairobi and the reception is there.

For instance, the *Citizen Radio*, with its co-sighting arrangement with KBC, has been able to broadcast beyond the Nairobi environment. So, that allegation is not quite true.

Dr. Kituyi: Mr. Speaker, Sir, first of all, there was a contradiction in the reply by the Minister. He said that airwaves have been liberalised and he agrees that the monopoly of KBC to receive licence fees cannot operate in a liberalised environment. The implication of this statement is that there is no liberalised environment because KBC has that monopoly of collection of licence fees. Could the Minister tell this House why *Nation Television* has been denied the licence to broadcast nationwide, if this is a liberalised environment?

Mr. Mudavadi: Mr. Speaker, Sir, we are at the moment trying to broaden and improve on our broadcasting policy. This is one thing that I want to put on record. There are several television and radio applicants who want to have licences to broadcast either nation-wide or region-wide. We are trying to improve our policy so that licences can be granted appropriately to the respective applicants. We do not want to have any principle at this stage which we cannot justify from a broad policy level.

Dr. Kulundu: Mr. Speaker, Sir, could the Minister confirm or deny that the reason why airwaves have not been liberalised nation-wide is because the KANU Government would like to use KBC as a propaganda tool?

Mr. Mudavadi: Mr. Speaker, Sir, I deny.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. You have heard the Minister say that it is not only KBC which broadcasts outside Nairobi. The only other radio station that was broadcasting outside Nairobi was the Citizen Radio, which is owned by S.K. Macharia. When he fell out with KANU, KBC went switching it off from Nakuru, Nyambene, Nyeri and other regions. Is the Minister in order to mislead the House? Could he tell us of any other radio station other than KBC which broadcasts outside Nairobi?

Mr. Speaker: Order! That is not a point of order! You are ambushing the Chair in the guise of a point of order to ask a supplementary question. You are denied the chance. In fact, you are the main culprit in all this. Next Question, Mr. Sungu.

Question No.153

ISSUANCE OF TITLE DEEDS IN KOLWA EAST

Dr. Ochuodho, on behalf of **Mr. Sungu**, asked the Minister for Lands and Settlement:-

- (a) what the Ministry is doing to provide title deeds to the residents of Buoye Sub-Location of Kolwa East Location in Winam Division, Kisumu District; and,
- (b) when the said title deeds will be issued.

Mr. Speaker, I wish to congratulate this Minister in advance because he has given me a written answer.

Mr. Speaker: Order! Dr. Ochuodho, please, stick to the rules.

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

(a) The Ministry is about to finalise the adjudication process in Buoye Sub-location in Kisumu District after which the title deeds will be issued.

(b) The title deeds will be ready by December, 2000.

Dr. Ochuodho: Mr. Speaker, Sir, you realise that I had very good reasons for congratulating the Assistant Minister and the "rumour" is that he is also in the cards, being considered.

(Laughter)

Mr. Speaker: Order! Dr. Ochuodho, please, save this House all these unnecessary theatrics. Let us get to business. I have ruled a thousand times that "rumours" shall not be the basis of any argument in this House. Now, abide by my ruling.

Dr. Ochuodho: Mr. Speaker, Sir, the land adjudication in Winam Division was completed four years ago. Can the Assistant Minister tell the House why it is taking so long for the title deeds to be issued?

Mr. Opore: Mr. Speaker, Sir, the fact is that from time to time, problems occur in various Ministries. However, the important thing is that the title deeds will be ready for this particular sub-location by the end of December this year.

Mr. Kiunjuri: Mr. Speaker, Sir, it is true that title deeds will be issued. However, could the Assistant Minister confirm or deny that there has always been double issuance of title deeds all over the nation and especially in Laikipia?

Mr. Opore: Mr. Speaker, Sir, issuance of double title deeds is not something that is common with us. It is not the case particularly in this sub-location. If hon. Kiunjuri has a specific case, let him come up with it.

Dr. Ochuodho: Mr. Speaker, Sir, the issue of title deeds is a major problem in Nyanza Province. Even in a place like Ahero where none other than the Head of State did say they would get their title deeds, they have not been given, a year later. Can the Assistant Minister, given the good answer he has given here, make sure that all persons [Dr. Ochuodho]

deserving title deeds in Nyanza get their title deeds by December as he has said?

Mr. Opore: Mr. Speaker, Sir, we have a number of title deeds lying in various districts in the country. During the submission of our budget for the Ministry, we advised Members of Parliament to please bring up the matter with their constituents so that they can make a point of collecting their title deeds from their districts.

QUESTIONS BY PRIVATE NOTICE

ACTION AGAINST OFFICER COMMANDING GURAR POLICE POST

Dr. A. Ali: Mr. Speaker, Sir, I wish to ask the Minister of State, Office of the President, the following Question by Private Notice.

- (a) Is the Minister aware that the Officer Commanding Gurar Police Post ordered his askaris to cock their guns after a disagreement concerning his treatment of wananchi, who had fled to the camp for security reasons?
- (b) Is he further aware that this happened in the presence of Wajir District Security team?
- (c) What appropriate action has the Minister taken against the officer?

The Minister of State, Office of the President (Maj. Madoka): Mr. Speaker, Sir, I have discussed this Question with the hon. Member and the people on the ground and we want to do further consultations. So, we are requesting that it be deferred.

Mr. Speaker: Dr. Ali, is that alright with you?

Dr. A. Ali: Yes, Mr. Speaker, Sir.

Mr. Speaker: The Question is deferred! Next Question, Mr. Muite.

(Question deferred)

GOVERNMENT BORROWING FROM
CENTRAL BANK OF KENYA

Mr. Muite: Mr. Speaker, Sir, I wish to ask the Minister for Finance the following Question by Private Notice.

(a) Could the Minister table a list showing direct advances to the Government of Kenya by the Central Bank of Kenya for the last six months?

(b) Could the Minister confirm whether such borrowing conforms with Section 18(3) of the Central Bank of Kenya (Amendment) Act of 1996?

The Assistant Minister for Finance and Planning (Mr. Lomada): Mr. Speaker, Sir, I have also talked to hon. Muite about this Question, that I will bring the answer tomorrow.

Mr. Speaker: Mr. Muite, is that alright?

Mr. Muite: No, Mr. Speaker, Sir. It is not alright at all. Mr. Speaker himself on several occasions has underscored the importance of the dignity of this House. The Speaker yesterday directed that this Question be answered today. That ruling is already there. This is getting on to "contempt" of this House.

Mr. Speaker: Order! Mr. Lomada, is that the position?

The Assistant Minister for Finance and Planning (Mr. Lomada): Mr. Speaker, Sir, that is not the position. I do not want to bring an incomplete list to the House. We are still compiling the list and that is why I said that---

Mr. Munyao: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Mr. Munyao! Let me deal with this, please. Mr. Lomada, the question is very simple: Was this Question directed to be answered today by the Chair yesterday? That is the simple question I am asking.

The Assistant Minister for Finance and Planning (Mr. Lomada): Mr. Speaker, Sir, I can neither deny nor agree because I was not here yesterday.

Mr. Munyao: On a point of order, Mr. Speaker, Sir. Even if you do not agree with what the Assistant Minister has said, all the same you heard him say that he had discussed with hon. Muite. Hon. Muite says that he is not aware that they have discussed this Question. Can the Assistant Minister apologise for misleading the House by saying that they had discussed with hon. Muite and yet they had not?

Mr. Speaker: Order! That is "diversionary." You are diverting my own question. You know it is so easy for me to get this because it is in the HANSARD and I will always know what transpired yesterday. That notwithstanding, I am informed as follows: That, indeed, this Question did come up yesterday.

Indeed, the Question was deferred to today under the direction of the Chair and that the Minister in charge of the Question, then was hon. Arap Kirui and not hon. Lomada. Hon. Lomada, could you now assist the Chair? Why did your colleague run away from the Question?

(Laughter)

The Assistant Minister for Finance and Planning (Mr. Lomada): Mr. Speaker, Sir, I cannot say if he ran away, but I have no idea of where he is.

Mr. Speaker: Order! However, can I ask you on a question of seriousness? If the Chair has directed that the Question be deferred to today or tomorrow, presumably, - because I was not here and I do not have the HANSARD - for the reason that you did not have the answer then and that you will be ready tomorrow, are you telling this House that the Chair is going to facilitate Ministers seeking the indulgence of the Chair to enable those Ministers to run away from answering the questions? Mr. Lomada, if I were you, I would apologise profusely on behalf of your colleague and ensure that this Question is dealt with at the earliest possible time.

The Assistant Minister for Finance and Planning (Mr. Lomada): Mr. Speaker, Sir, I apologise that my colleague was not able to come to the House today. However, as I had said earlier, we will bring the answer tomorrow.

Mr. Speaker: I will do the following: I will now pin it on you. The Question will be here tomorrow and if for any reason you run away, it means you will have trouble answering any further questions in this House.

The Assistant Minister for Finance and Planning (Mr. Lomada): Mr. Speaker, Sir, I am ready to answer it.

Mr. Speaker: Very well. Mr. Muite, will you oblige?

Mr. Muite: Yes, Mr. Speaker, Sir. I do oblige. I do trust that the answer will be here tomorrow because I have got nagging suspicions that the Ministry is "buying time" in order for the World Bank team to leave town since

the answer will be embarrassing to the Ministry.

Mr. Speaker: Order! By the way, just to remind Members, we address the House; we do not address the World Bank. Proceed, Mr. Anyona.

CLOSURE OF MATANGI PRIMARY SCHOOL

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

(a) Is the Minister aware that in February, an Education Officer closed Matangi Primary School in Kitutu Masaba and went away with all the teachers, leaving the students stranded in classes?

(b) Under what circumstances; and, with what authority did the Education Officer close the school?

(c) What measures has the Minister taken against the officer concerned?

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

(a) I am not aware that the Education Officer closed down Matangi Primary School and went away with the teachers; leaving the students stranded in the classes.

(b) In view of my answer in "a", part (b) does not apply.

(c) But nevertheless, I am aware that on Monday the 21st of February, 2000, my Officer for Rigoma Division convened a parents' meeting at Matangi Primary School to resolve a bitter rivalry over whether the Deputy Headmaster should succeed the ailing Headmaster who was about to step down. The meeting became very rowdy and aborted. The parents took their children away from the school and intimidated the teachers. While the teachers sought assurance of security from the authorities, the school was disrupted and did not work for three days.

However, I am pleased to inform the House that the Ministry resolved the issue and the school is now in full operation.

Mr. Anyona: Mr. Speaker, Sir, when the Assistant Minister says he is not aware, that is, indeed, true. When I got the information, I rang the Education Officer, Nyamira, and he was not aware at all. But as a result of discussions, the Deputy Education Officer by the name of Mr. Ruto went to the school to find out what had happened. So, indeed, the information the Assistant Minister got is not true. But, be that as it may, could the Assistant Minister tell us the nature of the dispute and how it has been resolved?

Mr. Awori: Mr. Speaker, Sir, the nature of the dispute is the sickness that seems to be embracing this country sometimes; that is tribalism and clanism. The Deputy Headmaster by the name of Mr. Anyona - no relation to the hon. Member - comes from some distance away from the school, but he is a very capable person. The people around the school wanted their "son of the soil" to take over the headmastership of the school. On the other hand, the teachers believed in the Deputy Headmaster. They felt that losing him would be a problem. That was the nature of the problem.

However, after my officers sat together with the parents and the teachers, it was pointed out that, it was in the interest of the community to have the Deputy Headmaster take over the headmastership of the school. He is now the Headmaster.

Mr. Anyona: Mr. Speaker, Sir, the Assistant Minister should tell the House who incited the parents against the Deputy Headmaster, who actually comes from Nyaribari Masaba, and whom I personally, as the area Member of Parliament, have no objection! I had to intervene! How can he tell us that all the teachers were happy and, yet, it is some of them who incited the parents against the Deputy Headmaster? Who are they and what has the Assistant Minister done about it?

Mr. Awori: Mr. Speaker, Sir, the major inciter was the councillor of the area. But as I said, we have solved the problem. The school is now in full operation. So, we should "let bygones be bygones!"

COMMUNICATIONS FROM THE CHAIR

DISCLOSURE OF INFORMATION UNDER THE BANKING ACT

Mr. Speaker: Hon. Members, last Wednesday on 3rd May, 2000, in the course of Question Time, I did undertake to make a ruling on certain issues raised in a Question by Private Notice, by the Member for West Mugirango, hon. Henry Obwocha, concerning disclosure of information under Section 31 Paragraph (i) of the Banking Act, Cap 488 of the Laws of Kenya. If I may quote the relevant section, it reads as follows:-

"Except as provided in this Act, no person shall disclose or publish any information which comes into his possession as a result of the performance of his duties or responsibilities under this Act, and if he does so, he shall, for the purposes of Section 49, be deemed to have contravened the provisions of this Act."

Section 49 reads as follows:-

"Where any institution or other person contravenes any of the provisions of this Act:-

(a) if it is a body corporate, he shall be guilty of an offence and liable to a fine not exceeding Kshs100,000; and,

(b) every officer of that institution or person shall be guilty of an offence and liable to a fine not exceeding Kshs50,000, or to imprisonment for a term not exceeding two years; or to both, unless he proves that, through no act or omission on his part, he was not aware that the contravention was taking place, or was intended or about to take place, or that he took all reasonable steps to prevent it from taking place."

Hon. Members, I have considered this matter in depth and, as a law-making body, we must abide by the laws that we legislate. Part (b) of the Question by the hon. Member requested the Minister for Finance to table a list of bad debtors and doubtful debts with the Kenya Commercial Bank. In my opinion, any disclosure of the information by any officer of the bank, sought by this part of the Question, will contravene the provisions of the Act; and until, in the wisdom of this House, Section 31 Subsection (ii) is amended, part (b) of this Question remains inadmissible.

I am however, aware that the Assistant Minister for Finance, on 26th November, 1998, did table before this House, a list of debtors with the National Bank of Kenya, following a Question by Private Notice by the Member for Webuye hon. Musikari Kombo which, similarly, should not have been allowed in the first place. Hon. Members will recall that no Member brought to the attention of the Chair any objection under Section 13 Subsection (ii).

I therefore order that part (b) of this Question be dropped and withdrawn in view of Section 31 Subsection (ii) of the Banking Act, Cap 418, Laws of Kenya. It is so, dropped!

(Applause)

MEMBERS' WORKSHOP ON BUDGET-MAKING

Hon. Members, you will recall that early this year, when we had a Seminar at Safari Park, I undertook to organise a two-day Pre-budget Workshop to facilitate discussions on the budget-making process, and the role of Members in the budget process. I am pleased to invite all hon. Members to attend the Workshop at the Safari Park on Thursday 18th and Friday 19th May, 2000. The Workshop is jointly sponsored by my Office and the Inter-Parliamentary Union Headquarters in Geneva. We have invited resource persons from other Commonwealth Parliaments, who are expected to share their experiences with us.

MEMBERS' SEMINAR ON THE KENYA ROADS BOARD ACT

May I also, on behalf of the Chairman of the Departmental Committee on Energy, Communication and Works, and the Minister for Roads and Public Works, request all Members to attend a one-day Seminar at the same venue on Wednesday, the 17th of May, 2000, to deliberate on the newly enacted Kenya Roads Board Act. As you are all aware, roads are vital components in the development of every constituency. I am informed that, from July this year, the Districts Roads Committees will be operational and you are all members of those committees.

I am, therefore, appealing to you all to attend those two workshops next week. A programme for the Seminar will be circulated to all hon. Members before the rise of the House today.

INTER-PARLIAMENTARY UNION (AFRICAN REGION) CONFERENCE

Finally, the Inter-Parliamentary Union (IPU); Kenya National Assembly Group, is honoured to host a Regional Seminar for English-speaking African Parliaments; from Monday, the 22nd to 24th of May, 2000. We expect over 250 delegates from Commonwealth Parliaments in Africa - that is of course, excluding yourselves - to attend the three-day Seminar on Parliaments and National Budget Process. This Seminar is also organised jointly with

the Inter-Parliamentary Union Headquarters in Geneva and our Parliament. I will shortly be nominating the delegation to this Seminar. I thank all of you. Next Order!

(Applause)

PERSONAL STATEMENTS

REACTION TO PARLIAMENTARY SELECT COMMITTEE REPORT ON CORRUPTION

The Vice-President (Prof. Saitoti): On a point of order, Mr. Speaker, Sir. I stand on a point of order under Standing Order No.69, which does allow an hon. Member to stand at any time to make a personal explanation.

I want to refer to the Report of the Parliamentary Select Committee on Corruption which was tabled in the House yesterday, by hon. Musikari Kombo. This Report has received very wide Press coverage and, therefore, I feel that, I need to address one or two issues, because I have been adversely mentioned therein.

There are really two issues of very great concern to me; one, is the recurrence of the very old case of Goldenberg. In this case, the Report bases its own recommendations on page 89 of the Report; specifically, paragraphs 29-31, of the Public Accounts Committee Report (PAC) of 1995/96 and paragraphs 36-41 of the Public Investments Committee Report (PIC) of 1994/95.

Mr. Speaker, Sir, I have had the opportunity to go through the relevant paragraphs, as far as the 1995 Report is concerned. For example, in case of those paragraphs of 1995/96, relating to the matter of Goldenberg, paragraph 30 specifically states as follows:-

"Since then, a further transaction amounting to K£324,614,809-00-00 had been identified and it explains that. However, no acceptable documents have been produced for the balance of expenditure amounting to K£364,132,765-00-00 made up as follows:- K£29,132,761-00-00, stated to be related to the payments made to the Goldenberg International Limited and for which no available records or information had been provided, and K£75 million representing payments to the National Bank of Kenya."

Mr. Speaker, Sir, the amount of K£289 million is what this House has come to know as Kshs5.8 billion. Once again, if you look at the 1994/95 PIC Report, it is the same amount of money, but it goes into very great elaboration and says that; "the total expenditure of K£299,132,765-00-00---"

Mr. Shitanda: On a point of order, Mr. Speaker, Sir!

Mr. Speaker: Order! The hon. Member is on a point of order.

The Vice-President (Prof. Saitoti): The total expenditure of K£299,132,765-00-00 was unconstitutionally debited to the Consolidated Fund. It goes on to state that the payments were as follows:-

"On 19th April, 1993, K£90 million; 1st July, 1993, K£141 million; 7th July, 1993---"

Mr. Speaker, Sir, I have the following submission to make. I was not the Minister in charge of Treasury at that time.

Hon. Members: Who was the Minister?

Mr. Speaker: Order! Order! When this House claims to advance and enhance democratic governance and space, it must by itself set an example by being the first to embrace democracy. "Democracy" means, my right to say what I please, and your obligation to listen to me. Proceed!

Mr. Obwocha: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! Order! Let him finish!

Mr. Obwocha: But, my point of order is in relation to the ruling which the Chair---

Mr. Speaker: Order! Order! Let him finish, Mr. Obwocha, and then ask me to make that ruling, then I will, all right? Proceed!

Mr. Obwocha: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! Order! Hon. Members, may I just say this, that the Vice-President here, who is a Member of this House, is rising on Standing Order No.69. So, for the benefit of those Members who have not read the relevant Standing Order, I will read it. By the way, ultimately, I have also some observations to make in the misgivings I have in all this. I will communicate to this House in due course.

Standing Order No.69 states as follows:-

"By the indulgence of the House, a Member may explain matters of a personal nature, although there is no question before the House, but such matter may not be debated."

Now, according to the precedence of this House and the rulings since this House was initiated, statements made about a Member in the House fall under Standing Order No.69. But any statement made about a Member outside the House, does not fall under Standing Order No.69.

(Dr. Ochuodho rose up in his place)

Mr. Speaker: Order, Dr. Ochuodho! Please, try to sit down! Any matter that comes to this House and an hon. Member is mentioned in the course of the proceedings of this House falls under the ambit of Standing Order No.69.

If a Member contributes on the Floor of the House and mentions another Member who is absent adversely, the absent Member is entitled to come to this House after Question Time and make a personal statement about what was said about her or him here. The question here is: Is a document tabled in this House part of the proceedings of the National Assembly to entitle a Member to take advantage of Standing Order No.69? I have agonized about this issue, but in my own view, it clearly is. If a document is tabled in this House, it is part of the proceedings of the House. Secondly, if such a document is part of the proceedings of the House and it does adversely affect any Member, is that Member entitled, under Standing Order No.69, to make a personal statement in order to make a clarification? In my view, yes.

The third issue which I agonized about when I was consulted about this issue, and which is much more important than all these other peripheral issues, is whether, when a Member has been adversely mentioned in a report of the House, which has been tabled in this House and, therefore, has become part of the proceedings of the House, as I have said; and whose Notice of Motion has been given that it will come before this House, can, under Standing Order No.69, make a personal statement. At the same time, there is a conflict of the rule that no Member shall anticipate debate. In this House, the rule is that no Member shall anticipate debate of any Motion whose notice has been given in this House. The Anti-Corruption Select Committee has clearly given Notice of Motion within the meaning of the rules of this House. But looking at that Report, in my view, it is in direct contravention of the necessary Standing Order that says: "No Member shall be mentioned adversely without a specific substantive Motion about that Member, calling into question the character of that Member."

There is no doubt here that many Members have been adversely mentioned by the Report. The question that arises and which engages the mind of the Chair, and which should engage the minds of all hon. Members here is: As a Committee of the House tables a document that condemns many Members who are present here, and which is not likely to be heard today or tomorrow; and which received greater publicity, are those Members of the House who are aggrieved entitled, even without going into the technicality of Standing Order No.69; even by recourse of natural justice, which says, "Thou shall not condemn me unheard", to be heard? Are those Members condemned to eternal damnation without being heard? As far as I exercise my mind, and to the best of my ability, I think the discretion tilts, in my view, in allowing hon. Members who are aggrieved to make their point in so far as they do not go to the total merits or demerits of the whole Report. They should comment only on those aspects which talk about them, but not as to whether the Report should be accepted or not. That is, in my view, the best human decision I can make.

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. I appreciate the concerns of the Chair in guarding the dignity and honour of hon. Members in this House. But what recourse do Members of this House have if they perceive that the interpretation of the rules and the opinion of Mr. Speaker is faulty? The other issue is, if you can allow hon. Members to selectively start negating contents of a Parliamentary Report two weeks before the House can debate it, are you not satisfied that you are setting a dangerous precedent, which will dilute the rules of this House?

Mr. Speaker: Order, Dr. Kituyi! Let me say this, with all honesty and with a straight face. I have a lot of interest in maintaining the dignity of this House. I am absolutely worried by the trend this House is taking when Members deliberately flout the rules of the House. I hope the hon. Members of this House will address that issue without partisan politics and emotions. This is not my House; it is your House. This is not your House as Members of Parliament, but a Kenyan House. We have temporary membership, but the Kenyan people have perpetual ownership of the National Assembly. To go to your question, if the House feels that the ruling of the Chair is wrong, such a ruling can be overturned by the House through a Motion, and I will help the Member who is interested in overturning it to do so and he will have to satisfy the Members of the House that the ruling of the Chair is incorrect and give them his understanding, which he wants to be adopted as the ruling of the House. We cannot quarrel about this because at any one time, only one person will sit in the Chair. Whoever that person will be, he will have the responsibility of making the rulings. In doing so, he will be doing it alone. If you are mindful of what happens in this Parliament tomorrow, and for the purposes of history---But I want to ask you, hon. Members, that whatever course you want to take, please do so but with the following message from me. We require, to be able to develop and promote democracy, a House with dignity, honour, free of malice and intimidation. As far as I am concerned, I did allow the Vice-President, and any other Member who wished, to make a personal statement in clarification of a matter that has been referred to him in the

House. This has been so since Independence. I challenge any Member to disprove that to be untrue.

Mr. Anyona: On a point of order, Mr. Speaker, Sir. This is an important matter, which has arisen in the past; it is arising now, and it is likely to arise again. So, this may as well provide an opportunity when the matter should be really settled once and for all---

(Loud consultations)

Mr. Speaker: Order! Order! Can we listen? Hon. Members, on issues like these, I think it is absolutely important that we understand what is the problem and how we can sort it out. I think that is the only way forward. The best thing is to understand what is the problem because we cannot sort out a problem unless we understand it.

Mr. Anyona: Mr. Speaker, Sir, I was saying that this matter has actually arisen in the past it is arising now, and it is likely to arise in the future. I think the House may as well address it now. Standing Order Nos.69 and 70 should be read together. The matter before the House right now arises out of Standing Order No.70(2) and (3). I think you have addressed paragraph 3, but I think the answer lies in the interpretation also of paragraph 2. We are talking about anticipation. In what circumstances does anticipation arise? The Standing Order does state that: First, if you are debating a substantive Motion, then you are not allowed to anticipate debate on another Motion. Secondly, if you are debating a Motion of Adjournment, then you are not allowed to do that. Thirdly, if you are debating an amendment to another Motion, then you are not allowed to stray into anticipation of another business that is pending before the House. In those circumstances, if that was to be interpreted in conjunction with paragraph 3, then, clearly, the provisions of Standing Order No.69 would stand on their own and would not be affected by the provisions of Standing Order No.70.

Mr. Speaker: I think you are absolutely right. Proceed.

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

Mr. Speaker: Order! Order! Proceed, Prof. Saitoti.

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

The Vice-President (Prof. Saitoti): Mr. Speaker, Sir, let me say the following; namely, those aspects, referred here as substantiation, refer to activities of 1993. I was not in the Treasury and that is a fact. Secondly, you have on a number of occasions ruled that matters before the court are *sub judice* and cannot be discussed here.

An hon. Member: Are you hiding on that one?

The Vice-President (Prof. Saitoti): Mr. Speaker, Sir, I am not hiding on that one. We have Standing Orders--

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(Loud consultations)

Mr. Speaker: Order! Order, Mr. Vice-President! Order, hon. Members! There is nothing to be excited about all these. Mr. Vice-President, just mention the matters that touch on you personally. If it is anything that touches on my ruling on *sub judice*, that does not come under Standing Order No.69; we would have to await the Report to come here and anybody who thinks part of the Report is inadmissible because of either the Standing Orders, or a ruling made by the Chair, that objection will be made here. So, please, stick to the matters that touch you---

(Dr. Ochuodho stood up in his place)

Dr. Ochuodho: Toothless!

Mr. Speaker: Allright. Dr. Ochuodho, I may be tempted to get you out. You have for a long time, taken the Chair as if the Chair has no authority in this House. It is just about time I showed you I do have authority.

Dr. Ochuodho: Mr. Speaker, Sir---

Mr. Speaker: You will now leave the Chamber.

Dr. Ochuodho: Mr. Speaker, Sir, I will leave, but it is not fair!

Mr. Speaker: You will leave the Chamber. Proceed. Would you leave my rulings apart?

*(Dr. Ochuodho and Mr. Obwocha
withdrew from the Chamber)*

The Vice-President (Prof. Saitoti): Mr. Speaker, Sir, I will very much oblige by your ruling. As I have stated about the issues in question, they have no reference to materials. Secondly, I have, indeed, on these matters of

the Goldenberg, really been cleared by a resolution of this House on 19th April, 1995. I lay that one on the Table.

*(Prof. Saitoti laid the document
on the Table)*

Mr. Speaker, Sir, indeed, when this matter was brought here during the Motion on the vote of no confidence against me, I clearly stated my position. I was cleared during that particular time by the resolution of this House. After thorough investigation by the Government and the Office of the Attorney-General in a letter directed to the Managing Director of the International Monetary Fund (IMF), it stated that no criminal intent can be preferred to hon. Saitoti.

Mr. Wanjala: Resign!

The Vice-President (Prof. Saitoti): I do not want to be nasty. I also want to say this, and I am glad; indeed, natural justice demands that if you are accused, you must be given the opportunity to defend yourself. I was never summoned by this Anti-Corruption Select Committee on this matter. So, what has actually been brought here is a matter of a kangaroo court. There is another one I want to go through very quickly. It refers to the soya beans plant. Again, I want to inform this House that the Public Investments Committee (PIC) did summon us and we voluntarily went there; that is, a number of us being mentioned here. We defended ourselves and I believe the Report will be coming to this House any time. Members are all here---I am not here to mention what will come---

Mr. Murathe: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Mr. Murathe!

The Vice-President (Prof. Saitoti): Mr. Speaker, Sir, my submission is this: How come that this Anti-Corruption Select Committee failed to consult with the proceedings of the relevant Committee on this matter? Neither was I ever summoned by this Committee! I was never summoned. Again, the recommendation here is made without availing me, and I am sure it is true of the other hon. Members, the opportunity to defend myself. The conclusion I make is that this Committee, rather than having the objective of thoroughly examining the issues of corruption, its intention was none other than to witchhunt people and slander their names for purely political reasons. To me, this is a bogus Committee based on evil.

Hon. Members: No! No!

(Several Members stood up in their places)

Mrs. Ngilu: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! Order! Order, hon. Members! Mr. Vice-President, you are not allowed, neither is any Member allowed, to use abusive or offensive language to any Member or a Committee of this House. I, therefore, order that you withdraw and apologise.

The Vice-President (Prof. Saitoti): Mr. Speaker, Sir, I do have the honour to withdraw any offensive remarks I have made. I only stand by the fact that the Committee never made the attempt to call us. It is clear who is the man there and what their intentions were.

Mr. Wanjala: Resign!

Mr. Speaker: Order! Order! Mr. Wanjala, why are you so excited? The Anti-Corruption Select Committee is not Mr. Wanjala. Why do you take it so personal?

Order! Order! May I say this to this House---

An hon. Member: He has not apologised.

Mr. Speaker: Order! Mr. Vice-President, please, apologise.

The Vice-President (Prof. Saitoti): Mr. Speaker, Sir, I thought I did apologise.

Mr. Speaker: No, you withdrew; you did not apologise.

The Vice-President (Prof. Saitoti): Mr. Speaker, Sir, the apology is certainly offered to this august House; I do that with great honour.

Mr. Speaker: Very well! Before we go any further, let me say this: I had hinted to you, hon. Members, that it is within your hands, as the Eighth Parliament, to strengthen or destroy the National Assembly. If you read the Standing Orders and the rulings of the Chair since Independence, personalised attacks on Members have always been outlawed for good reasons. It facilitates a sober and orderly discussion of national issues. The moment we personalise debate or issues, we will have wrangles in the House. The moment we personalise debate and issues, we will have rancour in the House. I hope that, collectively, we will guide this House together.

(Messrs. Murathe and Angwenyi)

stood up in their places)

Mr. Speaker: I will come to you, Mr. Angwenyi. Let us hear what Mr. Murathe has to say.

Mr. Murathe: Mr. Speaker, Sir, my point of order is about a procedural issue. The Public Investments Committee (PIC) summons hon. Members who are adversely mentioned in the course of its receiving evidence. You heard the Vice-President say that this House's Anti-Corruption Select Committee did not summon them to respond to the allegations made against them. Can we, therefore, allow a Committee of this House to publish Reports here, in which some hon. Members are adversely mentioned despite the fact that those hon. Members were not requested to appear before such a Committee to defend themselves?

Mr. Kariuki:---(Inaudible)

Mr. Speaker: Order! Order, Mr. Ngenye Kariuki! Hon. Members, may I say as follows. First of all, may I confess to this House that, as a matter of fact, I have not read the whole Report. So, I will not do what I do not know. I have not read the whole Report, but I browsed through some of its minutes. I encourage the hon. Members of this House to, actually, read the minutes of that Committee and find where accusations have been made, not only against Members of Parliament, but also against other Kenyans, generally. Hon. Members should also try to find out whether, as a matter of fact, the accused persons were ever summoned to the Committee to be heard. You all have copies of the Report; you will find out the truth for yourselves. I encourage you to do so, so that when that Report comes up for debate in the House, you will already have been properly informed.

Hon. Members, if it emerges that a Committee of this House expended public funds and the time of this House; called witnesses who made accusations against certain persons who were not given a chance to defend themselves; and that notwithstanding, such a Committee brought to this House a condemnation Report, then, such a Committee can only be a danger to the operation of the Committee system of this House, Parliament as a whole, and to democracy. However, that is something that you will establish yourselves; I have not read the whole Report myself.

What is your point of order, Mr. Angwenyi?

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. Would I be in order to suggest that the House suspends its business, so that we may discuss this Report; so that hon. Members who have been named adversely may defend themselves, and for us to see who have been proved to have been corrupt?

(Applause)

Mr. Speaker: Order! Order! Mr. Angwenyi, we do not suspend the business of the House anyhow; we always deal with the business of this House through rules. Even if I was mandated - which I am not - to agree with you that I, somehow, have the residue power to dispense with the business of this House for you to discuss this Report, that this Report was laid on the Table yesterday and I am not sure hon. Members are conversant with what is contained in it. I will encourage you to read it. There is no harm in being patient. There is a lot of virtue in patience; there is also a lot of virtue in reading that Report. So, could we read and understand that Report, first, so that we can contribute to its debate while we are informed?

Let us now go to another issue! What is it, Mr. Biwott?

The Minister for Tourism, Trade and Industry (Mr. Biwott): On a point of order, Mr. Speaker, Sir. I rise under Standing Order No.69. The Chairman of the Parliamentary Select Committee on Corruption tabled his Report in this House yesterday. The Report listed several names, some of which appeared in today's newspapers. One of those names was mine. In relation to my name, I would like to state as follows.

First of all, I was never given an opportunity to appear before the Select Committee to clear my name. The fundamental principles of natural justice demand that no one shall be condemned before being given an opportunity to defend oneself. The Committee's departure from this principle is unjustified and malicious. I, therefore, demand an explanation. Secondly, I demand the publication of the full details of the allegations made against me, if any, so that members of the public can have an opportunity to have the full facts, to enable them make their own judgement.

Thirdly, I would like to appeal to the Chair to exempt the Select Committee's Report from this House's privileges and immunity provision, so that the matter may be pursued by the aggrieved persons in a court of law.

Fourthly, I would like to take this opportunity to state that the Committee's attempt to throw mud at me is unfortunate, uncalled for, and that it will fail miserably as the truth will always prevail.

Thank you.

Mr. Muchiri: On a point of order, Mr. Speaker, Sir. Now that you have given the two hon. Members an opportunity to defend themselves against the allegations raised in the Committee's Report, could you rule on how the members of the public and civil servants, who are mentioned adversely in the same Report can come here and also defend themselves?

(Applause)

Mr. Speaker: Order! Order! Mr. Muchiri, you have given me a very difficult assignment. I understand why you have made that suggestion; I, honestly, understand it. I hope that hon. Members, too, will understand why you have made that suggestion, and think twice before they put into agony, Kenyans who cannot defend themselves here.

[Mr. Speaker]

I hope that hon. Members understand the agony that arises from this.

However, Mr. Muchiri, as far as I am concerned, no stranger can address this House. There is no way a stranger can address this House. But I understand that, as a lawyer, Mr. Muite can help me out of this situation. All laws arise because of a certain mischief that must be curbed. Because there is that mischief, which Mr. Muchiri has referred to, I think this House, in its own wisdom, must find ways by which to curb that mischief, so that ordinary Kenyans can also have redress.

The hon. Members here can use Standing Order No.69, but I know of no rules which an ordinary Kenyan who is aggrieved can use to redress an agony in this House. Maybe, they can publish a press statement, but that is too expensive. I hope, and I have prayed to you, hon. Members, that we put the dignity and respect of Parliament on the forefront.

The Assistant Minister for Education, Science and Technology (Mr. Karauri): On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Can we stop this now?

Mr. Sambu: They are only two people!

(Mr. Karauri stood up in his place)

Mr. Speaker: Order! "Order" means "sit down", Mr. Karauri. Somehow we must bring this issue to an end, not because I like to shorten it, but as I told the House much earlier on, many of these days we spend all our time on Questions and points of order, and very little time on business. Ultimately, to Mr. Sambu, please, do not be in the business of shouting in this House. The Chair respects you and, therefore, respect it. If you want to raise something in the House, please, rise up and I will give you an opportunity.

Mr. Karauri, I think you will be the last person to talk, but not on this issue any more.

The Assistant Minister for Education, Science and Technology (Mr. Karauri): On a point of order, Mr. Speaker, Sir. Since this matter has thrown the House into a bit of confusion, with people issuing personal statements about having not been called to appear before that Committee, which happens to be sitting in this House--- I happen to know that most of the Committee records are verbatim. Would it be in order, when a matter like this has arisen, to hear from the Committee whether it is true that they called so-and-so, or whether they can produce a verbatim report?

Mr. Speaker: Yes, indeed, I appreciate the sentiments of hon. Members, that when questions are raised on the integrity of a Committee of this House, it is actually a question to the integrity of the House itself. By the way, Committees must understand that they are creatures subordinate and subject to the rules of procedure of this House. Further, they should understand that they are governed by the ruling of the Chair from time to time delivered. I hope that they do understand that. But I hope that we will not get into this embarrassing situation again. I do not want to get myself involved. I am trying to arbitrate, but it is difficult. So, can we now proceed?

Mr. Magara: On a point of order, Mr. Speaker, Sir. I think, with due respect, it would be very unfair to defraud the rules to allow the two hon. Members to defend themselves on a matter which is yet to be debated in this House.

Mr. Speaker: Mr. Magara, that is your opinion now.

Mr. Kariuki: Mr. Speaker, Sir, I am one of the hon. Members of that Committee, and in the absence of the Chairman of our Committee, I would like to clear the name of the Committee; that, it did not have any malice at all against the Front Bench on the KANU side, and that those are extracts from the PAC Report, which were endorsed by this House. Therefore, there is nothing like making malicious representation in the Report. Secondly, we instructed the Clerks of this House to summon various hon. Members of this House who were adversely mentioned so that they could clear their names, but they used their own

discretion, with whatever powers, to block us from getting the summons sent to them. I do not know whom they cleared with. We have put that in black and white in that Report, that we were blocked by bureaucracy from summoning hon. Members from the other side of the House who were adversely mentioned. Therefore, who are we to blame if at all the machinery of the Government blocked us?

Mr. Speaker: Order! You can now see how low this issue is going. If it is going to the Clerks. First of all, I will look at your allegation about the Clerks, but I hope that you are not serious. Mr. Kariuki, on behalf of your Chairman, under what authority does one Committee uplift the Report of another and spend public funds on it to bring exactly the same thing here?

BILL

Second Reading

THE TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICAN COMMUNITY BILL

Mr. Anyona: On a point of order, Mr. Speaker, Sir. There are two procedural issues which I would like to raise with regard to this Bill, but I would like to be guided by the Chair whether I do it at this point in time or later on. The first issue I would like to raise here concerns Standing Order No.101A(3), where the House is entitled to a Report of the Committee. As far as I know, there is no Report which has been circulated to hon. Members. Secondly, I will raise an issue as to whether this Bill is properly before the House.

Mr. Speaker: First of all, can I deal with one item at a time? Mr. Anyona, you are referring to Standing Order No.101A, which allows any Member or Minister to refer the Bill to Committees. That Standing Order is actually optional. It allows any hon. Member of the House to rise up and say: "May the Bill be referred to the Committee," or the Minister, in his own initiative. In the absence of both, there is no application for the Bill to go to the Committee. I may be wrong, but to the best of my recollection, neither the Minister nor any hon. Member rose here and sought that the Bill be referred to the Committee. Since there was no hon. Member who sought that the Bill be referred to the Committee, it never went there and it is, therefore, not necessary for any Report of the Committee, because it did not go there. Unless you can tell me that I am wrong, that there was an application for the Bill to go to the Committee, I think you are out of order.

Mr. Anyona: On a point of order, Mr. Speaker, Sir. This is correct. What I understand is that in the last Session, the Bill was, indeed, referred to the Committee and a Report was made. All that was required this time round is the formality we went through with regard to the other Bills. I was saying that since it is optional, as you have said, the House could have the advantage of having that Report, because I am told there is one. This Report will help the House to debate this Bill.

Mr. Speaker: Mr. Anyona, if I may put the issue in the correct perspective, there was no Bill which was published in this manner in the last Session. What was brought to the House and the Committee was the Draft Treaty and not the signed Treaty. I read the appraisal of the Committee, and to their internal credit, they perused that document very thoroughly and gave their Report. But that was the Report of the Committee on the Draft Treaty.

Mr. Anyona: That is the correct position, Mr. Speaker, Sir. I wanted to raise the second procedural issue, if I may.

Mr. Speaker: Before it comes to the House?

Mr. Anyona: I was asking whether I should do that one now or later, because I feel that this Bill has not been brought properly before the House. I am not sure whether I should raise it now or later.

Mr. Speaker: Let it come to the House, then you can object to it, because it is not before the House now.

Proceed, Mr. Biwott.

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Speaker, Sir, before I proceed with my presentation of the Bill, I would like to confirm that, indeed, we did bring the entire draft of the Treaty to this House, and it went through the Committee. The Committee deliberated on it because we wanted to get the approval---

Mr. Speaker: Can you first of all, move the Bill?

The Minister for Tourism, Trade and Industry (Mr. Biwott): I just wanted to explain this one.

Mr. Speaker: No, move the Bill first.

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Speaker, Sir, I beg to move that the Treaty for the Establishment of the East African Community Bill be now read a Second Time.

The hon. Members will recall that the Treaty on the Establishment of the East African Community was signed last year, on 30th November, 1999, by our President, along with the other Presidents of Tanzania and Uganda. This follows the passage of a Motion in this House seeking the authority of the House to sign that draft treaty. I am happy today to confirm to the House that we now have a treaty in place, duly signed by our President in accordance with the approval of this House. The purpose of this Bill now before the House is to set out clearly the Memorandum of Objects and Reasons outlined on page 294, at the back of the Bill. They are so clear and self-explanatory that I need not repeat

them.

I would, however, like to highlight a few pertinent aspects which may need explaining. I will firstly deal with the ratification process. Our Constitution does not provide for ratification of treaties. Consequently, we have to rely on the precedent set in the establishment of the Treaty of the now defunct East African Community. The procedure followed then was to introduce a Bill in this House, to give legal effect to the provisions set out in the Treaty. The Community so-established was given a body corporate status with perpetual succession and power to acquire, hold, manage and dispose of property, and to sue and be sued. These indeed, are the provisions given to the current treaty. Having given similar legal status to this Community, we have enabled the treaty to be taken and accepted as part of the laws of this nation.

Secondly, the deadline for the ratification of the Treaty is given on page 201 of this Bill. That is the actual annexe of the Treaty, which states: "Within 12 months from the date of signing of the Treaty", whereas, in accordance with the minutes of the consultative meeting of the Permanent Tripartite Commission of 30th September, 1999, the deadline is given as within six months of the signing of the Treaty. This apparent contradiction does not pose any inconsistencies. It was made in the matrix of the implementation to speed up the schedulisation of the Treaty, but not to contradict the provisions of the treaty.

Thirdly, are the protocols and the seven clauses. The protocols apply to trade issues, contained in Chapter 11 of the treaty. These became necessary because it takes so long to conclude agreements on trade issues especially when they involve negotiations on particular trade items. This is no exception to the East African Community. It has been employed elsewhere, for example, in the European Union (EU); the North Atlantic Free Trade Association (NAFTA); the Southern Africa Development Co-ordination Conference (SADCC), and the African Common Market (ACM).

We have, however, ensured that the present status will be maintained or improved through certain clauses, which you will find under Articles 139 and 142 of the Treaty.

Fourthly, is the East African Legislative Assembly in Chapter 9. Hon. Members will be interested to know that an East African Legislative Assembly will be established. It will be composed of 27 members; nine from each member state, who will be elected by the National Assembly. Therefore, in our case, the nine members will be elected by this House as provided for in Article 50 on page 226.

Mr. Speaker, Sir, the only other point to which I would like to draw the attention of this House is the fact that the coming into operation of this Act shall be declared by the competent Minister in accordance with Clause 1 as already stated in the Bill. For more information about the evolution of the East African Community, I would---

Mr. Angwenyi: On a point of order, Mr. Speaker, Sir. The Bill which is being moved here today touches on very important matters that are going to enjoin Kenya to other states. I would propose---

Mr. Speaker: What are you contributing on now?

Mr. Angwenyi: I am asking that this Bill be referred to the Committee concerned so that it can be discussed fully before being brought to the House.

Mr. Speaker: Order, Mr. Angwenyi! I think you had better be a little bit more serious. Where were you when the Bill was read the first time? You should have asked us that at that time. In any case, it is not done that way. If you want to do so, make it by way of a Motion. What else can it be? In any case, the Bill has not even been proposed from the Floor. There is no Question before the House.

(Mr. Angwenyi stood up in his place)

Mr. Speaker: Mr. Angwenyi, sit down!

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Speaker, Sir, in fact, I was about to conclude moving the Bill.

I said that I had one other point to which I wanted to draw the attention of this House, and that is the fact that the coming into operation of the treaty will be declared by the competent Minister, in accordance with Clause 1 as provided for in the Bill. For more information regarding the evolution of the East African Community from its inception, I would refer the hon. Members for more details to the preamble of the treaty because it gives you the whole history from the 1890s, when they built the railway line, up to the present time.

For those who are wondering whether this treaty has received adequate scrutiny by the relevant Committee I will also draw the attention of the House to this document which is entitled: "The Kenya National Assembly, Eighth Parliament, Third Session. The Report of the Departmental Committee on Defence and Foreign Affairs on the Draft Treaty for the Establishment of the East African Community." I would like to confirm that before this document was signed, it was subjected to scrutiny. It was brought to this House through a Motion requesting the House to authorise the signing of the same, just before the 30th. The Movers at that time included the chairman of the---

Mr. Kihoro: On a point of order, Mr. Speaker, Sir. To the best of my recollection what happened last year is

that the draft report from the Defence and Foreign Relations Committee was pending before this House for nearly four months. It was brought before this House a week prior to the signing of the Treaty in Arusha. Therefore, to say that this House, especially that the committee was given the opportunity to scrutinise the draft Bill, I think, is misleading.

Mr. Speaker: Mr. Kihoro, you would do better next time if you rose on a point of information.

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Speaker, Sir, even if the hon. Member had stood on a point of information, I do not think he would have given any new useful information because the Treaty Act was scrutinised in this House. It has not been changed much, except for the seven clauses which we improved. We made sure that the interests of Kenya will not be any less than what they were at that particular time.

Mr. Speaker, Sir, as I said, in those seven clauses, we made sure that our interests are improved. I will refer you to relevant Articles Nos. 139 to 142. If you look into them, you will see that those clauses improved the interest of this [The Minister for Tourism, Trade and Industry]

country. Otherwise, everything is identical as it was presented before this House.

Mr. Speaker, Sir, maybe, I would do more justice if I were to read what the chairman of the Defence and Foreign Relations Committee, Mr. Musila, said when he commended the report to the House. He says:-

"Mr. Speaker, Sir, allow me to begin by sincerely thanking hon. Members of the Committee for their co-operation and dedication in pursuing the objectives for which the Committee was established and, especially, in deliberating on the draft Treaty. I feel indebted to their invaluable contribution and commitment in producing this report."

He gave all the terms and references of the Committee.

Then he says:-

"When the Committee met for the first time on 21 July, 1998, it generally became apparent that although there were many issues under its purview which were yawning for attention, the consideration of the draft Treaty for the establishment of the East African Community, which has just been laid in this House, was of utmost priority. Consequently, the Committee held a total of 31 sittings during which time, hon. Members went through the draft article by article, at considerable details, in the process eliciting interesting discussion, the result of which are the proposals I am presenting to the House today. Allow me to take this early opportunity to recognise the significance of the report of the forum convened to discuss the draft Treaty, namely, the East African Co-operation meeting of Speakers of the National Assemblies held at Arusha, Tanzania, between 4th and 5th June, 1998; the workshop at Kenya School of Monetary Studies at Ruaraka, between 24th and 25th September, 1998, which was organised by the Ministry of East African and Regional Co-operation, and, finally, the East African Co-operation--

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. Although I risk facing your wrath as my colleague did, I am getting concerned---

Mr. Speaker: Which one?

Dr. Kituyi: Hon. Angwenyi.

Mr. Speaker, Sir, it is my understanding that the Minister is moving a Motion for a Bill for an Act of Parliament to give it certain provisions of the Treaty of the East African Community, and for connected purposes, in conformity with a provision in the Treaty. If you listened to what he said, he is moving the Treaty. You cannot blame him because he has brought us a Bill with a wrong title. This Bill is being given the name of the treaty. We may need some guidance from you. But if it was a Bill for getting legislative foundation for certain measures in the treaty that affect our internal jurisprudence, the title should reveal the intent and he should move such a Bill.

Mr. Speaker, Sir, he is moving a Bill with a title of the Treaty for the purposes which are not for Treaty. So, he is moving the schedule of the Bill.

Mr. Speaker: What are you moving hon. Biwott?

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Speaker, Sir, first of all, I would like to confirm that this is the correct title. As I said earlier on, if you look into our Constitution, there is no provision for a treaty ratification. What we normally do is to adopt the treaty into our laws, so that the provisions of those regulations become part and parcel of our laws. I believe, when the Attorney-General seconds this Motion, he will explain to you in detail. He will also give you the legal expertise which I cannot offer.

I just want to allay fears that--

Mr. Anyona: On a point of order, Mr. Speaker, Sir. This is the issue I was raising; that, the Bill that we are debating now is not properly before the House. This is because the Bill presumes the Treaty, which is treated as a schedule, has been ratified by this Parliament. It has not been ratified. That must be in the main body of the Bill.

Mr. Speaker: Order! Can I ask you a simple question? What section of the Constitution are you referring to,

that mandates this House to ratify the Treaty?

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

Mr. Speaker: Order! I want to get this from him. Let him answer. You are not Mr. Anyona.

Mr. Anyona: Mr. Speaker, Sir, I happen to have some experience in matters of the East African Community.

Mr. Speaker: Neither have I. Maybe, we will learn together.

Mr. Anyona: Mr. Speaker, Sir, I have, and that is why I want to share that experience with the House.

When the first community was created, there was an Act of the Kenyan Parliament that ratified the Treaty under which all the other laws, like East African Airways Act, were then made. We need the same umbrella in this one to be able to operate the Act.

Mr. Speaker: Mr. Anyona, can I ask you a further question before you sit down? Are you quarrelling with the provisions of the Bill or the title of the Bill?

Mr. Anyona: Mr. Speaker, Sir, I am objecting to both. This was the issue I wanted to raise, and I was wondering whether it was the right time to do so. For instance, according to the Bill and the Schedule, there is nothing this Parliament can do---

Mr. Speaker: Will you then do this; since you are calling it a Bill and you say it is not properly before the House--- It cannot be before the House until the Question is proposed. So, will you wait patiently until the matter has been proposed from the Chair, then it will be before the House and then you can take your liberty---

Mr. Anyona: That is where I was leading.

Mr. Speaker: Very well. Proceed, Mr. Minister.

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Speaker, Sir, the point I was making is the fact that the Treaty which is part of the Bill, was scrutinised fully and we followed the wishes of this House to the letter. So, we subjected this to the relevant Committee. We brought the draft Treaty before this House before we recommended it to the President to sign it. This House agreed that the President could sign the document and he went ahead. Therefore, I would like to commend this Bill to the House.

An hon. Member: What does the Bill contain?

The Minister for Tourism, Trade and Industry (Mr. Biwott): First of all, the whole world is moving towards regional integration. In other words, people are moving towards greater markets with an eventual integration of the entire world under the WTO.

Mr. Wamalwa: In what?

Mr. Speaker: Order! Mr. Biwott, you cannot have a private exchange there.

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Speaker, Sir, in our attempt to become part of the globalised world as we have always done, through the East African spirit, we have created the EAC, which will enhance our market considerably. Instead of relying on about 28 million people in Kenya, we are now relying on about 100 million people of the three EAC countries. That market gives us a leverage in the world's globalised scene.

If hon. Wamalwa read the Treaty, and I presume he has read it as a learned gentleman, he would have found that it has moved a long way, except in Chapter 11, where we have subjected the trade issues to a protocol. I did mention earlier on that, that is not an exception to the EAC. It is practised everywhere so that, if necessary, we can negotiate one item by one item in the reduction of the tariffs, towards an eventual common market and, finally, a federation which we hope will come in the future. We have secured the Kenyan interests through the seven clauses which I have mentioned.

Regarding Articles 139, 140 and 142, where we have said that the Kenyan interests will not be any worse than they are at the moment; from there onwards, the tariffs will gradually come down so that the Kenyan business people and our own industries can benefit. You must accept the fact that, today, Kenya has still got the greater market potential than any of the other countries because of its protocol reasons.

I would think that hon. Wamalwa would be the first to acknowledge that fact and support this move, and assist in the realisation of an eventual East African Federation, but more so, of a common market, which we envisaged will be achieved within the next four years.

Mr. Muite: On a point of order, Mr. Speaker, Sir.

The Minister for Tourism, Trade and Industry (Mr. Muite): Mr. Speaker, Sir, with those few remarks, I beg to move the Bill.

(Laughter)

Mr. Muite: Mr. Speaker, Sir, I arise to seek the guidance of the Chair. Is it in order for this House to debate a Bill which, on the face of it, appears to contravene the Constitution of Kenya? The legislative authority is vested

exclusively in the National Assembly and, therefore, for anything to become part of the Municipal Law in this country, it must enjoy the enactment through an Act of Parliament, be debated, and passed by this House. Therefore, for this Treaty to become---

Mr. Speaker: Order, Mr. Muite! Actually, you are saying nothing now because there is no issue before the House. So, why do you not wait until the matter comes to the House?

Yes, Mr. Attorney-General.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, it is my pleasure to second this Bill, not just as the Attorney-General of Kenya, but as a Kenyan, an East African and a believer in Pan-Africanism. The Bill before you is to ensure that the Treaty which the Government has gone into can be enforced under our Municipal Laws.

On page 211 of the Treaty, you will see that there are certain obligations which the Kenya Government must fulfil. Some of those obligations, and I am referring to the provisions of the Treaty, are to confer upon the EAC the legal capacity and personality required for the performance of its functions, legislation, regulations, directives and institutions as provided for in this Treaty, to give the force of law within its territory. This Bill is doing exactly that.

Mr. Speaker, Sir, regarding its ratification, there is a difference. Ratification under the Common Law Country such as ours is a decision of the Cabinet, which decides which Treaty to ratify, and thereafter the instruments of ratification to convey that Cabinet decision are lodged at a place where that Treaty says should be lodged. In this case, they will be lodged at Arusha and the Secretary-General of the EAC will, in turn, lodge copies thereof with the Secretary-General of the United Nations Organisation. That is at that level. Even before that is done, the State has to undertake to ensure that the provisions of that Treaty are part of the Municipal Laws; that they can be enforced. If you read this Bill, it is doing exactly that. It somehow attaches the Treaty as a schedule and then proceeds to mention it in the various sections of the Bill.

For example, under Clause 3, it says that the Committee shall now have the legal capacity in Kenya, and the various sections are now referring to those provisions of the Treaty which must have been provided for, and must have effect within our laws. Therefore, in referring to the Treaty, we are now saying its provisions will have the force of law in this country, and that is different from ratification at that level.

Mr. Speaker, Sir, Hon. Anyona is not here, but since he cited his experience in the East African Community (EAC) which broke up in 1977 or thereabouts, he will note that it was established in 1967 when Kenya had already become a sovereign State by way of a Bill such as this. In fact, when we talk about precedents, I would invite the hon. Members to look at that precedent which established the former East African Community as it was then.

Dr. Kituyi: On a point of information, Mr. Speaker, Sir.

The Attorney-General (Mr. Wako): I do not need it now.

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

Mr. Speaker: Order! How can you immediately change your mind?

Dr. Kituyi: Mr. Speaker, Sir--- (inaudible).

Mr. Speaker: Order! I will not allow you to play around with the rules of the House. I think honour dictates--
- He has refused your information, and so sit down. Maybe after sitting down, you may formulate your point of order.

(Dr. Kituyi sat down and then stood up)

Yes, Dr. Kituyi!

(Laughter)

Dr. Kituyi: Mr. Speaker, Sir, is the Attorney-General in order to mislead this House by drawing a parallel between the Bill for an Act of Parliament in 1967 called the East African Community Act, and a Bill for an Act of Parliament called the East African Treaty of 2000? The former had an Act called the East African Community Act, and the latter will have an Act to be called the Treaty of East African Community Act. Is he in order to say that they are the same thing?

The Attorney-General (Mr. Wako): What is the difference? It was an Act of Parliament and was passed by the National Assembly, taking into account the Treaty that was entered into. You will note from Clause 3 that the EAC shall have the capacity within Kenya of a body corporate and so on. So, we are giving the EAC the legal capacity within this country. You will note that under Clause 5, we are touching on financial provisions, the status of immunities and privileges of employees of the EAC, and the Act of the EAC to have the force of law. We are touching on adaptation of written laws, the amendments of the Treaty and so on. All these provisions have the effect, just like the Treaty before, of giving effect to the provisions of the Treaty to have the force of law in this country.

Mr. Speaker, Sir, as a person who was involved, together with the Minister for Tourism, Trade and Industry, in the negotiations of this Treaty, one of my happiest days was when the Heads of States, on 30th of November last year, signed the Treaty in Arusha. I say it was one of my happiest days because one of the major things that have shaped my life was the then East African Community as it then existed. I recollect, for example, seeing the Leader of Opposition during those days making very good contributions in the then East African Legislative Assembly. I also recollect, as a student at the University of East Africa, mingling with other students from Tanzania and Uganda, who have now become leaders in those countries. Consequently, when we visit Dar-es-salaam or Kampala, we feel very much at home.

Mr. Speaker, Sir, this Treaty is to revitalise the East African Community. When negotiations are entered into between sovereign states, one may not get exactly what they want. But one takes the common denominator into account and drafts a treaty in accordance with that common denominator, if that common denominator is lower than what you would think. What is important is that, apart from the common denominator, there should be, within that treaty, provisions where the potential for development into what you want. I would like to state that as far as this Treaty is concerned, the potentiality is very much there. Of course, we had to take into account the history of the fact that the East African Community broke up. We knew that part of the reasons why it broke up was because of the ideological differences between the three states. Therefore, here, we had to be careful, and we had to provide for the fact that any person who wants to become a member of the East African Community must, in accordance with page 207, adhere to the universally acceptable principles of good governance, democracy, the rule of law, observance of human rights and social justice. And also, be a deliver in a market-driven economy.

Mr. Speaker, Sir, that principle is also enunciated further on, when one is talking about the operational principles of the Community at page 209, where the operational principles of the Community would be a people-centred and market-driven society. So, to be a member, you must at least hold to certain fundamental principles. Those are the principles we have enunciated among others.

Mr. Speaker, Sir, I may say that the approach to the drafting of this Treaty was an approach which I call consolidation. In other words, from the basic minimum which you can agree on, how do you move on to the ideal that you want? How do you move from the current position that we have today, to the political federation that the people of East Africa aspire to? That is clearly set out in the whereas positions. At page 200, you will notice that there is a paragraph which states:-

"Determined to strengthen their economic, social and cultural politics and technological and other ties for their fast balanced and sustainable development by the establishment of the East African Community with the East African Customs Union and the Common Market as transitional stages to and integral parts thereof, and, subsequently, the monetary union and ultimately the political federation".

In this, we have what we call the vision of what the East African states are aiming at. They are aiming at starting with a minimum through the establishment of the customs union, the common markets, the monetary union and, ultimately, the political federation.

Mr. Speaker, Sir, what we have in this Treaty as far as the establishment of the East African Customs Union is concerned, under Article 75(7), provides that a protocol for that customs union should be entered into within four years. So the Treaty is there, and now we have to discuss and have a protocol of the customs union within the four years. Then it is provided for, that to be able to reach into a customs union, this would be a progressive development. So, really, that is the first stage. Then, Article 76(4) provides that thereafter, we shall have a protocol for the common market. Then, thereafter, we will have a monetary union, and ultimately a political federation.

Mr. Speaker, Sir, I would like to refer hon. Members to page 270, Chapter 23, which is talking about co-operation in political matters. You will notice there that the said parties are committed to ensuring that eventually - under Article 123(1) - we shall have a political federation of the partner States, and establish common foreign policy, security policies *et cetera*. In the meantime, we must do what we can to enhance the establishment of a political federation of the partner states. That is Article 123(3)(f). And also, in the meantime, we must develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms. The partner states should also not take any action on their part, which is contrary to the interest of the Community and which will undermine the progressive development towards a political union. As far as some people may say, maybe, we should have began with a common market or customs union immediately, but one had to start from somewhere, and then, through confidence building measures and discussions, build up progressively, as I have indicated, leading up to the political federation.

Mr. Speaker, Sir, recently, a high-level meeting was called. It will be meeting to ensure that we move rapidly towards a customs union. I know that they will meet regularly in that regard.

Currently, because of the various provisions of the Treaty, which are providing for co-operation in various matters, here maybe, I can start with legal and judicial matters. It, it is encouraged to note that the organisations within

East Africa must now come together at that level, to promote this spirit of East African Community. When we look at, for example, the East African Court of Justice, which has been referred to on page 219, again, we are starting on the minimum. The court shall initially have jurisdiction over the interpretation and applications of this Treaty. That is the minimum.

Again, we have in-built into that, development towards a greater court, as and when, the partner states are ready to confer extra jurisdiction on the East African Court of Justice. Article 27 of Subsection (2) states:

"The court shall have such other original appellate, human rights and other jurisdiction as will be determined by the Council at a suitable subsequent date. To this end, partner states shall conclude a protocol to operationalise the extended jurisdiction".

Mr. Speaker, Sir, although the jurisdiction of the supreme court of justice is only limited currently to the interpretation of the Treaty, it has the potential to have such further jurisdictions as may be conferred on it in all matters. Maybe, one day it will come to the same level as the Court of Appeal for East Africa that we had before.

We have also a section on the co-operation in legal matters. It is one of the areas that the Treaty has talked about. It has stated that we must develop common legal education, almost common jurisprudence and that we must co-operate at all levels, be it at the Governments level and so on. Again, the potential is there and I am glad to say that in that area we are moving, fairly fast. There is already a Committee which is looking into the possibilities of reviving the East African Law Reports, which were last published in 1977. There is also a judicial Committee which is bringing together the judges and the magistrates of the East African Region. There are already plans in place to train magistrates from all over East Africa. At the bar association level, I am pleased to say that we already have an East African Law Society, which is catering for the whole of East Africa and its members have been meeting regularly. They have met, at least, three times in Kenya. I am glad to say that even at the law students level, we now have the East African Law Students Association, covering all the law students in East Africa. I am glad that the Kenya Law Students Association, which is based here, will be hosting a meeting of that body here towards the end of this month.

Mr. Speaker, Sir, we are also encouraging cross border practice so that an advocate in Kenya, can also practise in Uganda and Tanzania and *vice versa*. I will soon be publishing a Bill which will amend the Advocates Act to allow advocates in Uganda and Tanzania to practice here. But the effectiveness of that Bill, if passed, will be conditional upon Uganda and Tanzania passing similar legislations. So, at that level of lawyers, interactions are going on. I know also that at the level of the business community, we have the East African Business Council and interactions are going on. At all levels, whether we are talking about doctors or other professionals, interactions are going on. This also applies to the trade unions and so on.

Mr. Speaker, Sir, even at your level, I know that the Speakers of the National Assemblies in the region have met several times. We are also encouraging co-operation between the various National Assemblies in the region to have more interactions. Very recently, hon. Members of the Ugandan National Assembly visited Kenya and you hosted them. We believe that through these interactions, confidence building measures will be there to enable us to move through the various stages that I have outlined, up to the level of the federation.

As we talk now, the emphasis and the activities are on the co-operation in various areas. You will see that in the Treaty itself, we have co-operation, for example, in trade liberalisation and development, particularly, on the monetary and financial co-operation. There is a whole Chapter 16, which has been focussed on that. If you read that chapter very carefully, you will see that its aim is to ensure that at the end of the day, we have a firm monetary union. At that level, I know that the Governors of Central Banks and the Ministers for Finance are regularly meeting to harmonise their fiscal and monetary policies.

Mr. Speaker, Sir Chapter 15 deals with co-operation in infrastructure and other services. I know that already we have a plan for the East African network of roads. Already, there is a Committee also which is looking into the road safety in East Africa. I know that we also have a tripartite agreement on traffic issues. Again, things are being harmonised and activities are going on. The same can be said of any area of co-operation.

Chapter 16 deals with the co-operation in the development of human resources, science and technology. This is one of the most important areas. There is already a Committee which will revitalise the Council for the University Education in East Africa, as a whole. A committee has already been set up to revitalise that. Another Committee has been set up to look into the issues of syllabuses in education and other areas in order to harmonise them. All these have been in-built into this Bill, and there is encouragement for there to be an exchange of lecturers and students throughout East Africa, so that we will have some students in Kenya from Uganda and Tanzania, some students in Tanzania from Kenya and Uganda and some students in Uganda from Kenya and Tanzania. All this is to encourage the people of East Africa to think themselves as one.

Mr. Speaker, Sir, to sum up, I am glad that even before the Treaty was signed in Arusha on 30th November, 1999, at least, it was brought to this House and this House looked at it. I am also glad that when the Treaty was signed, all of us, hon. Members of this House and others, were there to witness the occasion. There are some permissible laws

on some aspects of that Bill that give that Community legal personality in Kenya.

Mr. Speaker, Sir, as the Mover of the Bill has said, developing countries cannot survive on their own economically and socially. We have to integrate with other countries to form bigger markets so that we can attract the right type of investment and also engage in the right type of activities which can provide the people of East Africa with employment and education in order to realise full capacity. So, the concept of integration is there. I think it has been accepted that we must move forward. Apart from East Africa, we have bigger associations like the Common Market for East and Southern Africa (COMESA) and the African Common Market (ACM). However, today we are dealing with East Africa which is supposed to be more closely integrated, not just economically, but in all other aspects than even the institutions of COMESA and the ACM.

Mr. Speaker, Sir, with those few remarks, it is my pleasure to second this Bill.

(Question proposed)

Mr. Speaker: Mr. Attorney-General, I do have a little problem on this title. It does not sound right to me: "The Treaty for the Establishment of the East African Community Bill (Bill No.6)". I do not think we make Treaties in this House. We only pass Bills. So, I think that will require an amendment. I think it will be a nice thing if you can make a commitment to this House that there will be an amendment to that title.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I can commit that I will look into it and come up with an appropriate amendment.

Mr. Speaker: Very well. Now, we can continue. Mr. Anyona.

Mr. Anyona: Mr. Speaker, Sir, I do not rise to contribute at this stage, but to raise matters which I consider are defective before we begin the debate.

Mr. Speaker, Sir, the first thing is what you pointed out. The title of the Bill is definitely wrong. Even if you compare it with the previous one, it is different.

Mr. Speaker: That is agreed.

Mr. Anyona: Yes, that is point number one. The second point is that the Bill is full of procedures and maybe I will make the other one a third one. The intention of this Bill, as we are told, is to establish and implement the Treaty. Now, this Bill does not establish the Treaty. Maybe that is why the title is defective. Secondly, if you look at the first paragraph of the Memorandum of Reasons and Objects, it talks about "The Bill enabling the implementation of the Treaty in its entirety as reproduced in the Schedule".

However, if you look at the long title and that preamble, it talks about implementing certain provisions of the Treaty and yet they have put even those provisions which we are not providing to implement in the same law. I do not understand how we are going to do that because the preamble--- I think many Members may not be having copies of the Bill.

Hon. Members: We have it!

Mr. Anyona: Well, for those who do not have, the Leader of the Official Opposition has just come in.

Mr. Speaker: That is not quite correct.

Mr. Anyona: Well, he has not been here all along like we have been but he is very welcome. We welcome his presence here since he is an experienced hand in this matter. It states:-

"The object of this Bill is to implement the Treaty for the establishment of the East African Community signed at Arusha by the President on behalf of the Government of Kenya on 30th November, 1999. The copy of the Treaty is set out in the schedule to the proposed Act".

In the long title---

Mr. Speaker: What are you doing now?

Mr. Anyona: Mr. Speaker, Sir, what we are trying to show is that the Bill is defective and, therefore---

Mr. Speaker: Order! What I would suggest is this: First of all, the question of the title is already agreed to. This title should be amended and I think we already have a commitment from the Attorney-General. What I also suggest to hon. Members is that if you see any defects on this Bill, please point them out as you contribute to it. Bring your suggestions and also hand to me any suggested amendments. This is because in the end, we want to produce a Bill that facilitates this objective to which, as a country we have already committed ourselves. So, it would be a nice thing to have suggested amendments. I think it enriches this House also because it takes a long time for us to have a Bill of this nature that deals with localising an international Treaty. Provisions of the Kenya Constitution are not there. So, it helps the House to have the input of all hon. Members, to get us to learn. Mr. Anyona, do you want to contribute?

Mr. Anyona: Mr. Speaker, Sir, yes, I want to conclude my submissions on this second part.

Mr. Speaker: I have already told you what you should do, please.

Mr. Anyona: Yes, Mr. Speaker, Sir. I was going to respond to what you said.

Mr. Speaker: That is alright.

Mr. Anyona: Mr. Speaker, Sir, we understand that the intention is to have this Bill passed before Parliament goes on recess. However, as long as there is no such intention, we can even raise procedural issues later on, but we need to have that guarantee.

Mr. Speaker: Can I again say this? I think in a Bill like this, we need to get it right. I am sure the Minister in charge and the Attorney-General are as anxious as I am, to get it right. It will help this House and this country in the future. I am sure they will not call for a closure today. I hope not.

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Speaker, Sir, the idea is not to rush the House unduly. The idea also is to perfect this Bill as far as possible. The Treaty as it is, is a Treaty. It has been signed and it was signed after we had scrutinised it in this House. Therefore, the presumption is that the House has been satisfied.

Mr. Speaker: No, that is not what I asked you to do. It is because of this technical problems and that is why we want to perfect this Bill. I was asking you whether you are able to respond to the words of hon. Anyona. We hope that we do not rush before we rectify all these things.

The Minister for Tourism, Trade and Industry (Mr. Biwott): Mr. Speaker, Sir, that I can confirm. In fact, as indeed, we have confirmed that we can change the title. In fact, the best way to change the title is to use exactly the same title that was used in the case of the now defunct East African Community.

Mr. Speaker: Very well. Dr. Kituyi.

Mr. Muite: On a point of order, Mr. Speaker, Sir. I rise on a point of order to seek your guidance on whether really we can continue to debate this Bill.

Mr. Speaker, Sir, you heard the hon. Attorney-General saying that the objective of this Bill is, in fact, to make the Treaty part of the laws of Kenya. That is what he says. However, if you go through the ten clauses of the Bill, nowhere is there any clause out of these ten that seeks to make the provisions of the Treaty part of the municipal law of Kenya. Hon. Biwott says that the Treaty has been signed. That is granted, but in terms of the Constitution, nothing can become part of the law of Kenya unless this House so enacts.

Mr. Speaker: Mr. Muite, can I ask you one very basic and simple question? Why do we ever read a Bill for the second time? Is it not to point out all the mistakes? Does that not also to give a chance to Members to improve on it?

Mr. Muite: But, Mr. Speaker, Sir, there is the question of the amendment! There is the question of the actual drafting of the Bill! If it is so defective indeed, it is not our responsibility to draft Bills; it is the responsibility of the Attorney-General. Ours is to suggest amendments. This Bill is fundamentally defective!

Mr. Speaker: Order! In my view, the Bill probably requires certain amendments. There is no doubt about that. But it is your singular duty, as a Member of this House and a lawyer, to point out all the defects in the Bill. That is why you are seated here this afternoon. It is the duty of the Attorney-General to listen very carefully to you and any other Member who has suggestions and take into account all the defects brought forth by this House.

Now, upon listening to all of you, it is his ultimate duty to prefer to this House at Committee Stage, amendments to rectify the Bill, and bring the Bill in good condition. But if, at the Committee Stage, it appears to this House that, the Attorney-General has not made the necessary amendments that would make the Bill meaningful, this House will penalise the Attorney-General and the Minister in-charge by rejecting the Bill at that stage. I will be very ready and willing to listen to you at that time. But for now, take the Floor and tear the Bill into pieces; show all the defects and tell the House your suggestions to improve it. As I said earlier, this is not a Bill that comes to the House every day. Proceed, Dr. Kituyi!

Dr. Kituyi: Thank you very much, Mr. Speaker, Sir. I would like to make my contributions to the Bill. I will make very brief interventions.

First of all, at the outset, I would like to say that, I will move that, the House does pass the Bill. But I have some suggestions over certain alterations. I am glad that the Mover has also seen that, we have a very strange title for the Bill before the House. I am glad that he has accepted that, we were duped just like in 1967, on the East African Community Bill, 2000! That one was called the East African Community Bill, 1967 which became Act of Parliament, which gave municipal legal effects in its provisions.

Mr. Speaker, Sir, actually, the entire purpose of what we are discussing as a Bill, is to satisfy Article 85 of the Treaty of the East African Community, which says:-

"In pursuant of the provisions of Paragraph Four of this Article, the partner States undertake to make the necessary legal instruments to confirm precedence of Community organs, institutions and laws over similar national ones."

That is the purpose, which is also a weakness of this Bill. What will transpire if this Bill is enacted into law is that, we will give domestic effects of the organs of the Community, but we will not give them precedence over our own. Maybe, it is a weakness in the Treaty and, therefore, there will be a deliberate statement by the Government, that we want to give legal effects to the provisions of the Treaty of the East African Community, without giving its institutions, organs and laws precedence over our own. If they set out to do what they promised to do, under the provisions of Article 85, this Bill should state somewhere that, the organs, institutions and laws of the East African Community will have precedence over similar institutions in Kenya. That is what they promised under that provision. But that is not provided for in the Bill before the House. So, when the Minister comes to reply, I would like him to try and give us the balance. Does the Minister, realise that he cannot subordinate our domestic laws and institutions to the laws and institutions of Arusha?

Mr. Wamae: On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member to refer to Article 85, which is on Banking and Capital Market Development? Is he in order to say that the same will take effect?

Dr. Kituyi: Mr. Speaker, Sir, that is a simple one! I would like to refer hon. Wamae to page 211, in the Schedule of the Bill.

Mr. Speaker: Order! You should refer to the hon. Speaker!

Dr. Kituyi: Mr. Speaker, Sir, I wish to refer the Chair to Clause Five of Article Eight of the Treaty, which is published on page 211. It is the only provision in the Treaty obliging the Kenya Government, after adopting and signing the Treaty, to bring a Bill to this House. Apart from doing what the hon. Minister has told us, it also asks him to do another thing, which he has not done. That is to give precedence to the organs and laws of the Community, over the laws and organs of this country. That second component which the President signed on the 30th of November last year in Arusha, has not been provided for in the Bill before the House.

Mr. Speaker, Sir, another matter that I would like to refer is: If you look at the Memorandum by the Attorney-General at the back page, it is written:-

"No additional expenditure of public funds will be occasioned by reason of the enactment of this Bill."

Then, if you look at the first sentence on page 191, it is written:-

"There shall be charged on and paid out of the Consolidated Fund, without further appropriation than this Act, all payments required to be made from time to time by the Government, under the terms of the Treaty."

My understanding as a layman is that, by the enactment of this Bill into a law, we will be allowing the relevant Minister to enter agreements about certain disbursements from Kenya to the Community, which shall be charged directly from the Consolidated Fund, without any reference to this House. How does the Attorney-General consider such an eventuality to exclude any additional cost to the Kenyan taxpayer? I know it is a useful cliché that is added at the end of every other Bill, but did the Attorney-General look at the implications of that Clause, authorising that, money will be transferred from the Consolidated Fund without budgetary allocations, and without discussions by the representatives of the taxpayers, as an obligation on the basis of enacting this Bill?

(The Attorney-General interjected)

We are not debating with you!

Mr. Speaker: What are you saying, Mr. Attorney-General?

The Attorney-General (Mr. Wako): On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Do you want to be informed?

Dr. Kituyi: How can he ask the Speaker when he wants to inform me?

The Attorney-General (Mr. Wako): On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Order! You are out of order! You should rise up and say: "Point of information." It is up to him to agree or not! I have nothing to do with it!

Dr. Kituyi: Mr. Speaker, Sir, when I listened to the Attorney-General seconding this matter, there was something very interesting that emerged. He tried to sell the Treaty. But you see, he tried to sell the Treaty which we have already bought! We have already signed it! He told us that the Government will ratify it without reference to us! So, why is he sending a wagon that is escorting the Bill and not the Bill itself? Why is he selling the schedule to the Bill as his main focus?

But, be that as it may, I appreciate the desire in the leadership of this country, to find out where we went wrong, in the reemergence of the East African Community as a regional integration, and explore possibilities of doing better than we did before! Recently, something impressed me very much.

Mr. Speaker, Sir, as at Christmas, the year of our Lord, 1989, when a ship docked at the port of Mombasa

with a container destined for Uganda, it took on average of 28 days before that container got off the ship and got onto a railway wagon. It took an average of another 14 days before the container moved between the port and Malaba. Come Easter time and this year that period had been reduced to two days! When a ship docks in Mombasa, it takes two days for the container to get off the ship and to put it on a train. It takes four days for the train to get out of Mombasa and reach Tororo. That impressed me very much.

(Mr. Speaker left the Chair)

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

But there is a second thing that impressed me even more. The Kenya Railways Corporation, for the first time, since the collapse of the East African Community, is helping Uganda to rehabilitate the railway line between Tororo and Jinja.

Mr. Temporary Deputy Speaker, Sir, I raised this issue because of two concerns: One, the driving force of our interest in East African Community should be our national self-interest. It is shameful to this country that, Uganda has started importing cargo through Durban in South Africa, because it takes 16 days for cargo to arrive in Durban and 15 days to reach Kampala; when it would still be somewhere being stripped by thieves in Mombasa. It is a very important consideration that the national interest is not only making us cut down on the wastage, but also to see that the destiny of this country lies in it conquering regional markets and capturing business in this region.

There is all this talk about the spirit and interest in the East African Community. There is something very worrisome, which cannot be pretended away. When the first draft of the East African Treaty was prepared, Tanzania was much more pro-East Africa than it is today. But certain persons very serious in public life in Tanzania are still mired in the populist talk of socialism and sometimes they negate the national interest without due regard to the changing environment internationally. But, even more significantly, the insistence by the Tanzanian Government that actually it will implement its threat to quit COMESA, poses very serious concerns about the possibilities of a Customs Union between the three countries of East Africa. So, the hardest time for us is not going to be how much we tell Uganda that we are ready for this integration, but the hardest time for us is how we are going to turn the soul of Tanzania to come closer to East Africa.

Mr. Temporary Deputy Speaker, Sir, I run the risk of starting to convince Members to support a Treaty which has already been signed. But the essence is, that it was necessary, for the legislation to be brought here, but it is not sufficient for the purposes for which it was brought.

With those remarks, I beg to support the Bill.

Mr. Kajembe: Thank you, Mr. Temporary Deputy Speaker, Sir. We welcome the East African Community Treaty. But it is sad that, the East African territories had a very strong community, with a very strong economy. The East African countries owned airlines, railways and other assets. But due to "bad" politics, the East African Community broke up and those who were behind its break-up are still alive. They are not dead at all!

So, with the good co-operation of our three East African Presidents today, a Treaty has been signed again, which we all welcome. But is there guarantee that, after the political life of the three Presidents, when their terms of office expire, the Treaty will again not fail? What I am trying to say is that, this Bill which this House is trying to debate, should have a provision to ensure there is co-operation. It will be too bad when political marriage breaks up and the Treaty collapses. It is our sincere hope that this Treaty is going to have a long life.

Mr. Temporary Deputy Speaker, Sir, under the new Treaty, it is my wish that, the East African countries should own assets the way we owned under with the defunct East African Community. The new Community should own railways, airports, harbours and customs. It is important for us to have one tariff. I am talking of a custom tariff because today, Kenya, like any other African country, is a member of Preferential Trade Area (PTA) and COMESA, and so many other organisations in Africa. It is clear that under the PTA tariff agreement, member States will buy goods amongst themselves using the PTA tariff. But today, that is not happening. You find that, the developing world and especially the East African countries, buy goods from the developed world and ignore what they have within the PTA region. So, I am saying that, whatever has been signed in this Treaty must be adhered to. This will strengthen the East African economy. You cannot run an economy--- If you compare the hard currency, the US Dollar, it is currently equivalent to Kshs75.00, Tshs600.00 and Ushs1,000. So, we have to bring the Shilling at par with the Dollar in the three East African States in order for us to grow together economically.

Mr. Temporary Deputy Speaker, Sir, when there was a meeting of donors in Arusha, the donors did agree that they were going to provide money for the construction of roads joining the three East African territories, and to refurbish those roads which are in a bad state. Up to now, the roads which are in a very bad state have not been

refurbished.

We must be honest to each other. If you read the *East African Standard* today - I have been following up statements carried in the *East African Standard* - you will see that, this Treaty is still being debated in Tanzania and Uganda, is still being debated. The Tanzanian and Ugandan Parliaments are debating this Treaty and there are so many write-ups in other countries about the Treaty. So, it is important that, when the Treaty has been signed, we should agree on its implementation. All the three East African countries should honour the Treaty. It is a very bad affair because Uganda and Tanzania Governments have signed an agreement with South Africa to construct a railway line--- Today, goods are being transported through the railway from Durban to Uganda. What is our position with regard to the signing of this Treaty, taking into account the fact that the Port of Mombasa is there to serve the land-locked East African countries, including Uganda? How is this issue being addressed? I would like the Minister in charge to see how best this can be worked out when we will have a railway line running from South Africa to Uganda and another one from Mombasa to Uganda.

Mr. Temporary Deputy Speaker, Sir, immigration formalities within the three East African countries are the same as those we found during the time of Independence. These immigration laws should be harmonised so that East African citizens can feel that they are one people who belong to one territory; and that they are brothers and sisters. This is the thing which really touches people from the low income group. If all the East African countries are sincere about this Treaty, let us join hands in boosting the economies of the East African countries. This should be done right from the Government levels down to the business communities within East African countries.

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

Mr. Kibaki: Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill.

The perspective set out in the introduction, where it expresses what commitments we have, is very suitable because it spells out very clearly what we intend to do. But we should also accept the reality that today, there is a movement amongst our neighbouring countries with whom we are associating, to seek ways of doing things which may go contrary to what we have committed ourselves here. It is important for us to appreciate why they are doing those things and see what we can do, to continue to promote our interests as a nation in that particular environment. Let me give one example. Today, Tanzania and Uganda, whenever they debate these issues in their own Parliaments - and we read their reports - they talk about one thing: The quantity of goods and services they are able to sell to the Kenyan market and what they receive from us. Every time, the emphasis seems to be that they will be receiving more goods from us than what we buy from them. So, what I am saying is that in order to promote greater appreciation that we are committed, and, indeed, we are for the East African Co-operation, we could take certain positive steps which would actually help to do a good thing for the future of the Community. For example, today Kenya is short of electricity and Uganda can, by spending very small sums of money augment what they can produce at Jinja and other sources where they are producing electricity. But for some reason, we are taking no step to have a memorandum of understanding, so that we can import from them more energy than we have now. Above all, we should agree to pay the going rate and not a cheaper price as was negotiated by the colonial governors. An action like that would, indeed, create a thinking in Uganda that we are thinking communitywise. In any case, we shall be doing ourselves a favour because we are short of energy. From the prospects of what we read, we are not going to have enough energy until another ten years. So, we are going to suffer from the shortage of energy for a long time. Why do we not start those negotiations with Uganda straightaway and buy more from them. This will be of benefit to us and it will also help in promoting the understanding between us.

Mr. Temporary Deputy Speaker, Sir, Uganda has been supplying food items to us and we actually encourage those who are engaged in trading activities to look up to Uganda as a source of some of those items and they would be very pleased indeed. Perhaps, it is more important for us to mention that today, there are many Kenyans who have invested in Uganda in the manufacturing sector. These are people who have industries in Kenya, but due to the very many problems they are facing in this country, including the shortage of power, the difficulties arising out of corruption and obnoxious taxes which are too high, they have been attracted to move to Uganda. That should help in at least bringing Uganda nearer to having some things to market to us which we should welcome. The same applies to Tanzania. We can discuss matters of common policy with regard to energy. We can also discuss tourism with Tanzania. Instead of always discussing about the destination of tourists; where the tourists land and why we have all these rows at the border, the two governments plus the tour operating companies can, indeed, get together and accept the geography of this matter, that Tanzania's major attraction is the northern part of the country like the Serengeti National Park which is bordering our country. It is logical that tourists go to those areas from bases in Kenya. But we can agree to the system of payment which guarantees that those who invest in tourism in Tanzania, and they have people who have invested in that area---Indeed, all their lodges in those game parks have been revived and refurbished and they are now attracting tourists. In fact, they are getting more tourists than we are getting in Kenya. That is the reality and not a story. Indeed, many people who used to

be here have in fact, moved to Tanzania. This is the truth and it must be accepted by the Minister incharge of tourism. What I am saying is that these discussions should be real and practical and it should be seen that we are not selfish wherever we are.

Mr. Temporary Deputy Speaker, Sir, we were promised that there would a passport for East African citizens to make travelling easy and quick. We were told that it had been agreed upon. When the Minister will be replying, could he tell us what is holding up the issuance of this passport? The free movement of the citizens of Kenya, Uganda and Tanzania in visiting each other during weekends is what is going to help in promoting greater understanding between these people. That should be made very easy, but I do not know what is holding it up. So much was talked about it and many business people are waiting for that document. I do not know when we shall have it. That would really be very useful for us because the free movement of people, and particularly, as people come to know each other and as they go into partnership in trade, we shall have laid more firm foundation than any other for the future of the East African Community, which is what we want.

Mr. Temporary Deputy Speaker, Sir, it is very disappointing that under Chapter 11, on the common market, I am referring the whole of this section from Article 74 to Article 77, we are told that matters of trade will be dealt with on a protocol basis. The meaning of the matter is that, we have not reached an agreement. That is exactly what it means. So, it has been postponed and yet, those of us who live in Kenya, had hoped that in the first draft of this Treaty the common market was going to consolidated. We were going to move forward with it and that within two years or so, we should have a proper common market. In any case, since we have already began to reduce tariffs under the PTA and COMESA, what remains is very little and it can be removed fairly quickly. But we are told that this matter has been postponed, but we do not know for how long. The Attorney-General referred to a period of four years, but I do not know where he got the concept of that commitment. But even four years is a very long period for people who were hoping that the whole of this Treaty was going to mean more and easier trade. But now, if we are told that it will take four years before we get to that position, then it is very frustrating. But indeed, I accept what has been said that, we must go by what can be appreciated by the three partners together. But what does it mean, if we cannot reach an agreement today, to remove any restrictions which are remaining? What does it mean that one of the partners wants to opt out of COMESA to join the Southern Africa Development Co-ordination Conference (SADDC)? What is the implication of it?

We are not trying to come to any conclusion before, but it does create doubt in some people's minds. It is important for us to appreciate whether that does mean that, we shall remain in this half-way house for a very long time, instead of making progress. This period of trade is more important. In any case, that is what is very important in the PTA and COMESA. In the PTA and COMESA, when we have accepted countries like Egypt which are very advanced in terms of industrial development and which are already exporting to Kenya very many goods which we were producing here under protection; it does mean that, even when we have the common market within East Africa, we shall still not have the advantage we used to have in the past. That is a reality. Therefore, since it was proposed here that Ministers should begin negotiations so as to come to that protocol and to move it forward to a common market, they should start straight-away instead of waiting for next year. I say this because I heard some story from Tanzania that they do not want any serious negotiations until after their elections which are going to be held in October. I do not know how true that is. At least, the Minister can tell us where the matter now stands, or whether there are negotiations actually continuing.

Mr. Temporary Deputy Speaker, Sir, there is need to harmonise the institutions which govern those traders, particularly in matters to do with payments for goods. I know that the governors of the three central banks do intend to meet and I know they have agreed on a regime for the exchange whereby they are recognising the currency and the rates at which each currency is changing across the world, particularly against the harder currencies of the world. For that matter, we need the Ministers responsible for trade, as well as the Ministers for Finance, to make payments smoother and easier between the actual commercial banks of the three countries, so that those who are trading do not have to wait for a long period. When you have sent your goods, you know you are going to be paid and that, transferring your money back to your own country shall be made easier. One way we could do that, is to establish a clearing house between the three central banks. When you accept to be paid in Uganda currency, if you have sold goods to Uganda, then the three banks should facilitate the exchange of the currencies, so that there are no delays. We want to promote trade and greater understanding.

Mr. Temporary Deputy Speaker, Sir, I also want to mention here that one of the things which made the original Community collapse was that, it was tied too closely to the political structure so that the Summit and the Council of Ministers, could not meet and when they met, they could not resolve anything. Indeed, nothing moved. We should learn from the common market of Europe. Let us strengthen those other institutions, like the committee of civil servants and the committees which will supervise transportation and so on, so that those institutions can grow and do business whether or not, there is a temporary political quarrel. You would always have little quarrels between the

bosses of any particular country, but that should not be allowed to spoil the Community. The Community should be encouraged to grow and have a separate existence apart from the individual separate States. Indeed, it is for that reason, that I welcome the idea that the laws passed by the Community will have the status they should have in our country. That will also help them to feel they are permanent; that, they are not just tolerated by Kenyans, but they are there on their own rights and they would be able to stand up by themselves. That is very welcome, indeed. I hope they can be encouraged to be recognised exactly like that.

With those few remarks, I beg to support.

Mr. Musila: Thank you, Mr. Temporary Deputy Speaker, Sir. First of all, I wish to say that, I rise to support this Bill because it is very important. I do hope that the contributions that have been made by the previous speakers, particularly relating to the title and contradiction in regard to the financial position, would be taken into consideration in the Committee Stage.

Mr. Temporary Deputy Speaker, Sir, I want to clarify one point here: Earlier on, when we started and the Minister was moving the Bill, several issues were raised as to whether this matter has been considered by the Committee. I am the Chairman of the Defence and Foreign Relations Committee. Right from the beginning, the draft Treaty was committed to the Committee and it was deliberated upon for a very long time. I would like to remind the House that the Committee held 45 sittings and scrutinised the draft Treaty, article by article, in great detail. I had the pleasure of moving a Motion in this House on 24th November, 1999, for the House to adopt the Report of the Committee on the examination of the draft Treaty. I am pleased to report that the House did, in fact, unanimously pass the Motion and adopted the Committee's Report and consequently, the draft Treaty, which as you are aware, the three Heads of State signed on 30th November, 1999.

Mr. Temporary Deputy Speaker, Sir, I would like to say here that this is one document that has been subjected to a lot of scrutiny by this House. Even the Ministry of Tourism, Trade and Industry should be commended. Prior to us even discussing the draft Treaty, the Ministry did organise a seminar for the stakeholders, including businessmen and the civil society, before it was brought to us. This is one document that has been thoroughly scrutinised and debated by Kenyans before it was signed by our President.

Mr. Temporary Deputy Speaker, Sir, if you recall, earlier on, you had led a delegation of some hon. Members which joined other delegations of the three partner states in Arusha and discussed exclusively, Chapter 9 of the Treaty which dealt with the establishment of one of the most important institution of the East African Community, namely; the East African Legislative Assembly.

Mr. Temporary Deputy Speaker, Sir, I am explaining this so as to convince the House that the draft Treaty for the establishment of the East African Community has been subjected to so much debate and scrutiny; I do not think that in the history of this country, this has been witnessed. I am glad that my Committee was associated with those deliberations, and that it eventually brought its Report on the Draft Treaty to the House, which adopted it.

I would like to talk about a few of the institutions that this Treaty is going to create; I will start by commenting on the co-operation on trade, liberalisation and development among the member States. I think this is one of the most important areas of this proposed Community. We decided to go into the Community basically because we thought that our people will gain from the economic development of this region. I believe that without co-operation in trade, we cannot make it. I say this because countries the world over are coming together to form trading blocks. As a country, Kenya cannot afford to remain in isolation. I, therefore, find it appropriate that Kenya joins other partner states in East Africa and, enlarge the market, so that we may become a force to reckon with, economically. Unfortunately, this was not completely agreed in the final Treaty that was finally signed. Mr. Temporary Deputy Speaker, Sir, our intention - which I believe is the intention of most hon. Members here - was that, from the word go, we would start enjoying the benefits of the Treaty by having a customs union, for instance. However, it is indicated in the Treaty that there will be progressive formation of protocols. I hope that within the four years, as is stated in the Treaty, we will have free trade in East Africa. It is only then that we can truly say that we have a community. A community without free trade will have no meaning at all. So, I hope that, in accordance with this Treaty, the three East African States will have a common market.

When as I was presenting my Committee's Report, I voiced the concern of its Members on the intended withdrawal of Tanzania from the Common Market for Eastern and Southern African States (COMESA). We felt that if, really, the three East African States want to do things together, they should remain members of COMESA. The pulling out of one country from COMESA would mean that we are not together as an economic block. So, I hope that Tanzania will rethink its position, and remain a member of COMESA. One of the previous speakers talked about free movement of persons within the East African States. If there are restrictions on movement of the people of the three East African States, the Community Treaty will have no meaning at all. I hope that the three Governments will do everything possible to ensure that there is free movement of persons within East Africa, so that they can trade effectively. Indeed people from the community will not trade effectively if there are restrictions on their movement.

I think it is also important that as we remove trade barriers, we also remove movement barriers, so that the people of East Africa can trade together, visit one another, as one community. Otherwise, we do not want to have a community that is in books only; we want a community in practice, so that we can walk around and say: "Yes, we are a community". All organisations should be able to operate in any of the member States; even lawyers who are members of the Law Society of Kenya (LSK), should be free to move into Tanzania, or Uganda, and practise there. Also, lawyers from Uganda should be able to, freely, move into Kenya and practise. I am trying to emphasise the importance of creating a situation where East Africa can be seen to be a community. Otherwise, we cannot say that we have "the East African Community" and, at the same time, put restrictions on our peoples' movement and their practices.

Mr. Temporary Deputy Speaker, Sir, that brings me to the next point that I want to make this afternoon, which is on tourism. If you travel all over the world, you will find that countries that have formed trading blocks, examples of which are the European Union (EU) and the Pacific and Caribbean trading block. Various trading blocks in the world promote their tourism industries together; they have one pavilion, and they promote their destinations together.

However, if you go to world trade fairs, you will find that Kenya, Uganda and Tanzania have a small pavilion each, and yet the three countries claim to belong to one community. So, I hope that with the implementation of the provisions of this Treaty, the three countries can go out there and claim to be a community with a common tourist destination, and then promote tourism products out there. I am sure that if we do this, we will be promoting this region called "Kenya, Uganda and Tanzania".

Currently, some very primitive ways of trading go on between Kenya and Tanzania in as far as the trafficking of tourists is concerned. If you go to this country's border with Tanzania, you will find Kenyan tour guides exchanging tourists with Tanzanian tour guides, because tour operators from Kenya are not allowed to move tourists into the game parks of Tanzania. I think we should not be doing things that way. We cannot subject tourists to this kind of treatment, when they are transported to the Kenya-Tanzania border, off-loaded and handed over to Tanzanian tour guides, who take them into their country to spend some days there before they are transported back to the border to be handed over again Kenyan tour guides. Even you, Mr. Temporary Deputy Speaker, would not want to be treated like that, as a tourist. Therefore, if we want to have a true East African Co-operation, we must co-operate in all areas including trade, tourism, and ensure that the movement of persons is very clear.

Mr. Temporary Deputy Speaker, Sir, Article 125 of this Treaty deals with defence. I think we all agree that one of the most important element today is defence. The issue of defence is very casually dealt with in this article. This article has only two paragraphs, the first of which reads as follows:-

"In order to promote the achievement of the objectives of Community as set out in Article 5 of this Treaty, particularly with respect to the promotion of peace, security and stability within and good neighbourliness among the partner States, and in accordance with Article 125 of this Treaty, the partner States agree to closely co-operate in defence affairs".

Mr. Temporary Deputy Speaker, Sir, I hope that, as the Community grows, we will be able to go deeper into matters of defence. I say so because, as a Community, we cannot allow nations to carry out matters of defence unilaterally. For example, if we are a community, will we allow one of the members of the community to engage in wars with other countries? We would not be drawn into such wars. What will be the economic effect of our country, for example, if it goes to war with another country? Does that not affect the economic development of another country? So, what I am saying is that it is important that matters of defence, in the future, be put into active consideration so that we can have a certain safeguard so that a country consults and ensures that we have defence tags which are similar so that a country cannot unilaterally take a decision to attack another country. These points are very important because all I am emphasising is that the Community must have uniform rules, ideas and cultures, which we already have. I would like to say that in this Treaty, we have not fully ensured that all those things which can adversely affect this nation are adequately catered for.

Mr. Temporary Deputy Speaker, Sir, I do hope that this will be true not only in tourism, common market, defence, but in most areas. I do appreciate that making a Treaty is not an easy matter, because it involves giving and taking. This country has gone into great length to negotiate this Treaty. I believe that it is a good Treaty that will see Kenya, Uganda and Tanzania going very far in their development.

There is the issue of withdrawal. We know that last time, the collapse of the East African Community in 1977 was caused by the three countries. One country would say that it was not a member and that would be the end of it.

I am pleased to note that Article 145 of the Treaty gives provision on how a member country can withdraw in case it wishes to do so; if the National Assembly of the partner States resolves by a resolution supported by not less than two-thirds majority of all members entitled to vote. I am saying this because last time, we just woke up one morning and the radio announced that Kenya had pulled out of the East African Community. I think this Treaty is good because it safeguards that type of thing. One hon. Member asked: "Does it mean that when one Head of State disagrees

with another one, that will be the end of the Treaty?" I think this is wrong because this is not a Treaty between one President and another, but a Treaty between three sovereign States, and a provision has been made here on how one can withdraw from the Community. In case of Kenya, the matter will have to be brought to the National Assembly and a two-thirds majority vote will be required, just like it is in the case of making a Constitution or amending the Constitution. The same will apply to other countries. So, I think it is a good Treaty and we should try it again. Kenyans and the people of East Africa in general have a reason to be happy that in the long run the three East African States have done Kenyans, Ugandans and Tanzanians proud by signing this Treaty which I think will go a long way in enhancing co-operation and development of these States.

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

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I rise to give support to this Bill and congratulate the Attorney-General and the Minister in charge of the East African Community for bringing this Bill to the House for debate. I would also like to congratulate my friend, hon. Musila, for the important points he has made regarding the Bill, especially, the last point he made about the withdrawal. I think it is extremely important that this time, in the Bill setting up the East African Community, there is a specific role for the National Assemblies for the three member States to play. The National Assemblies of member States will accede to the Treaty, subject to their being admitted when the Community comes into being.

Having said that, I would also like to raise a point of caution regarding accession to the Treaty by those who will come after the Community has come into being. My feeling would have been that the founding member States should have put a very high threshold of entry for those coming in, especially, knowing very well that the Community should have certain standards of belonging.

One of the points that hon. Musila made was with regard to defence. One of the things that the Treaty should ensure is that no member State goes to war and jeopardises other member States arbitrarily. This is because, as hon. Musila said, going into war incurs a lot of hardship and economic jeopardy.

Mr. Temporary Deputy Speaker, Sir, the other thing I would like to touch on regarding the threshold of entry is, I think the founding members should have put in this Treaty certain internal standards for each State, that a State should arise to. For example, if a State is constantly engaged in internal conflicts and it becomes a member of the Community, that State will be *ipso facto* a burden to the Community. This is because so long as internal conflicts go on, very little productive economic activity will go on and hence you expect that State to be a liability and not an asset to the Community. I do believe that belonging to the Community should be subject to being observant to certain human rights principles. I know that this is in the Treaty; that the objectives of the Community is to enhance democracy, liberty, good governance and so on, but those are objectives. I was saying that there should be at least be a clause of qualifications for entry, which lays down some of these standards, in the way the States of the NECOSUR in Latin America and the European Community have also done. I think it behooves those founding members to do that.

Mr. Temporary Deputy Speaker, Sir, secondly, we know that in all initiatives for regional integration all over the world, there are usually certain key member states that pull the others along; that certain key members have a fundamental interest in the establishment of the Community and of its future and that must be the magnetic point for the growth of the Community. In this regard, let us not be shy about it. Kenya, in the history of East Africa, has always been the magnetic pulling point for the growth of the Community. It is upon Kenya to ensure that the Community survives and establishes certain internal conditions that make it useful for the under members to come along. I can understand Tanzania dragging its feet with regard to belonging to the Community because Tanzanians could as well ask: "What is it in the East African Community that gives us advantage over being members of Southern Africa Development Co-ordination Conference (SADDC) or COMESA?" It therefore, means that although these principles are laid here, it is upon Kenya to create a domestic environment in our country that makes others pull into the Community because it is advantageous to them. Let me give you an example. We know that we have a comparative advantage in Eastern Africa and the horn of Africa in being a service providing economy. The only thing we have not done is to manage this environment well to attract more investment into our service sector. For example, when people fall sick or are shot in Sudan, because of the internal conflicts there, they will fly to Nairobi for medical care. What Kenya should do is to provide such good health services that it does not make any point whatsoever for somebody to fly from Uganda to London for certain forms of treatment. It will be cost effective to come to Nairobi and receive that kind of health care that this person could receive in Denmark or London. For that to happen, other services must be provided equally cost effectively, for example, communication, schooling services and so on. There should be apartments which are easy to access and at reasonable costs. This is what I mean by providing a service sector for the Community. That indeed, will be a magnetic pull for other people to come into the Community, especially, when they know that when you are members of the Community, you have certain preferential treatment or pricing for the kind of services you receive in Kenya. Knowing that we have a comparative advantage in providing services in the region, how come that this Treaty is rather silent on that kind of issue? It is extremely important that where we know as a

country that we have a comparative advantage and that we will develop as a magnetic pulling effect for the Community, so that kind of thing should be in-built in the Treaty so that we, as a nation, ensure that there is a firm economic interest in other people trying to accede to the Treaty and becoming members of the Community.

Further to that, I am rather surprised that there is a Section that deals with everything concerning agriculture like food security and so on, except two important factors; land and labour. There is a general saying that we want free movement of labour. However, labour in agriculture in a developing capitalist economy is a very difficult thing. There is the Section that deals with agriculture, that is articles 105-110. We have Section 105 which is a general statement of the scope of co-operation. They have things like seed multiplication and distribution, livestock multiplication and distribution, land and animal diseases, controlled irrigation, water catchment management and food security. If you read that Section carefully, you will see that everything there has to do with management. They have very little to do with investment. Is there anything that this treaty is offering for agricultural labour that will make it possible for a Kenyan peasant who wants to get land in Northern Tanzania to do so? Issues of agricultural labour which are any different from those already existing in Kenya, Tanzania and Uganda will not arise.

In a previous contribution to the debate on East African Community I argued that because we have vast tracts of land in Tanzania which have been put to productive use, and a lot of land hunger in Kenya, one of the major contributions to the East African Co-operation or economic integration in East Africa that the treaty will help us in is to make it possible for the landless peasants in Kenya to move to Northern Tanzania and make that land productive, not just for the interest of the Tanzanian economy, but for the Kenyan peasant economy in general. We know that Tanzania has been very generous in the past in settling refugees from Rwanda, Burundi, Kenya and Uganda and after some time, giving them full citizenship rights. That happened in Mara District, Kagera and all those places. That kind of experience should be raised to the level of relationship among the community members. We should have a very definite statement about common agricultural policies and movement of both labour and capital in agriculture because agriculture is the mainstay of the economies of the three East African countries. Maybe the Minister may say that these are some of the things that will come in the protocols that the council will write or the Ministers will bring up. If that is the case, we would be very grateful if the Minister, when he comes to reply to the debate in this House, will tell us for certain whether this area of agriculture will be the subject matter of some of the protocol agreements that are envisaged in the Treaty. If that is the case, then the House will definitely welcome such a proposal. I think it is extremely important that the issue of land and the movement of capital and labour with regard to agriculture be clearly spelt out in the Bill. The movement of capital and labour in industry is very different when it comes to agriculture. Agriculture is one of the most difficult sectors to capitalise in capitalist economies. Countries have always been very sensitive about their agricultural policies. Even in the European Community, agriculture is one of the most sensitive areas. We know quite often that the French have gone on rampage when they are forced to import beef from Denmark, London and so on. They drive tractors on the streets, demonstrate against the government and so on. Agriculture is extremely difficult to capitalise. It is also extremely difficult to have free movement of labour and capital under this Community arrangement when it comes to agriculture. The Community should be sensitive to that especially when we know that agriculture is the mainstay of this free economy.

There is also another issue that I wanted to raise with regards to the treaty. This is something that hon. Musila did touch on. Article 149 is one of those Articles that deal with belonging and withdrawal. It deals with the rights over property and assets of the Community upon succession of membership. The Article is very optimistic. It assumes that member states will be gentlemen and ladies and that when a marriage breaks they will be very civil and obey the rules of the game. We know that when marriages break up people are often not very civil. There are bad feelings, loss of pride and things can be very nasty. Last time when the East African Community collapsed, one of the things that became very touchy was the issue of sharing out assets and property. It took a long time and a lot of money was spent by the member states to settle the issue of property and assets. In fact, I would argue that more money was spent paying lawyers and setting up commissions to find out what happens to the assets that belonged to the Community. When I read these three Sections in Article 149, I find them a little inadequate because they sound very optimistic and they do not take into account the experience we went through. I just want to read it to refresh our memories. Maybe the Minister and the Attorney-General have more information than I do. Having been more privy to the preparation of the Bill, I concede them that possibility. Nonetheless, let me just read this article and remind the House that we are treading on rather dangerous ground here.

"Where a partner state withdraws or is expelled in accordance with Articles 145 and 147 respectively of this treaty, the property of the Community in that partner state's territory shall remain vested in the Community. A state that has ceased to be a partner state of the Community shall have no claim to or any rights over any property and assets of the Community. The Community shall continue with its remaining membership notwithstanding withdrawal or expulsion of any partner state."Mr. Temporary Deputy Speaker, Sir, this would only hold if there is a good system of arbitration agreed

to by members in acceding to the Treaty. I can just imagine a member state whose parliament has passed by two-thirds majority that they are withdrawing and say: "We are no longer members of the Community. We have so many houses and what not in our capital. From now on anybody who says he is a member of the Community is not allowed to enter our country and our courts of law will not recognise him." What do we do in spite of these three Articles? I was just thinking that maybe this Article is rather optimistic. Once a member state has its parliament pass the vote by two-thirds majority, and then they say their borders are closed, it becomes rather uncivil like a husband who no longer wants his wife in a broken marriage and becomes a little bit uncouth; what do you do? I am just puzzled. I am wondering whether it will be possible, when you have that experience, for this articles to be obeyed by member states in a very civil and gentle manner. I am worried.

Mr. Temporary Deputy Speaker, Sir, I would think that maybe when the Minister replies he could enlighten the House on what other possible measures will be put in place as a safeguard to ensure that the Community does not lose its properties and assets. We should ensure that the process of settling and handing over those assets is not as painful, costly and tedious as it was in the experience when the previous East African Community collapsed. I am quite sure that the Kenya Government will definitely find in their records that a lot of money was spent in the East African Community. That is one of the issues that I was going to raise with regard to specific articles. The other issue I want to raise is that the Minister, the Attorney-General and Mr. Musila have made a lot of emphasis on the issue of trade. I agree with that because the Community cannot rest on a firm foundation unless it is firmly based on economic interests. Economic interests go beyond trade.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Imanyara): Order! Hon. Members, it is now time for the interruption of Business. The House is, therefore, adjourned until tomorrow, 11th May, 2000, at 2.30 p.m.

The House rose at 6.30 p.m.