

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 5th July, 1995

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table of the House:-
Sessional Paper No.1 of 1995 - International Labour Organization - Proposed Actions by the Republic of Kenya on the conventions and recommendations adopted by the International Labour Conference at the 65th to 80th Sessions (1993).

*(By the Minister for Labour
and Manpower Development)*

NOTICE OF MOTION

ADOPTION OF SESSIONAL
PAPER NO.1. OF 1995

The Minister for Labour and Manpower Development (Mr. Masinde): Mr. Speaker, Sir, I beg to give Notice of the following Motion:-

THAT, this House adopts Sessional Paper No.1 of 1995 on International Labour Organisation; Proposed actions by the Republic of Kenya on the conventions and recommendations adopted by the International Labour Conference at the 65th to 80th Sessions (1993) laid on the Table of the House on 5th July, 1995.

ORAL ANSWERS TO QUESTIONS

Question No.342

EXPENSES OF FEEDING PROGRAMME

Mr. Sifuna asked the Minister for Education how much money was spent on Primary School Milk Feeding Programme in Kanduyi Constituency, in particular, and Bungoma District in general for the years 1993 and 1994.

The Assistant Minister for Education (Mr. Komora): Once again, Mr. Speaker, Sir, I seek the indulgence of the House because I have realised, after discussing the Question with hon. Sifuna yesterday, that I need more time than I had estimated. I will reply to this Question on Tuesday next week.

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

Mr. Sifuna: I have no objection so long as the Assistant Minister can promise to bring a proper answer here on Tuesday next week.

Question No.295

TARMACKING OF DAGORETTI ROAD

Mr. Kamuyu asked the Minister for Local Government what immediate plans he has to tarmac

the road from Mau Mau Bridge adjoining Kawangware and Kangemi locations in Dagoretti Constituency which is currently impassable.

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

The road from Mau Mau Bridge adjoining Kawangware and Kangemi Locations in Dagoretti Constituency is called Kiarie Muchai Road. There are no immediate plans to tarmac the said Kiarie Muchai Road due to lack of funds. However, the Council grades the road as part of routine maintenance activities.

Mr. Kamuyu: Mr. Speaker, Sir, most of the answers that we get from the Ministry of Local Government are complete nonsense. How can he talk about lack of funds without telling us how much money he needs to tarmac that road. This Question has become perennial; I ask it every year.

The Assistant Minister for Commerce and Industry (Mr. Osogo): On a point of order, Mr. Speaker, Sir. I thought that the Chair also heard what I heard from hon. Kamuyu; that the answers he receives from the Ministry of Local Government are "nonsense." Is that word permissible in this House?

Mr. Speaker: Order! I think the language used by the hon. Member is un-parliamentary. Can you withdraw that word, Mr. Kamuyu?

Mr. Kamuyu: Mr. Speaker, Sir, it is not the Assistant Minister who I am referring to as nonsense. He is a very intelligent man. In fact, we were together at Makerere University. It is the answer he has given that is nonsensical.

Mr. Speaker: Order, Mr. Kamuyu! You cannot say on one occasion a word is un-parliamentary and in another occasion it is parliamentary. I have ruled that in my view the language you have used is offensive and you must withdraw that word.

Mr. Kamuyu: Mr. Speaker, Sir, I have no intention of withdrawing that word because the answer I have been given is obviously nonsensical. This is a perennial Question and---

Mr. Speaker: Order! Order! Very well then. If you do not intend to withdraw a word when called upon to do so, that in my view, amounts to misconduct and I am afraid you will have to withdraw from the precincts of the House for the balance of the day.

(Hon. Kamuyu withdrew from the Chamber)

Prof. Mzee: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! Order! Any hon. Member who has in his view a question and deliberately behaves in such a disorderly manner that he must be removed from the premises of Parliament, in my view, ceases to have any Question standing to his name.

(Loud consultations)

Mr. Speaker: Order! Order! Hon. Members, I have already said that once an hon. Member who asked a Question then deliberately refuses to comply with the request by the Chair to behave in an orderly fashion, then, of course, he is punished and we must move to the next Question. What is it Professor Mzee?

Prof. Mzee: Mr. Speaker, Sir, I would like to seek guidance from the Chair on this issue. The Question has already been answered by the Assistant Minister and has become the property of the House and the hon. Member has already been dealt with and punished and he has gone out and the Question remains the property of the House!

Mr. Speaker: Order! Order! It does not matter whether it is the property of the House or not. The time that this Question should have been dealt with, normally in three to four minutes, was taken by the hon. Member himself engaging with the Chair and refusing to allow discussion of that Question. I am not willing to extend any further time on this Question because it has taken more than its fair share.

Mr. Ndicho: Mr. Speaker, Sir, I want to seek you guidance here.

Mr. Speaker: Order! Mr. Ndicho! You cannot get any guidance from the Chair if you are not willing to listen. I have already given the guidance and I do not understand what further guidance you are seeking or maybe you just want to engage the Chair. Next Question.

(Loud consultations)

Mr. Speaker: Order! Order! Prof. Mzee! I should warn the three of you that anyone who will persist in taking issues with an issue that I have already ruled on, will be construed by the Chair as being disrespectful. I

have already said that normally we allot a question four to five minutes, maximum. If a Member takes his time on matters other than that Question, then he is the one to suffer by having that Question cut short rather than the whole House. Next Question, Dr. Oburu.

Question No.355

UTILIZATION OF CESS

Dr. Oburu asked the Minister for Local Government:-

- (a) whether he was aware that, like other county councils, Siaya County Council collects cess funds especially from beaches; and
 (b) if the answer to "a" is in the affirmative, how the funds collected have been used.

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

Part (a), yes, I am aware. Part (b), the money is used by the Council on the normal duties in the County Council.

Dr. Oburu: Mr. Speaker, Sir, the cess money which is collected from the fishermen along the beaches is not supposed to be used for general council duties but for improvement of the road network at the beaches. This does not happen in Bondo and the surrounding areas, and I am wondering why the Council did not implement the provision of the by-law to collect funds from 1989 up to 1995, and that only Kshs4,700 has been collected since that time. What measures is the Assistant Minister going to take to make sure that cess from fish is sufficiently collected so that the road network which is neglected, hence fishermen have no access to the beaches to fish which is already rotting, is improved?

Dr. Wameyo: Mr. Speaker, Sir, may I thank the hon. Member for having brought that Question. Fish traders have been very uncooperative in paying this cess. However, arrangements are being made with the co-operative society at the beaches to collect the cess on behalf of the Council with the assistance from the Provincial Administration and police.

Mr. Wamae: Mr. Speaker, Sir, the tea cess money in other parts of Kenya is used purely for road construction not for general purposes of the council. Why can't the fish cess money be used for the infrastructure and not for general purposes?

Dr. Wameyo: Mr. Speaker, Sir, from what I know, Siaya County Council has had a very big financial problem for a long time, and that is why sometimes they use this money for general purposes. The most important thing is that, the fishermen have not been keen to provide the cess and, therefore, not much money has been collected that can even make a road but once sufficient funds are collected that will be done.

Mr. Ojode: Mr. Speaker, Sir, could the Assistant Minister give a directive to the Homa Bay fishermen for their cess money to be utilized on patching up roads within the town? This is because the Assistant Minister has said that fishermen in Homa Bay have been co-operative unlike their counterparts in Bondo.

Dr. Wameyo: Mr. Speaker, Sir, I am dealing with an issue in Siaya for now, and if an issue in Homa Bay comes up, I will deal with it.

Dr. Oburu: Mr. Speaker, Sir, is the Assistant Minister aware that fish traders along Lake Victoria are normally very rich businessmen, including Asians from Kisumu, and that they have not been paying cess because there is corruption among the officials of the Ministry of Local Government who have been unable to collect cess from these people and not the co-operatives? It is the officials from the Ministry of Local Government who are supposed to collect cess and not the co-operatives.

Dr. Wameyo: Mr. Speaker, Sir, that is why the Clerk and the Treasurer of that County Council were removed. I would like to hear more details from the hon. Member and I will take the necessary action. In fact, I am planning to visit Siaya County Council Headquarters very soon.

Mr. Speaker: Very well. Next Question, Mr. Rotino.

Question No.333

INTRODUCTION OF PASSENGER TRAIN

Mr. Rotino asked the Minister for Transport and Communications that in view of the escalating road transport costs, whether he would consider introducing a passenger service train along the Eldoret-Kitale Railway.

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

There are no immediate plans to re-introduce a passenger service train along the Eldoret-Kitale railway line due to the low demand for the rail passenger transport arising from competition from buses and *Matatus* which provide adequate transport on this route.

However, the Railways will continue to review the situation from time to time to determine when it can be justified to re-introduce the service in the area.

Mr. Rotino: Mr. Speaker, Sir, the Minister is giving a very unfortunate answer, knowing that within the area, there was a train which was serving that area between Eldoret and Kitale. Knowing the cost of road transport nowadays, it will be very unfair for the Ministry of Transport and Communications not to provide a coach for that area. What statistics are we talking about since demand goes with supply, and there is no demand without a centre of supply? Could the Minister, therefore, tell us what statistics he is basing his low demand on?

Mr. Otieno: Mr. Speaker, Sir, most of the branch line railways services both for cargo and passengers are uneconomic and are largely subsidised. When I talk of low demand, it means that if we were to consider adjusting the rates to a level that it will become economical, the demand level will definitely be lower.

But with regard to the railway line from Eldoret to Kitale, the roads are running virtually parallel to the rail line, and *matatu* and bus transport is much faster. We feel that the service would be uneconomical by charging high rates because people would prefer road usage.

Prof. Ouma: Mr. Speaker, Sir, with regard to the answers which the Minister has given and especially because he deals with a Ministry in which statistics are so important, may I ask the following: How possible is it to assess the day-to-day profitability or non-profitability of a line without a trial period? There are many poor people who cannot even afford the road rates. Could the Minister show us how he knows this without a trial; if he cannot let them give it a trial?

Mr. Otieno: Mr. Speaker, Sir, the Question itself talked of re-introduction which means we were running the service before and we have the statistics.

Prof. Ouma: On a point of order, Mr. Speaker, Sir. We ask questions and get replies to help the people of this country. It was discontinued sometime back and so he does not need to say that the conditions are the same. Could the Minister be humble enough to tell us what trials he has tried of late? We are helping the people of that place through this House. We need humble Ministers!

Mr. Otieno: Mr. Speaker, Sir, railways' tariffs, as opposed to the roads' fares, are things we know since they exist on several branch lines. So, it is not just based on this one if you are asking us about equivalent comparative figures.

Mr. Moiben: Mr. Speaker, Sir, can the Ministry consider re-introducing this service on a trial basis? I come from that area and every time on weekends, you have to see so many passengers headed from Lowdar coming to Nairobi, some from West Pokot, Marakwet, Keiyo and Trans Nzoia. It is a big problem. I am requesting the Ministry to consider introducing this service on trial basis, and twin it up with Malaba railway line.

Mr. Otieno: Mr. Speaker, Sir, I did mention that all railways branch line services are uneconomic including the cargo services. We are retaining the freight services simply because there are no better alternatives on this route, but for passengers' service, there is an alternative.

Mr. Rotino: Mr. Speaker, Sir, the Minister said that the railway lines are uneconomical. Could he tell us what has made the railway lines uneconomical? What are the reasons that make them uneconomical?

Mr. Otieno: Mr. Speaker, Sir, just that the current cost of running the railways compared to the tariffs the passengers raise is such that, we would need to raise those rates much higher, even sometimes higher than the fare charged by bus owners and that does not make sense.

Mr. Speaker: Next Question, Mr. Muite!

Question No. 189

CONCESSION ON LIFE SENTENCE

Mr. Murungi, on behalf of **Mr. Muite**, asked the Minister for Home Affairs and National Heritage whether he could consider a concession for Mr. James Apiny Adhiambo (inmate at Naivasha Prison) who was imprisoned for life in 1984, under a Court Martial, since the reasons he was imprisoned for have become obsolete.

The Minister for Home Affairs and National Heritage (Mr. Lotodo): Mr. Speaker, Sir, I beg to reply.

I am not in a position to consider a concession for Mr. James Apiny Adhiambo who was sentenced to serve life imprisonment in 1984. He appealed against the sentence and his appeal was dismissed in 1985. The question of the reasons for his imprisonment becoming obsolete does not arise.

Mr. Murungi: Mr. Speaker, Sir, I would like to refresh the memory of the Minister. In 1982, as a result of the campaign launched on behalf of all the political prisoners by RPP, a list of political prisoners was given to the Attorney-General and all those prisoners were released. On that list was the name of James Apiny Adhiambo. The only reason which Attorney-General gave for not releasing him was that he could not trace him in Kenyan prisons. Now that this prisoner has been traced at Naivasha Maximum Prison, could the Minister release him like all other political prisoners released in 1992?

Mr. Lotodo: Mr. Speaker, Sir, I am not aware of what the hon. Member has just stated. Mr. James Apiny Adhiambo was sentenced to serve life imprisonment on 8th April, 1984 for the offence of mutiny contrary to Section 25(i) of the Armed Forces Act Chapter 199 Laws of Kenya.

He appealed to the High Court under Nairobi High Court Criminal Appeal No.111/84, but the appeal was dismissed on 26th June, 1985. He is serving his sentence lawfully and the question of the reasons he was imprisoned becoming obsolete does not arise.

Mr. Achieng' Oneko: Mr. Speaker, Sir, is it true that those prisoners who get life imprisonment have their cases normally reviewed after every ten years. In that respect, is it not just fair for the Minister to consider reviewing the sentence imposed on this man because he is really suffering and, as we understand that he is in very bad health and he may die in prison?

Mr. Lotodo: Mr. Speaker, Sir, the Minister for Home Affairs and National Heritage can only release a prisoner on medical grounds, but this one has not even appealed to the Kenya Court of Appeal. **Prof. Mzee:** Mr. Speaker, Sir, the name of Mr. Odhiambo was on the list of the people to be released in 1992. We know that he could not be traced at that particular time. The Minister is talking about history, what had happened in 1984 and his appeal in 1985. He is talking about 10 years ago, but we are talking about 1992. We know that in the past, people have been in prison on wrong identity. We have hon. Mak'Onyango here and even after his identity was proved---

Mr. Speaker: You are no longer asking a question, you are making a speech.

Prof. Mzee: Mr. Speaker, Sir, I am building it up.

Mr. Speaker: No debate!

Prof. Mzee: Mr. Speaker, Sir, now that he is informed that he was due for release in 1992, and that it is only the prison officers who could not trace him, but now he is known where he is, could he review his case for release?

An hon. Member: Are you aware?

Mr. Lotodo: Mr. Speaker, Sir, I did say right from the beginning that I am not in a position to release him.

An hon. Member: Since 1992?

Mr. Lotodo: Yes, I know!

Mr. Speaker: The last question Mr. Murungi!

Mr. Murungi: Thank you, Mr. Speaker, Sir. According to the Minister, Mr. James Apiny Adhiambo was imprisoned for life in 1984, on the offence of mutiny. The mutiny was against a force known as `82 Air Force. Since then, it has been discovered that `82 Air Force was not set up under any law and, in fact, it was an illegal organisation. Since `82 Air Force has been disbanded and no longer exists, what we have today is Kenya Air Force: Could the Minister now consider reviewing the imprisonment of Mr. Adhiambo because the organisation which he was supposed to have mutinied against, no longer exists?

Mr. Lotodo: Mr. Speaker, Sir, what I am aware of is that, it was Kenya Airforce at that time when he mutinied and then it became `82 Air Force and it is now back again to the original name. So, the crime does not change anything.

Mr. Speaker: Next Question, Mr. Sankori!

Question No. 420

PAYMENT OF MONEY TO RANCHERS

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

(a) how much money was collected on bird shooting in Kajiado Central Constituency from

1984 to 1994; and

(b) how much money has since been paid to the ranchers.

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

(a) A total of Kshs412,100/= was collected from bird shooting in Kajiado Central Constituency between 1984 and 31st December, 1994.

(b) Of the total amount collected, Kshs219,100/= has been paid to Shombole, Mashuru/Maroro, Osilalei, Erangau, Mailua, Merrueshi, Emarti, and Ilamamen Ranchers.

Mr. Sankori: Mr. Speaker, Sir, the Assistant Minister, first of all, has confused all the constituencies in Kajiado District. Shombole happens to be in Kajiado North Constituency, Mailua in Kajiado South Constituency.

I specifically asked for Kajiado Central Constituency. Okay, when all is said and done, there is a balance of Kshs193,000 not paid. Could the Assistant Minister undertake to pay the Kajiado Central Constituency Ranchers on bird shooting - I am not talking about wildlife, I am yet to come later on that Question - a balance of Kshs193,000 with interest with immediate effect?

Mr. Kisiero: Mr. Speaker, Sir, of the amount that has not been paid, which is Kshs193,000, every effort is being made to pay the respectful ranchers.

Mr. Speaker: Very well! Next Question, Mr. Michuki!

Question No. 234

GRADING OF MURANG'A ROADS

Mr. Speaker: Is Mr. Michuki not here? We will leave his Question until the end. Let us move on to the next Question, Mr. Kiraitu Murungi.

Question No. 296

FUNDS FOR ROAD CONSTRUCTION

Mr. Murungi asked the Minister for Public Works and Housing:-

(a) how much money the Government has secured for the construction of 55 km. Meru-Githongo Kathera-Kinoro-Chogoria Road, whose construction was unanimously approved by this House in 1994; and

(b) when the construction of the said road will commence.

The Assistant Minister for Public Works and Housing (Mr. Mwamzandi): Mr. Speaker, Sir, I beg to reply:-

(a) The Government has not been able to secure funds for the construction of Meru-Githongo Kathera-Kinoro-Chogoria Road.

(b) Until funds become available to undertake construction of Meru-Githongo Kathera-Kinoro-Chogoria Road, my Ministry will regularly maintain this road to motorable standard. Grading of Meru Town - Katheri Road is going on and will continue up to Chogoria.

Mr. Murungi: Mr. Speaker, Sir, I am surprised that the Assistant Minister does not even know what happens in his own Ministry. According to the Printed Estimates for 1995/96, this road has already been allocated Kshs10 million. Is it in order for the Assistant Minister to come and give an answer to the effect that the Government has not been able to secure funds, when the Printed Estimates clearly show that Kshs10 million is available for this road?

Mr. Mwamzandi: Then you should be grateful if the Kshs10 million is there!

(Laughter)

Mr. Murungi: Mr. Speaker, Sir, the Assistant Minister should apologise to the House---

Mr. Speaker: Order! Mr. Murungi, we do not do it that way. You have to catch the Speaker's eye before you move there. You might be excited but - hold it. But anyway, I will give it to you. What did you say?

Mr. Murungi: Thank you, Mr. Speaker, Sir. I was demanding that the Assistant Minister do apologise

formally to this House because the Printed Estimates have allocated KShs10 million for construction of this road and his answer says that no funds are available for that road. So, could he apologise to the House for giving misleading answer?

Mr. Mwamzandi: Mr. Speaker, Sir, I have no apology to make. I said that the hon. Member should be grateful, if that money is there. Meanwhile, this answer stands!

Mr. Nyagah: Mr. Speaker, Sir, if the Assistant Minister says that the answer stands and we know that there is no guarantee that an estimate which is given will be undertaken, is the Assistant Minister being categorical in his answer that the Printed Estimates pertaining to this construction will not be undertaken or will this construction continue as shown in the Printed Estimates?

Mr. Mwamzandi: Mr. Speaker, Sir, I am not talking about the KShs10 million the hon. Member is talking about but I am talking about the time this Question came to my Ministry. That is until funds become available, we will undertake to maintain the road.

(Laughter)

Mr. Nyagah: On a point of order, Mr. Speaker, Sir. Since the answer the Assistant Minister has given is not satisfactory, the Question is before the House and he knows what his duties are. Is it right for the Assistant Minister to give us an "old" answer? Could he then give us a current answer and if he is not able to give a current answer, as of now, he comes back at a later stage to answer this Question?

Mr. Speaker: Mr. Mwamzandi, is it current or is it history?

(Laughter)

Mr. Mwamzandi: Mr. Speaker, Sir, the hon. Member has been talking of KShs10 million which has been set aside in the Printed Estimates, but we have a number of roads here. We have Meru Town to Katheri and we also have Katheri-Marimba, Kinoro, Chogoria--

Mrs Ndeti: On a point of order, Mr. Speaker, Sir. Is the hon. Assistant Minister in order to refuse to answer your very specific Question? Is it history or current? Simple!

(Loud Consultations)

Mr. Mwamzandi: Mr. Speaker, Sir, this reply is current. According to my reply, funds have not yet become available.

Mr. Speaker: Final one Mr. Murungi!

Mr. Murungi: Mr. Speaker, Sir, we have noted the Assistant Minister's answer that despite the KShs10 million allocated in the Printed Estimates, funds are not available. The people of Meru will listen to that and in 1997, if construction has not begun on this road count KANU out of Meru District.

An hon. Member: Reply! Respond!

Mr. Mwamzandi: Mr. Speaker, Sir, that is not a question at all!

Mr. P.N. Ndwigwa: On a point of order, Mr. Speaker, Sir. I think I need your guidance here because this Question is very relevant to most constituencies. How do we react to a Minister who tells this House that projects will be carried out when funds are available and yet we have Printed Estimates for the 1995/96 financial year? This is how people of Eastern Province have been treated by this Government. All the roads there---

Mr. Speaker: Order, hon. Ndwigwa! My advise to you as to how you can react is, that you either smile or frown. Let us move on to the next Question.

Question No. 241

GRADING OF MAKUYU ROADS

Mr. Gitau, on behalf of **Mr. R.K. Mungai** asked the Minister for Public Works and Housing:-

- (a) whether he is aware that the main Kakuzi/Ithanga Road, which traverses Mitumbiri, Kakuzi and Ithanga locations, is totally impassable during the rainy season and residents have to wade long distances for their medical and other personal requirement; and,
- (b) if the answer to "a" is in the affirmative, what steps the Ministry is taking to alleviate the situation.

The Assistant Minister for Public Works and Housing (Mr. Mwamzandi): Mr. Speaker, Sir, I beg to reply.

(a) A 20 kilometre section of the Kakuzi/Ithanga Road starting from Nyeri/Thika Road was gravelled in 1990/91 and is passable. The next nine kilometres towards Ithanga up to the beginning of Kakuzi farm (pineapple plantation) is impassable during the rainy season out of which two kilometres are the worst because of black cotton soil. The rest of the road (E532, E491, D424) was gravelled in 1993/94 up to Kakuzi. The section of the road in Mitumbiri is D416 and in good condition.

(b) The nine kilometre section will be improved by grading and installing of culverts in the current financial year (1995/96) before the short rains start in October with a view to alleviate the problem on the road.

Mr. Gitau: Mr. Speaker, Sir, arising from the answer by the Assistant Minister it looks like this Question has been answered by somebody who is living in London and is talking about Kenya. The 20 kilometre section which was gravelled in 1990/91 financial year is totally impassable. We have had very many rainy seasons there after and on the ground even a Land Rover cannot pass through this road. In view of the fact that the Assistant Minister insists that something will be done before October, we feel that these people have been rejected because this road should be gravelled every year and not after four or five years. Mr. Assistant Minister, please, take note that the answer you have is actually wrong.

Mr. Speaker: Order, Mr. Gitau! Are you really asking a question? Mr. Ndicho!

Mr. Ndicho: Thank you, very much, Mr. Speaker, Sir. The roads in Makuyu Constituency are in quite a pathetic situation. The Assistant Minister has said that the last time this road was gravelled was in 1990/91 financial year. Roads in Central Province are continuously becoming pathetic and in some areas like Makuyu, impassable. My request to the Assistant Minister and to the entire Government is to consider sending people in this particular area to see the state of these roads if they want to be considered for votes in 1997. My question is---

Mr. Speaker: Order! If any hon. Member wants to give a gratuity as advice to any side of the House, they are entitled to do so at an appropriate time but when it is Question Time, will you please put questions. We are taking too much time outside Standing Order No.37.

Mr. Ndicho: Could the Assistant Minister consider sending technical people from the Ministry to these areas to see for themselves the state of roads such as the Kakuzi/Ithanga Road and see that they are really impassable?

Mr. Mwamzandi: Mr. Speaker, Sir, I said that the road was tarmacked and ---

Hon. Members: No! No!

Mr. Mwamzandi: Mr. Speaker, Sir, I said that the road was gravelled---

Mr. Ndicho: Mr. Speaker, Sir, I have asked a specific question to the Assistant Minister. He is talking of tarmacked roads. There is no single tarmacked road in Makuyu. I asked the Assistant Minister to consider sending technical people to this particular road in Makuyu to see for themselves how bad it is. He does not need to give us anything else. Could he consider doing that?

An hon. Member: Yes or No?

Mr. Mwamzandi: Mr. Speaker, Sir, I was not talking of tarmacked roads but when the hon. Member stood up his black coat reminded me of tarmac. What I said is that we identified the bad areas and assured this House that by October this year, work is going to commence on that road to keep it motorable.

Mr. Gitau: Mr. Speaker, Sir, it now appears that the Assistant Minister is aware that the roads in Makuyu are impassable. The roads are in a very, very bad condition. Could he tell us when the Kakuzi people will get better roads? Can he tell us when these roads will be gravelled so that they can continue enjoying the cake of the Independence they fought for?

Mr. Mwamzandi: Mr. Speaker, Sir, I am being asked the same question that I have answered, but I do not mind repeating my answer. I have said that we are going to start work on that road in this financial year, before October.

An hon. Member: Even now it is before October!

Mr. Mwamzandi: Before October work will have been begun.

Mr. Nthenge: Mr. Speaker, Sir, for how long will this work take so that the road in Question is made passable?

Mr. Mwamzandi: It depends on weather conditions of that area.

Mr. Ruhui: Mr. Speaker, Sir, I wish to ask the Assistant Minister whether he knows that this road traverses through a very important location agriculturally and that farms in this area have got a lot of heavy investments from Kakuzi Company and other companies. How soon does he think he can start tarmacking these roads because they are vital to the agricultural sector of this country?

Mr. Mwamzandi: Mr. Speaker, Sir, I am not in a position to say how soon this will be done because until we get funds, then we cannot tarmac that road. However, the hon Member has said that these roads do pass through very important areas but for his information, all roads in this country pass through very important areas too!

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

Mr. Speaker: Order! We do not have time for more questions. We will move to the next Question.

Question No. 244

PRESENTATION OF OPPOSITION MEMORANDUM

Mr. Shikuku asked the Attorney-General why he, being the custodian of the laws of this land, refused to receive a memorandum by 52 Opposition Members of Parliament which was to be presented by the Leader of the Opposition and two other Members of Parliament on behalf of the other Opposition Members.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to reply.

The Attorney-General did not refuse to receive a memorandum by actually 49, not 52, Opposition Members, as alleged in the Question. The facts are that on the afternoon, not of 28th February as typed on the answer, but 22nd February 1995, while the Attorney-General was engaged with other persons, he was informed of the presence of the hon. Members of Parliament wishing to see him. The Attorney-General informed his officers that he would see them after this engagement but before the next scheduled appointment. Three Opposition leaders, hon. Michael Kijana Wamalwa, hon. Mwai Kibaki and hon. Joseph Martin Shikuku were then ushered to the waiting room on the Fourth Floor while the rest remained on Ground Floor.

As the three senior and respectable Members were waiting patiently, and I would like to commend them for that, the Members who had been left on the Ground Floor began shouting, chanting, singing and---

Hon. Members: Shame! Shame!

Mr. Speaker: Order! What do you want spectators or strangers in this House to conclude from you?

The Attorney-General (Mr. Wako): In fact, Mr. Speaker, Sir, they were doing exactly what they are doing right now!

Mr. Speaker, Sir, this caused fear and alarm to the staff and the security personnel were left with no alternative but to act in accordance with their security training. By the time I was ready to receive them, the Members had left but left behind the petition.

Mr. Speaker, Sir, the Attorney-General's Office has been, is and will continue to be open to all and, in particular, to all Members of Parliament. This incident could not have happened if the hon. Members of Parliament had, at least, informed or even better made an appointment to see me. Then I would have been ready to receive them immediately they arrived at my Office. I had been with some hon. Members of Parliament that very morning and, in fact, up to some minutes past two o'clock here in Parliament Buildings where I was attending the Public Investments Committee. But they did not tell me that they wanted to see me in the Office only a few minutes later.

Mr. Kibaki: Mr. Speaker, Sir, the Attorney-General should behave like Attorney-General. I was present. It is despicable to say that we were seated silently in the waiting room and we began to shout. There was no one to shout.

The Assistant Minister for Public Works and Housing (Mr. Mwamzandi): (inaudible)

Mr. Kibaki: Mr. Speaker, Sir, the illiterate fellow from Kwale should "shut up"! We did not shout!

(Laughter)

Mr. Sankori: On a point of order, Mr. Speaker, Sir. Hon. Kibaki should also behave like a leader of an opposition party. Having been the Vice-President of this country, he should have known better how to approach the Attorney-General. Is it in order for him now to say that the Attorney-General should behave like Attorney-General when we know that he is!

Mr. Speaker: Order! I think, hon. Kibaki, certainly is out of order to refer to hon. Mwamzandi as "the illiterate Member from Kwale" and also asking him to shut up. Mr. Kibaki, you must withdraw those remarks and apologise to the House.

Mr. Kibaki: Mr. Speaker, Sir, I entirely agree with you and apologise to the hon. Member. But he is shouting at me when we are dealing with very serious matters.

Mr. Speaker, Sir, we did not shout when we were in the Attorney-General's Chambers. But the Attorney-General comes to the House today to say that we were shouting. We are hon. Members of Parliament and we had taken a written memorandum to hand over to him, and we were told by a member of staff that he would receive us, if we would walk upstairs, which we did. So, we walked upstairs, sat quietly in the sitting room---

Mr. Speaker: What is the question now?

Mr. Kibaki: Mr. Speaker, Sir, my question is: since the Attorney-General received the message that we were waiting for him, was it too much for us to expect that he would, at least, agree that he does not lock his door? He locked himself up in his office and told his assistant that we were not to approach that particular door. Why did he lock himself up inside?

Mr. Wako: Mr. Speaker, Sir, as I have said quite clearly in my statement, it is true that the three leaders of opposition were actually in the waiting room and sat quietly. But - this is my belief - the rest of the Members who were left on the Ground Floor then decided to shout and caused alarm. Therefore, the security personnel had to take appropriate action under the circumstances.

Mr. Shikuku: Mr. Speaker, Sir, while I agree with him that the three of us sat quietly in his waiting room, but he is talking of "Members below" shouting. Did he hear the shouting because we who were there did not hear any shouting at all? Does he think we are deaf? Who told him that there was shouting? Secondly, how did he receive this memorandum? He says that the memorandum was "left behind". How was that done?

Mr. Wako: Mr. Speaker, Sir, I received the memorandum from my Secretary.

Mr. Achieng'-Oneko: Mr. Speaker, Sir, there is a question that the Attorney-General must answer. He said that the Members who remained downstairs were shouting and yet he locked himself up in his office. Who told him that these Members were shouting? There must be evidence to that and the Attorney-General must produce it before the House.

Mr. Wako: Mr. Speaker, Sir, I was briefed by my Security Officers and under the circumstances they took the right action.

Dr. Kituyi: Arising from the "original reply" by the Attorney-General and his claim that police officers took action and hon. Members walked away, notwithstanding the contradiction in that, but particularly his statement that, if hon. Members had mentioned to him that they were coming, the time they arrived, he would have stopped whatever business he was doing and spoken to them, what made it difficult for him to stop whatever business he was doing and talk to them this time round?

Mr. Wako: Precisely, Mr. Speaker, Sir, had the Members of Parliament been courteous enough just to inform me. I was with them here a few minutes past two o'clock and a few minutes later they were coming to my office. Then I would not have received some people who had an appointment for that time and I would have definitely taken them in. As it is now, when they came in, there were some people in my office.

Mr. Shikuku: Mr. Speaker, Sir, I think you have saved the Attorney-General since you are cutting the question short. He said he received the memorandum from his Secretary. Did she open her door and get the memorandum or how did he get it? She also refused to open her door. She locked herself up and also the Attorney-General locked himself and, as a result, we had to "push" the memorandum underneath the door? Is that not true?

(Applause)

Mr. Wako: Mr. Speaker, Sir, it is unfortunate that this had to happen, but really the lesson from all this is that we must respect each other. If you want to come to my office, what is the problem in at least informing me that you are coming and then I will be ready for you? The fundamental point here is that a memorandum was duly received by the Attorney-General.

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

Mr. Speaker: Order! This one Question will not take us to eternity. We will go to Mr. Michuki's Question for the second time now.

Question No.234

GRADING OF MURANG'A ROADS

Mr. Speaker: Mr. Michuki is still not here? The Question will be dropped.

(Question dropped)

POINT OF ORDER

SECURITY FOR MARAKWET PEOPLE

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. Being conscious of the fact that all hon. Members here are charged with the duty of looking after the welfare of the whole nation, on Saturday I went to the Kerio Valley and toured the whole area up to Tot. What I saw was beyond description. The people of that area are in great need for security. I was wondering whether the Minister in charge of internal security is here so that he makes a statement. The people there are being raided and their cattle and goats are being taken by the Pokot in Baringo East. When I was there the people had to leave the valley at about 3.00 pm and go up the hill lest they are attacked by people who are armed with rifles, machine guns and AK-47, and yet these people have nothing with which to defend themselves. I found even boy kids of five years, along with grown up men, being armed with bows and arrows. I would like to know from the Minister, if he could make a statement to this House, as to why he is not providing security for these people in Elgeyo/Marakwet, who have no roads, water or anything else. These people are living in a different backward area of this Republic. Could he tell this House whether he has got enough security for the people of Marakwet?

Mr. Speaker: Mr. Sunkuli, are you prepared to respond to hon. Shikuku now?

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Speaker, Sir, I am not making a statement now. However, I want to say that hon. Shikuku should raise an appropriate Question by Private Notice, so that we are able to respond to this matter. I want to say that, in fact, the matter has been raised by an hon. Member who does not reside in that particular area. We would not like to address a political problem, but a security one. If hon. Shikuku believes there is a problem there, let him raise a Question on it.

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

Mr. Speaker: Order! Order! We will not turn that point of order into a debate. The Minister was being asked whether he would make a statement. Since apparently he is not in a position to do so now, we will wait until that time when he will be ready to give it. If, indeed, he does not give it, then we will know what happens next.

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

Mr. Speaker: Order! I do not want anything to do with this issue right now. We will have to wait until the response comes. Yes, Mr. Nyachae.

PERSONAL STATEMENT

MISREPORTING BY THE PRESS

The Minister for Agriculture, Livestock Development and Marketing (Mr. Nyachae): On a point of order, Mr. Speaker, Sir. In today's *East African Standard* it is stated in the front page "Nyachae in NSSF Deal". I have gone through the HANSARD of yesterday's proceedings, but have not come across my name having been mentioned in this House. It is further stated in the same newspaper that hon. Icharia alleged in this House that Ms Sansora Investment Ltd. had sold to the NSSF a plot in Kilifi area for Kshs225 million. Going through the papers which were being floated yesterday in this House, I find that the allegations are referring to plot No. LR/North Mainland/III/1089 in Kijipwa mainland North in Kilifi District.

The malicious allegations made by the *East African Standard* are purely evil-minded and untruths in all aspects. This is because, firstly, Ms Sansora Investments Ltd. has never sold any plot or land to NSSF nor has Nyachae, as an individual, sold anything to the NSSF. The newspaper is also telling all readers untruth in mentioning my name because I was not named in this House. In this connection, I have already issued instructions to my lawyers to take appropriate action against the *East African Standard* because of their malicious allegations against me and my company under the pretence that what they have written was said in this House.

I would also like to inform this House that plot No. LR/North Mainland/III/1089 mentioned by hon. Icharia was acquired by Ms Sansora Investments Ltd in 1992 for the purpose of developing a hotel. Later on the

company changed its investment policy and decided to sell the plot in 1991. The plot was offered for sale through an estate agent, Ms Yusuf Datoo Associates. We received three offers one through each of the following: Harrit Seth Advocates, Fairlane Property Agents and Sachndeva Co. Advocates. The best offer was for Kshs13 million from Sea View Investment Ltd and was received through Ms Sachndeva & Co. All formalities and payments for this land were completed in May, 1992. The land was then duly transferred to Ms Sea View Investment Ltd. and Ms Sansora Investments Ltd. ceased to have any interest in the land immediately the sale was completed.

It is, therefore, evil and malicious for any hon. Member to come to this House and try to float papers which have false and malicious allegations against Sansora Investments Ltd, when the documents clearly show that when plot LR/North Mainland/III/1089 was sold to the NSSF it had long ceased to belong to Ms Sansora Investments Ltd. Because of the evil intentioned reporting of the *East African Standard* newspaper and the malicious remarks of hon. Kamau Icharia, I have found it necessary to table the sale agreement of this land between Sansora Investments Limited and Sea View

Investments Limited, together with the relevant correspondence documents between the lawyers of the two companies to show that the land ceased to be owned by Sansora Investments in May, 1992. Hon. Kamau Icharia, who is well known for his politics of hate and tribalism should have, at least, tried to cover his malice by outlining the factual position as shown in the documents he was floating in this House for the sake of his dignity as a Member of this House.

Mr. Speaker, Sir, I am aware that the *East African Standard* newspaper has a malicious war against me since I took them to court four years ago, when I was awarded damages of Kshs200,000 against them. They have a revenge mission, but for the sake of genuine readers, they must stop thriving on untruths and witch-hunting. These days, they are feeding Kenyans with some rubbish other than genuine news. This is the latest in a series of attempts by people who, for whatever reason, perceive me as their political enemy and who wish to drag me into the mud of public corruption. My public record and all my business dealings have been above board and will withstand any scrutiny.

Thank you, Mr. Speaker, Sir. The documents are here.

(Hon. Nyachae laid the documents on the Table)

Mr. Speaker: Next Order!

BILLS

First Reading

THE FINANCE BILL

*(Order for First Reading read
Read the First Time
Ordered to be read the Second Time
today by leave of the House)*

Mr. Speaker: Next Order!

Second Reading

THE FINANCE BILL

(By leave of the House)

*(Dr. Kituyi and three other Members
stood up in their places)*

Mr. Speaker: Order! What is this? Why are you standing?

Dr. Kituyi: Mr. Speaker, Sir, we deny leave!

Mr. Speaker: Oh, you deny the leave? Very well! This can only be read with the leave of the House.

By definition, leave is denied if a Member should stand with the sympathy of two other Members. A Member stood with the sympathy of three, so leave is denied.

Next Order!

Second Reading

THE ARBITRATION BILL

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to move, for the Second Reading, The Arbitration Bill, 1995.

This is a very important Bill which has come to this House for debate. Matters relating to arbitration are matters which must be of concern to all those who are involved in the resolution of disputes, be they through the court or outside the court. Most cases, of course, would go to court for adjudication and determination of the disputes. But as you all know, the court processes can also take a very long time. In fact, the complaint these days is that there are too many delays in the hearing, particularly of civil cases, in courts. These delays are caused by numerous factors, amongst which are factors related to the civil law procedure itself. The other factors are, of course, the number of civil disputes that have increased considerably over the last 20 years or so, which is really commensurate with the economic and social development that has taken place in this country. Because of numerous commercial transactions, the number of disputes has also gone up. Also, because the people have become aware of their rights, the number of cases has gone up. Whereas in times of old, one would meet with an accident on the road by a motor vehicle and so on, and not file a case in court, but today, such a person is likely to file a civil case in court. So, the fact of the matter is that we have numerous cases in court.

Mr. Speaker, Sir, the other alternative method of resolving civil disputes is by way of arbitration. Arbitration is a method that we even know of in our traditional systems, where people knowledgeable with a subject matter in hand would sit, hear the dispute and adjudicate on it. It is also less involved as far as legal technicalities are concerned and, therefore, it is more expeditious than the courts system of resolving disputes. So, arbitration has increasingly become the method of resolving, particularly, commercial disputes rather than going through the courts. Therefore, the Arbitration Bill that has been brought to this House is an important one, and I am glad that since it was published, at least, it has been welcomed by the business community, not only in Kenya, but also by East Africa as a whole, as I was pleased to note in *The East African* edition of this week.

Mr. Speaker, Sir, the current Arbitration Act is based on the law that was existing in the United Kingdom in 1950. Whereas the arbitration laws in the United Kingdom have gone through very many changes so that the current law there is different from what it was 45 years ago in 1950, with us, we have remained stuck with the Arbitration Act the way it was, 45 years ago. The current Arbitration Act that we have today is really obsolete and out of date. We need, therefore, to replace it with this new Bill which provides for the most up to date provisions relating to arbitration. I said that the arbitration is now becoming the most popular method of resolving commercial disputes domestically. But even at the international level, arbitration has now become the method of resolving international and commercial disputes. We do not have, at the international level, a court which can resolve commercial disputes.

Mr. Speaker, Sir, the International Court of Justice which is based at the Hague does not, by the nature of its statutes, go into resolving commercial disputes. This court is mainly to resolve disputes between the member states of the United Nations Organisations that they may have, for example, on boundaries. If they have a boundary dispute, they are likely to take that dispute to the International Court of Justice and disputes of that nature. It is also there to give advisory services to the Secretary-General of the United Nations Organisation or any other organ of the United Nations Organisations, should they request the International Court of Justice what to do. So, the International Court of Justice, is not like, for example, like our courts which can determine between

the rights of the people which have criminal jurisdiction and which can also determine commercial disputes. At the international level, we do not have a court which can determine commercial disputes. Of course, various regions in the world today have now set up courts which can determine those disputes. Under the European Economic Community (EEC), there is such a European Court of Justice and under COMESA for this region, we are also exploring possibilities of establishing a court of justice for COMESA region to be hearing disputes that may arise in the region. Therefore, what has come about in the world today in order to hear these type of disputes are what we call International Commercial Centres for Arbitration. Such centres for arbitration that we have are---

Dr. Lwali-Oyondi: On a point of order, Mr. Speaker, Sir. The hon. Members, on the other side, are making what we call "*shindu shiti*"; in other words, they are making too much loud consultations. We cannot hear what the Attorney-General is saying. We are trying to hear as much as possible about this technical Bill.

Mr. Speaker: Order! Order! Proceed.

The Attorney-General (Mr. Wako): Thank you, very much, Mr. Speaker, Sir. The fact that the world has become smaller and we now have very many international commercial transactions, in fact, the trade in the world is based on these transactions, there has arisen a need to have International Commercial Arbitration Centres and we do have such centres. For example, in Paris, we have International Court of Arbitration under the International Chamber of Commerce; in London, we have the London Court of International Arbitration; in Zurich, we have such an arbitration centre, and also in New York they have one.

Sadly, in Third World countries, we do not have such International Commercial Arbitration Centres. I am touching on this point because the Bill that we are going to discuss today will be a Bill which will provide the necessary legal environment, which will facilitate the setting up of such a centre here in Nairobi. Consequently, in any international commercial dispute which may involve companies from Third World countries *etcetera*, you invariably have to hear those cases in the capitals that I have mentioned, which are all based in the developed world. If you are having a dispute with a company from the developed world and you are from the Third World country, then you are at once at a disadvantageous position, psychologically and so on, to go to that developed world and to have your dispute heard there. As these centres are in those developed world, you will find that the arbitrators will invariably also be arbitrators from the developed world. Therefore, this is a matter that has taxed very much the minds of those who are involved in this from the Third World countries. As far as Third World countries are concerned, we have an organisation called the African/Asian Legal Consultative Committee, which covers all the Third World countries in matters related to international law. One of their major campaigns has been that we must have International Commercial Arbitration Centres based in Third World countries.

Mr. Speaker, Sir, as we are talking today, such a centre has been established in Kuala Lumpur in Malaysia while another such centre has just been established in Cairo, Egypt. Countries in Latin America are also thinking of where they can establish such a centre. Africa, South of Sahara, does not have such international commercial centres. I am pleased to inform this august Assembly that at the meeting of the African/Asian Legal Consultative Committee which was held in Tokyo, Japan, in January, 1994, it was resolved that a feasibility study be made by the Committee to find a suitability of establishing Nairobi as one such centre for International Commercial Arbitration.

Mr. Speaker, Sir, lastly, this year in Qatar, it was agreed that Nairobi could be a host to such an international commercial arbitration centre. As I said earlier, if we have to establish this centre, then we must create the necessary legal environment structure, particularly at the international level in arbitration matters, which will be conducive to such a centre being established in Nairobi. Since commercial arbitration has now assumed great importance in the area of international commerce and trade, the United Nations itself has been at the centre of drafting what is normally called the modern law on arbitration. A modern law which hopefully will be adopted by those countries which are serious about commercial arbitration, and in particular, with regard to international commercial arbitration. Therefore, the Bill that is before you is a Bill which follows very closely the modern law on international commercial arbitration of the United Nations Commission on International Trade Law. It follows that one very closely. I may say that we are not the first country in Africa to do this. Already, countries such as Zimbabwe and others are a step ahead of us in this regard.

Mr. Speaker, Sir, in formulating this particular Bill, Members of Parliament may recall that at least one or two seminars have been held to consider this Bill; to consider at least the preliminary drafts of this Bill here in Nairobi. That seminar was attended by the legal fraternity in this country. It was also attended by representatives of the Kenya Section of the Chartered Institute of Arbitrators. It was attended by the various professional bodies who are members of the Association of Professional Societies in East Africa. Why did they participate? They participated because the arbitration process is not just a matter for lawyers alone. In fact, you will find that in a number of arbitrations, lawyers do play a role but also other professions play a role. Also other

experts in various fields and, in particular, on the matters being arbitrated upon do play a role. So, if it is, for example, a dispute concerning construction works of building or a road, then you will invariably find that the arbitrators would be architects or quantity surveyors and valuers. If it is a dispute relating to a commodity business, you will invariably find that the people to arbitrate will include people who are in that business because they know it very well. Therefore, it was very important that all these professionals including those from the Chamber of Commerce and Industry, the Kenya Association of Manufacturers--- All of them were called and did fully participate in the seminar which was held to consider the preliminary draft, the initial draft, of this Bill.

Mr. Speaker, Sir, at that meeting also, we had the benefit of the experts from the United Nations Commission on Trade Law in Vienna who are charged with the responsibility of developing these arbitration laws.

Also, we had renowned international arbitrators who also came and gave their input. So, the draft which is before this august Assembly is a draft that has really undergone many phases of drafting and we have now come up with what we think is really the ideal Arbitration Bill.

The effect of this Arbitration Bill when passed, will be to completely repeal the current Arbitration Act and replace it with this particular Bill. On page 175 of the Bill, one major distinction or innovation, as I said earlier, is the introduction, under our laws, of international commercial arbitration. Under the current law, there is really no distinction between what one calls domestic arbitration and what one may call international commercial arbitration. That is now introduced in this Bill. If you look at page 175, you will find that a definition of "domestic arbitration" and then at page 176, we have a definition of what would be "international commercial arbitration."

Clause 3(2) states that:-

"An arbitration is domestic if the arbitration agreement provides expressly or by implication for arbitration in Kenya and at the time when proceedings are commenced or arbitration is entered into:-

- (a) The parties are nationals of Kenya or are resident in Kenya;
- (b) In the case of a body corporate, the body is incorporated in or its central management and control is exercised in Kenya;
- (c) The place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected is Kenya."

So, for it to be a domestic dispute the parties are either nationals of Kenya, or if it is a body corporate, it was incorporated in Kenya or, if it is a business transaction, then a substantial portion of that business was to be performed in Kenya.

Under Clause 3 at page 176, it says:-

"An arbitration is international if the parties to the arbitration agreement have at the time of the conclusion of that agreement their places of business in different States---"

Now the concept of different States now comes in for it to become international. It continues to say:-

- (b) One of the places is situated outside the State in which the parties have their places of business."

So, for an arbitration to be international, it must in actual sense involve more than one State. It must involve companies from different States. The performance of the commercial agreement must take place in more than one State. In that situation, then the arbitration becomes international. Therefore, one of the major purposes of this Bill is to make a distinction between domestic arbitration and international arbitration. The spirit of the Bill is that domestic arbitration being national and being within the territorial sovereignty of the State, has to be subject to the courts of this country. They have to be more closely supervised by the courts of this land. But where the arbitration is international, then the courts can only have a minimal role in the international arbitration process. This makes sense because that international arbitration is involving parties who are not necessarily parties of Kenya and who of necessity must be parties who are outside the domestic jurisdiction of this country. That should also be an arbitration which involves a dispute whose commercial transaction, most of it, is likely to be performed outside the territorial borders of Kenya. Therefore, the spirit of the Bill itself is to create this distinction; between domestic and international arbitration; with domestic arbitration going on but being more under the supervision of our courts here in the normal way but with international commercial arbitrations being less interfered with by our court processes here.

Mr. Speaker, Sir, in Part II of this Bill, we are dealing really with the general provisions as to what an arbitration agreement is all about. What is an arbitration agreement? This Bill is trying to answer that in more specific terms. It says of course, that the arbitration agreement must be in writing. If it is in writing it can either be in a document form, signed by both parties, or it can be by way of exchange of letters or by way of exchange of

claims or statements of claim or statements of defence in a particular dispute which is going to be arbitrated upon.

Mr. Speaker, Sir, Clause 5 provides for the waiver of the right to object. It gives the parties the right to waive their right to object in any proceedings that may be brought before an arbitrator.

Clause 6 talks about stay of legal proceedings. This is an important clause. The effect of this clause is really that if there is an agreement, and should we come to a dispute, that dispute would be referred to arbitration, if there is such an agreement. If such a dispute does arise and nevertheless one of the parties decides to go to court in spite of that agreement, then if this matter is brought to the attention of the courts, that there is in existence an arbitration agreement between the parties, then the courts are obliged to stay the proceedings so that the arbitration process can continue. In fact, this is the same clause that we do have under our current law. It is the same clause that is there in all Arbitration Acts; that where parties to a commercial transaction have agreed beforehand in clear terms, that, should there be a dispute between them, that matter should be referred to arbitration. There is a procedure that one of the parties should not be seen to be going behind that agreement and file a case in court. So, this Clause provides that should that happen, there has to be a stay of the proceedings in the court to enable the arbitration process to continue. Of course, there are exceptions. What are these exceptions? The court will in all circumstances be able to proceed with the arbitration if it finds that the actual arbitration itself is null and void. In other words, although the Parties entered into that arbitration agreement, then that application agreement should not stop the continuation of the case in court because that agreement itself is null and void. So, if the court finds that the arbitration agreement is itself null and void, then it will be at liberty to proceed with the case.

Also, if the court finds that although there is an arbitration agreement between the two parties, but that arbitration agreement only refers to some disputes and not others, and that the dispute which is before the court is not the dispute which was covered by that arbitration agreement, then the court will be at liberty to continue with that arbitration. So, the exceptions are there.

Mr. Speaker, Sir, Clause 7 provides for interim measures by the court. It may very well be that before a party can evoke the arbitration agreement because there are procedures for invoking an arbitration agreement, one has to agree on the arbitrators and so on. When that process is going on to appoint arbitrators and set up an arbitration tribunal, something may happen, for example, maybe to a property which is under dispute. Then Clause 7 does allow that the party can go to court to get an interim order to preserve, in this particular example, that property that may be under dispute to preserve it pending the formalisation of the procedures or proceeding on with arbitration.

Clause 8 refers to a situation where if it is death of one party, what happens to the arbitration. Then obviously, those who have taken out letters of administration continue with it. These are really formal clauses which are there even in courts. If you are a party to a court case, and one of the party dies, then the court has to wait for the letters of administration to be taken out so that the administrator of the estate can take over the case. It is the same type of concept that we find in Clause 7.

Clause 9 deals with the technical communications and so on. I do not really want to bore the House by going into the details of the arbitration. I think this is a matter on which Members of Parliament can read for themselves and if they are in any difficulty about the interpretation, we are here to put our heads together to interpret those particular clauses.

Mr. Temporary Deputy Speaker, Sir, part 3 deals with composition and jurisdiction of the arbitration tribunal dealing with appointment of arbitrators and also grounds on which somebody can challenge the appointment of an arbitrator.

Maybe I should read Clause 13 here:-

"Where a person is approached in connection with his possible appointment as an arbitrator, he must disclose any circumstances likely to give rise to justifiable doubts as to his impartiality and independence. It is important that the arbitrators who are really like judges, magistrates, adjudicating on the rights between two people in relation to a commercial transaction particularly, that just like the judiciary, they should be independent and impartial. Therefore, if there is anything that a person who is to be appointed has in mind which will prejudice his impartiality or objectivity or which during the short prejudice is impartiality or objectivity, it can lead others to think that he may be impartial and that he may be subjective in a matter, then he must disclose those circumstances".

Mr. Speaker, Sir, this is even a more important provision in an arbitration process because, as I said earlier, apart from lawyers, the other arbitrators are likely to be apart from lawyers, persons who are well conversant and who are experts in the deal being arbitrated upon. Therefore, it is highly likely that because it is in that field, because he is a trader in that field, because he is a professional in that field which is being arbitrated

upon, he may, in the course of his business or profession have a grudge or feelings or have had a different relationship with the people who are coming before him for arbitration, hence the importance that the arbitrator-to-be must fully disclose all those facts which might indeed prove his independence and partiality of, if not, in fact, then a thing which might be concluded and observed that he is not likely to be impartial and he is not likely to be objective. In case such an arbitrator says that he cannot be appointed and one party appoints him, then the other party can object to the appointment.

Clause 14 deals with the procedures to challenge the appointment of an arbitrator. Clause 15 provides for the situation where an arbitrator is unable to perform the functions of his office or for any other reason fails to act without undue delay or he withdraws from his office or the parties agree to the termination of his mandate. Then Clause 15 deals with what happens in those circumstances.

Mr. Speaker, Sir, you will see, as this is very, very important, that this particular Clause can apply where an arbitrator fails to proceed with the arbitration without undue delay. That is very, very important because part of the complaints that one gets particularly when dealing with the court system, is to be inaudinate and undue delays in hearing of civil cases.

Arbitration is a method of hearing civil cases in an expeditious way with a minimum of delay. If the arbitration process takes as long as it will take to have the case heard in court, then the arbitration process becomes meaningless and it is not good to have the arbitration process. The arbitration process can only be a good tool if it can enable a dispute to be heard with a minimum delay and a minimum of costs so that parties know where they start, and hence this position, that where an arbitrator is not proceeding with the arbitration diligently, then there are provisions in which he can be removed so that another arbitrator can be appointed so that the arbitration can be proceeded with. So, there are proceedings for removing him or substituting him and so on. Clause 19 is very important. Although, of course, the objective is to expeditiously dispose of civil disputes which are before the court, that objective must not be achieved in a manner which compromises the presentation of each party to present its case to court.

Mr. Speaker, Sir, Clause 14, therefore, preserves a very important principle. The principle is this, that parties shall be treated with equality and each party shall be given full opportunity of presenting its case. Subject to that, because of the flexibility of the arbitration procedure, the parties themselves can, in fact, determine the rules of procedure and that is contained in Clauses 20 and so on. For example, the parties themselves may say, "we are all agreed on the facts", and they put in their agreed facts. They can further say, "We have all agreed on the bundle of documents that can go in, therefore, all we want is for this court to read the facts which have been agreed, to read the bundle and then come to some determination". The parties may even agree, for example, that as far as witnesses are concerned, rather than leading evidence-in-chief, that person must put his statement in writing and only be subjected to close examination by the other parties to reduce the time of giving evidence on the original sentiments. If the parties agree, the arbitrator can proceed on that basis. All this is aimed at (a) the parties themselves being able to agree even on the procedure which can expedite the proceedings and (b) the objective of the arbitration being an added resolution of that dispute.

QUORUM

Dr. Lwali-Oyondi: On a point of order, Mr. Speaker, Sir. This is an important Bill and I can see that most of the legislators are not in. We are less than the mandatory number of 30 hon. Members.

Mr. Speaker: Well, I think Dr. Lwali-Oyondi is right. We have 20 hon. Members. Ring the Division Bell. There is no quorum.

(The Division Bell was rung)

Mr. Speaker: Order! Order! Proceed, we now have a quorum.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I think I was talking on the conduct of the proceedings. Clause 21 provides on the place for arbitration. Of course, unlike the court system where the courts are in fixed places say, for example, in Nairobi, Mombasa, Bungoma, and if a dispute falls within the jurisdiction of that court, one has to go to that court and where it is situated, this Clause provides for a place of arbitration. Clause 21 states that parties are completely free to agree on the place of arbitration. If they have gone to Nairobi within Nairobi, they may agree to arbitrate in somebody's house or anywhere. Third parties are completely at liberty to agree on the place of arbitration.

Parties are also free to agree upon the language or languages to be used in the arbitration proceedings unlike the courts where English has to be used and if any other language is used it has to be translated into

English. The parties themselves can say in what language they prefer the arbitration to be done, for example, it can be done in Bukusu dialect. Such a dispute can arise both domestically and internationally. Clause 24 really deals with statement of claim, statement of defence, hearings and written representations.

Clause 26 deals with a situation which arises if there is a default of any party at any stage of the proceedings.

Clause 28 deals with assistance of the court. It states:-

"The arbitral tribunal or a party with the approval of the arbitral tribunal, may request from the High Court assistance in taking evidence, and High Court may execute the request within its competence and according to the rules of taking evidence."

Mr. Speaker, Sir, part Five deals with arbitral award and termination of arbitral proceedings.

Clause 30 deals with decision-making by a panel of arbitrators, settlements, form and content of the arbitral award and other factors like that. I think they are more or less straight-forward and if any hon. Member has any doubts as to what they may mean, then we are here to see how we can assist. At least, when I will be replying at the end of the debate on this Bill, I will touch on any area that Members of Parliament may wish to get clarification on.

Part Six deals with recourse to the High Court against arbitral award. I will read it:-

"35. (1) Recourse to the High Court against an arbitral award may be made only by an application of setting aside the award under subsections (2) and (3)."

An arbitral award may be set aside by the High Court on the following grounds:-

"That, a party to the arbitration agreement was under some form of incapacity, maybe a minor at the time he entered into that arbitration agreement with an adult. Therefore, he was not able to decide for himself competently the issues that affect him. Or he can show that although this person entered into an arbitration agreement, at the time he entered into that agreement, he was suffering from mental incapacity. If that can be shown, the arbitral award can be set aside".

The other ground on which the arbitration may be set aside is that if the arbitration agreement is not valid under the law to which the parties have subjected it, or fail in indication of the law of Kenya. If I may explain here a bit. Because we are covering both domestic and international commercial arbitration, it may very well be that if one party, say, comes from France and the other party from South Africa, these two parties may well have agreed that the law to be applied to these disputes or transactions is the law of the United Kingdom. Now, if an arbitrator is required, then he has to sit here in Kenya and apply the law of the United Kingdom. But if one party can then show that under the United Kingdom laws this arbitration agreement is invalid, then if that can be proved before the High Court here, then the High Court will have jurisdiction to set aside that arbitration award. Of course, where international agreement has been reached and it is "silent" as to which law will apply, then if the arbitration is being held in Kenya, then it is presumed that the law to be applied to that transaction will be the law of Kenya. So, Clause 35 deals with only those circumstances under which an arbitration award can be set aside.

Part VII deals with recognition and enforcement of awards and in the enforcement of any arbitral awards, of course, the court system then comes into play to help in the enforcement of that award. When we say that in international commercial agreements the courts should have a minimal say in them, we are really referring to the way arbitration is conducted up to the time of the arbitration award. But once that award has been given, then the duty is upon the courts of any country, be it Kenya or any other country, to enforce that particular award in accordance with the laws of enforcement pertaining to that country.

Clause 37 deals with a situation where the courts may refuse to enforce an award. Again, they are specific and limited and straightforward. Under Part VII, we have the various miscellaneous agreements. Under Clause 39, we have issues relating to the questions of law arising from domestic arbitration. Basically, if it is a domestic arbitration and a question of law arises, the arbitrator may be an architect and he may want an authoritative interpretation of law from that aspect. Therefore, he is at liberty to refer to the courts the interpretation of law on that particular aspect.

Mr. Speaker, Sir, the rest of the Bill is very clear and straightforward. Just to sum up, this is a Bill that replaces an Act which is already obsolete and which does not take into account the current trend in commerce and trade, both domestically and internationally. It is an Act which does not make distinction between domestic arbitration and international arbitration. This Bill is there to make that distinction. It is also making the distinction to provide a forum in which both domestic and international arbitrations can best be handled in Kenya.

I do hope that when Parliament passes this Bill, then it will be possible, since the legal environment will be there, to proceed to the next stage of seeing how Nairobi can become an international commercial arbitration centre. If we do succeed in that, then we would become one of the very first capitals in the Third World countries

to have such a centre.

As I indicated earlier, already the Asian/African Legal Consultative Committee is supportive of Nairobi. I know that the International Chamber of Commerce in Paris is also quite supportive. It was only in December last year that I myself launched an arbitration conference mooted by the International Bar Association on arbitration matters here in Nairobi at which eminent Judges and everybody came to discuss this issue. They were very pleased that Nairobi had what it takes to be a centre for international commercial arbitration.

In passing this Bill, I would very much hope that Advocates and people in the private sector who are involved in commercial disputes should try to make full use of the arbitration process in view of the congestion that we have in our courts today. Today, our courts are now hearing cases that were filed in 1989/90. There is a big backlog of cases waiting and if the business community can now say that let us utilise the arbitration process, then you will find that a number of those cases pending in courts - the disputes - will quickly be resolved in a manner where justice is seen to be done. That is talking domestically.

However, talking internationally, I hope that with the passage of this Bill, we should be able to attract a number of international commercial arbitrations taking place in this country. This will have a ripple effect to this country, not only in earning foreign exchange but also in giving work - big important work - which challenges the mind of a professional to our local professionals. I am satisfied, having been the Chairman of the Association of Professional Societies in East Africa, that we have in this country amongst professionals of all types, architects, quantity surveyors, valuers, lawyers, doctors and so on. These are people who are capable of not only being arbitrators in international commercial matters but also capable of arguing such cases before the arbitrators so appointed. Therefore, to have this centre here will - I am sure - uplift the standards of the professional community in Kenya.

With those few remarks, Mr. Speaker, Sir, I beg to move.

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Speaker, Sir, in seconding this very important Bill, I would like to reiterate the words of the Attorney-General that, indeed, this Bill is meant to totally get rid of the use of Cap 449, the Arbitration Act. There are two reasons why the Arbitration Act should be repealed. First, this Act, as it is now, is outdated. It can no longer deal with the issues of commercial law as they have developed since 1950. Indeed, the present Arbitration Act was based on the British Arbitration Act of 1950. But now so much has gone on in the world of commercial law that, in fact, it is required that arbitration law should respond to the current changes in this area. The second reason why this Arbitration Act is to be amended is that we intend to incorporate international law into the municipal law of Kenya. This Bill has been drafted by the International Commercial Arbitration Commission of the United Nations on international trade law. We intend to incorporate it into our municipal law so that our courts are able to put into effect arbitration awards touching on the particular commercial enterprises.

I would not like to go into the details of provisions of the Bill, but I would like to say that Kenya has become a centre of trade in this region. Hon. Members will remember the number of Bills that we have passed in this House to respond to the particular factor, that Kenya is pivotal in the development of this region. We have passed laws relating to the Preferential Trade Area (PTA) and COMESA is a reality within the Kenyan commercial world. The Capital Markets Authority is acquiring a very important role and the Nairobi Stock Exchange is now the premier stock exchange of Africa. In fact, this is an indication that our country is becoming a very important commercial centre.

(There was murmuring from the Opposition)

My colleagues on the other side of the House are allowed to entertain their different views because, to them, Kenya must appear to be a dark country until they are in power!

However, I would like to say that it is an undeniable fact that Kenya is a very important commercial centre. We would like our legislation to always be in touch with this particular factor. Unfortunately, in this area of arbitration, we are not necessarily number one. There is already an arbitration centre that has been established in Cairo. But the centre in Cairo is not quite attractive to the countries south of the Sahara. Therefore, if we pass this Bill we are going to put Nairobi in the centre of arbitration so that other countries can make use of the facilities that we are going to establish here in Nairobi, and then countries to the north of the Sahara can refer their cases to the current centre in Cairo.

Currently, all our arbitration cases are heard either in the United States or in Zurich or in the Netherlands. For instance, the case of the Dinners Club could have been heard very easily if this type of legislation existed here in Kenya. However, because this particular law does not exist here in Kenya, this dispute that arose in our country and elsewhere could not be heard here. We would like to introduce into our municipal

law more comprehensive law that deals with arbitration. This law will be able to deal with the rise in commercial law of new factors like bills of exchange, credit cards and the increasing use of paper money. All these things will be handled under the law of arbitration.

Mr. Speaker, Sir, the question of arbitration has become important because the courts can no longer deal with the amount of commercial civil cases that are referred to them all the time. Kenyan courts are, perhaps, the most crowded courts today anywhere in the world because of the rising cases of litigation. People are getting civilised and because of this, they would like to have their disputes referred to court rather than be determined in methods other than---

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. Is the hon. Sunkuli in order to insinuate that the more anglicised you become, the more civilised you are and thereby abuse the fact that the Maasai have always been civilised and that they are not becoming civilised now?

Mr. Speaker: Order! Civilisation has been with mankind for a long time. I think that is a question of argument, which also depends on the degree of civilisation. Keep the Maasai out of this!

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Speaker, Sir, before you said "keep the Maasai out of this", I would have told hon. Kituyi that even the "Kitosh" people have always been civilised.

I am trying to say that the more people start to understand that civil cases should be determined civilly and not through crude methods the more litigation increases. But litigation has become hampered by the fact that our courts cannot deal with cases expeditiously. The principle of "justice delayed is justice denied" can no longer operate. This is because we have very few magistrates who are unable to deal with the work presented before them. Therefore, commercial cases that actually require quick determination start to pend all the time. Arbitration is a very quick exercise. In the first place, it does not demand that your case should be heard by a professionally trained magistrate. It can be heard by an arbitrator on whom both parties have agreed. Again, the arbitrator is an expert in the field of arbitration, if that be the wish of the parties. Usually if the law of contract, for instance, is touching on architecture we would like architects to arbitrate. Or my friend, hon. Obwocha, can be invited to arbitrate in a case involving economics because he is an economist. The parties are free to determine the type of men they would like to arbitrate between them.

The current arbitrators in the country are persons like Messrs Lee Muthoga, Pheroze Nowrojee, hon. Wako, Kaplan & Stratton and Hamilton, Harrison and Mathews. These are the companies and individuals that currently deal with arbitration. But with the introduction of international law into our municipal law, we are widening the horizons and inviting as many experts as would like to operate in this area of arbitration. I hope that this will expedite determination of commercial cases. The biggest problem that we have in Kenya in this area of commercial law is that our lawyers are not actually trained in the current commercial law. The kind of commercial law one learns at the University of Nairobi is not in keeping with the changes that have happened. People at the University of Nairobi are still lectured on the tenets of commercial law that have now become outdated. Having been trained in the University of Nairobi I can say this with authority, that it is important for our lecturers to start updating their students about the changes in commercial law.

One area of commercial law that should be introduced at the University of Nairobi is the changes in the law of taxation, so that lawyers can cope with different issues which arise in respect of methods and the style of taxing Kenyans. These are the kind of things that our lawyers should be able to learn. Of course, our lawyers should also be a little bit more fair because, I know that in the area of insurance law, the only thing that our lawyers want to do is to quantify. They would like to know how much money you are going to be paid by the insurance firm and, therefore, the rise of ambulance chasing. Our lawyers have kept certain contacts within the police stations to be able to brief them on what accidents have occurred. They have kept people who watch over the patients in hospital to see who has come in so that they tell them: "We want to give you a lawyer". They then go and quantify what the damage is and take the lion's share of what is supposed to be paid to you. This narrow area that our lawyers have been limited to does not allow for the development of law. In fact, our lawyers will end up becoming very commercial-minded. A number of our lawyers in the country today are unable to become arbitrators. They cannot work as arbitrators because of the fact that they are already biased by the nature of things. I know quite a number of lawyers who meddle so much in business themselves that they cannot become arbitrators. You cannot become an arbitrator in a matter where you have an interest.

So, Mr. Speaker, Sir, I would like to say that the law that we intend to pass today will improve Nairobi as an international centre of trade. It will enable our lawyers to refer quite a number of matters that their clients bring to them to arbitration. It will also enable people not to take disputes far away from Nairobi. In fact, these matters will now be dealt with more expeditiously and the municipal law of Kenya touching on arbitration will be more comprehensive.

With those few words, I beg to second.

(Question proposed)

Dr. Kituyi: Thank you, Mr. Speaker, Sir, for giving me the chance to say very few words indeed on this Bill.

First, I wish to enjoy the rare occasion to congratulate the Attorney-General on a matter that he is bringing before the House. I do not think that it is accidental that I so congratulate him. It is very clear for those who have watched his legislative agenda over the past few years that this Attorney-General is fairly good when he is attempting to domesticate drafts of internationally available legislation that deals with matters that go beyond the municipal law of Kenya. We saw this with the Drugs Bill, we are seeing this with the Arbitration Bill, and we have also seen a bit of that with the Chemicals Control Bill. It is my hope, in my introductory remarks, that the external inspiration that has tailored the Bill that he presents, whether on arbitration or on drug control, but to be similar to other municipal legislation in other countries, will also inspire his imagination and pen when he is dealing with matters exclusively of urgent concern to the citizens of this country. This is a matter he knows that he has under-performed up to now, and he continues to under-perform.

Mr. Speaker, Sir, my modest remarks will be only partially touching on the substance that he has so far described as the content of the Bill, and that is where I start. In clauses No.6 and 7 of the Bill, there is provision that, if one of the parties in an arbitration tries to appeal to the High Court, one, there is a stay of the legal proceedings before the High Court to allow for the arbitration process to continue, the High Court is bound by the ruling of the arbitration tribunal. This is, in one light, as it should be. This adds some significance to the ruling of the arbitrator or arbitration tribunal. However, this also has some problems. We have seen that one of the more commonly used areas of attempts at arbitration in this country has been disputes involving land ownership and transfers, where panels of elders have been called upon to arbitrate and the Government has urged persons to take these matters to these panels for arbitration instead of going to courts. Indeed, it is my humble argument that if the culture of arbitration, compromise and consensus building is developed in this country, a lot of the disputes on such petty matters as boundaries over land, when land transfers are actually consummated or not, could cease burdening courts of this country and will become part of the more domestic problems of arbitration. But again, this is where you see a weakness in the provisions of this power of the arbitrators.

[Mr. Speaker left the Chair]

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

While it is useful to consider arbitration as fair, and that the notion that we have agreed on an arbitrator to show that that party is neutral, I think it is pretentious, if you look at African culture and the practice in the country, to assume that this place is so scientifically clear. Let us present a case where a young girl is competing with her elder brother over the inheritance of land that used to belong to their late father. In the culture of those people, disputes over the estate of the deceased are presided over by the oldest surviving brother of the late person. This girl cannot abuse culture by saying that she can accept the uncle to be the arbitrator. But then, we are victim to two cultural practices; one is a patriachal society, where the authority of the fathers gives the blessing to the arbitrator, but also, that authority, bound by the dominant norms of primogeniture that you give preference to elder sons in the inheritance of the family estate, you get into a situation where the agreed--

The Assistant Minister, Office of the President (Mr. Sunkuli): On a point of order, Mr. Speaker, Sir. I would like to listen to the eloquence of the Member for Kimilili, but is he in order to mislead the House that, in fact, this Bill touches on land issues when the land issues he is referring to are dealt with under the Magistrates Jurisdiction Act?

Dr. Kituyi: Mr. Temporary Deputy Speaker, Sir, I have set out premises which I wished hon. Sunkuli listened to, that the only point so far emphasised by the Attorney-General that is really pressing on domestic legislation in this country as to why an Arbitration Bill is needed is that there is a crash on the High Court and the Magistrate's Courts because of too many civil cases that are dealt with. I proceeded from that premise to say that if the culture of consensus building and arbitration was properly developed, some of the cases that are stifling in courts such as disputes over land, will be

clear examples of our municipal law where arbitration will be practised. Having said that, I proceeded to show clauses within the Bill as being discussed today which make it very problematic to put this legislation into practice on arbitration over land cases. That is much more consistent to my understanding with the spirit and the content of the Bill than a discussion about Kenyans becoming more civilised as was contained in the contribution of the Seconder of this Bill.

Mr. Temporary Deputy Speaker, Sir, having said that, I want to continue and say the following. The provisions of Clause 12, that where the parties are not agreed on who should arbitrate, the High Court will appoint the arbitrator or the tribunal and such appointments will be binding on the parties. In practical terms, it is necessary that such a solution be found where there is totally no agreement on who can be an arbitrator. But we live in a country where appointments of public officers have been less than noble. We live in one of the few countries, perhaps the only country where one can find a cereal miller being appointed a Minister for Marketing and a saw miller being appointed the Minister for Forests. We have evidence of practices where the potential of conflict between personal practice and official responsibilities has never shielded people from appointments to public offices. Having said that, you are in a situation where you cannot exclude the possibility that a person who is imposed upon the competing parties as an arbitrator is an interested party. This also is an anomaly.

I promised to make very modest remarks and I want to move now towards two crucial factors. The Mover and his Seconder, of course, in giving due emphasis to the reality that a lot of the focus of this Bill is arbitration in commercial disputes, and particularly in regional disputes, it can entail arbitration between a Kenyan registered company and a company registered in the neighbouring country, and even a premature celebration of the possibility that this country will become a centre of arbitration and is becoming an important centre. Even somebody dared say that this country has the most important stock exchange in Africa. Of course, this is an ill-advised statement.

Mr. Temporary Deputy Speaker, Sir, first of all, we have to be genuine in one regard. The benefit to accrue to this country, even if Nairobi was to become a centre for arbitration in this region, are extremely modest; very modest indeed. They have nothing to celebrate upon. It is useful to have legislation consistent with growing mercantile legislation around the world. That in itself is good enough. But we should not celebrate for the fact that Nairobi might become an import arbitration centre in this region. This is very minor, indeed, in its consequences to this country's economy. But even be that as it may, nobody should delude Kenyans with the tradition of propaganda, such that we were very important, we were doing very well and we were a shining beacon in this neighbourhood. The truth is very different. The truth is that this country started off with a major advantage and it is being led back to the dogs. The truth is that this is the slowest growing economy in the region, and it is the country with the least defined public purpose of a collective sense of what we will do as we approach the next century.

We can celebrate our past that we used to be a fairly relatively progressive country. But if you look at what we are doing to ourselves, even our own inability to define, or to be led by an Attorney-General to define, how to get out of this morose of the absence of a constitutional reform agenda, you will find this is enough evidence why we cannot celebrate as we come to the end of this century. The next millennium is most uncertain for a country which is obsessed with congratulating itself for achievements of our founding fathers, has sacrificed all advantages and is now seeing formerly ravaged economies, such as that of Uganda, outstripping it in economic growth, confidence-building and in even sitting together its people and building consensus about where they are going. If Ugandans can have the capacity to sit down in spite of their political divide and say: "Let us now initiate constitutional reforms in our country", while Kenyans can forever brag about their advantage and being more advanced when they lack the capacity for consensus building, this is the last thing that anybody wishes to hear.

The Assistant Minister, Office of the President (Mr. Sunkuli): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is Dr. Kituyi in order to compare a country that has suffered civil war and has, indeed, got rid of its own basis and is now reconstructing itself, with a country that has been stable for 30 years and does not need any constitutional reform?

Dr. Kituyi: Thank you, Mr. Temporary Deputy Speaker, Sir. Notwithstanding the fact that, that is not a point of order, I would wish to correct the delusions that are implied in that point of argument.

It is true that Kenya has not had a military dictatorship, more by luck than by the design of Kenyans. It is even true that Uganda has had a collapse of law and order. Uganda has a gross domestic product (GDP) growth of 10 per cent. Last year, the Kenyan economy created 28,000 formal employment opportunities. The Ugandan economy manufactured 60,000 new jobs in the formal sector, which was double the Kenyan job opportunities. Whatever one may want to say about Uganda, it is also true that Kenya competes with Uganda before donors for a certain finite resources. The fact that the donor community is expressing more solidarity and awareness of the performance and the potential Uganda has more than Kenya, is reason for us to be ashamed of ourselves. It is not

because we are richer than Uganda but because, in spite of the continued stability, leading a very meek population which does not rise even when it is being messed up by corrupt leadership, we have continued to lag behind.

Mr. Shikuku: On a point of information, Mr. Temporary Deputy Speaker, Sir. The hon. Member has belaboured the issue of us being ashamed. He has asked us to be ashamed, but we only have a people who have no shame. What is the hon. Member asking for? They have no shame!

Dr. Kituyi: Mr. Speaker, Sir, I concur with hon. Shikuku's sentiments, that some of the things that are done in this country manifest a leadership that is totally graduated beyond being shocked by crime. It is a leadership that does not see anything wrong in stealing from its own public.

Mr. Temporary Deputy Speaker, Sir, I can give an example which I will even substantiate. In November, 1994, the Financial Secretary in the Treasury wrote a letter to the Commissioner of Customs asking him to allow the consignment of 25,000 tonnes of white maize, 25,000 tonnes of wheat and 50,000 tonnes of sugar belonging to M/s Jushan Enterprises Limited, which belongs to Messrs Bawazir and Sajjad. He ordered that this consignment be allowed into the country without duty being paid for it. The letter stated that the Minister for Finance had promised that he would publish a Gazette notice waiving that duty because the consignment was coming in as famine relief. Then the same Financial Secretary wrote to M/s Jushan Enterprises and asked it to write a letter saying that some people were going to buy the consignment of sugar and cereals for distribution among the victims of famine, which was necessary to regularise the illegal waiver of duty. To date, there has not been any publication in the *Kenya Gazette* of a waiver of duty on the grain and the sugar that was imported by M/s Jushan Enterprises Limited. That means that Messrs Sajjad and Bawazir imported cereals and sugar into this country illegally and without paying duty. The sugar and the grain were clearly known to have been brought into the country to be sold. Nobody has asked them why this illegality has taken place. Indeed, this is evidence of what hon. Shikuku talked about. They have no shame!

The Temporary Deputy Speaker (Mr. Ndotto): Order! Has that got anything to do with the Bill we are debating? Dr. Kituyi, I would like you to confine yourself to the Bill so that we do not waste time talking about other things. You will have time to say what you are saying on another occasion.

Dr. Kituyi: Thank you, Mr. Temporary Deputy Speaker, Sir. It is my considered opinion that if we are talking about a Bill on arbitration, we are talking about confidence-building in consensus-building. The arbitration is founded on trust.

Mr. Temporary Deputy Speaker, Sir, I am saying that the problem of consensus building between a people who abhor corruption and a people who wallow in corruption is a very difficult thing. I totally concur with the statement by hon. Shikuku that these people are shameless.

Mr. Shikuku: Say it again!

Dr. Kituyi: Having said that, I want to say that---

The Minister for Health (Mr. Angatia): On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member on the Floor is misleading the House. If you have consensus, you do not need arbitration. So, let us talk about arbitration but not consensus. So, if he is talking about arbitration, he should confine himself to that. He should not talk about consensus. It is very strenuous to bring in the issues of consensus, constitution, politics and corruption. He is just looking for an escape route to say dirty things that should not be said.

Dr. Kituyi: Mr. Temporary Deputy Speaker, Sir, I can appreciate hon. Angatia's problems of following a sustained form of logic where we are talking about the relationship between confidence building, consensus and arbitration. I still insist that there are certain minimal conditions of fairplay---

The Temporary Deputy Speaker (Mr. Ndotto): Order! Please, confine yourself to the Arbitration Bill. The letters written by the Financial Secretary, Treasury, to the Customs have nothing to do with this Bill.

Dr. Kituyi: Mr. Temporary Deputy Speaker, Sir, I thought that we had gotten away from that criminality which goes unpunished. I was now talking about the culture of compromise and arbitration mechanism in society. I just amplified an important point made by hon. Shikuku; that we are talking to stones.

Mr. Shikuku: They have no shame!

Dr. Kituyi: Mr. Temporary Deputy Speaker, Sir, it is my humble submission that, somehow, the confidence that is being eroded in the leaders from the led has to be arrested. The population of this country has to believe that the Government stands for fairplay before you can start talking about moving substantial matters of dispute from the court system to a mechanism of arbitration. That confidence building mechanism and return of a perception that the Government stands for fairplay can only come if Government looks itself in the face and sees how ugly it has become. It can only come if officialdom can be seen to shun corruption and to abhor theft.

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

The Minister for Information and Broadcasting (Mr. Makau): Thank you, Mr. Temporary Deputy

Speaker, Sir. This is another Bill which has been brought here for amendment so that our statute books are brought up to date with the developments in the modern world. This Bill is meant to bring an amendment to the Arbitration Act---

Dr. Kituyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Minister to mislead this House---

(Hon. Makau remained on his feet)

Hon. Members: Sit down hon. Makau!

(Hon. Makau resumed his seat)

Dr. Kituyi: Is it in order for hon. Makau to mislead this House by pretending that amending is the same as replacing?

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, it is difficult to deal with man-eaters!

Mr. Obwocha: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to allege that Dr. Kituyi is a man-eater?

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, when we were young, we were told that *Bagisu* or people from that area are cannibals and I assumed that Dr. Kituyi is one of them.

The Temporary Deputy Speaker (Mr. Ndotto): Order! Hon. Makau, you must withdraw that remark.

The Minister for Information and Broadcasting (Mr. Makau): That is what I was told when I was young but, if it does not happen any more, I withdraw and apologise to the hon. Member.

Mr. Wetangula: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for hon. Makau to make such a terrible allegation against a community that I belong to? A withdrawal is not enough; he has to apologise to us.

The Minister for Information and Broadcasting (Mr. Makau): Which community are you talking about?

Mr. Wetangula: Order! He referred to Dr. Kituyi as belonging to man-eating society. I come from Dr. Kituyi's community and that allegation touches on me.

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy [The Minister for Information and Broadcasting] Speaker, Sir, Dr. Kituyi talked a lot about Uganda and that is what I was referring to. I assumed that Dr. Kituyi comes from there.

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a question of procedure. You will recall that the two hon. Members faced each other on the Floor of this House, which is contrary to the Standing Orders of this House. Secondly, could the Chair remind the hon. Minister, and any other Member in this House, that once a Member says "On a point of order" under Standing Order No.68, the Member on the Floor must resume his seat as fast as possible?

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, this Bill is intended to repeal the current Arbitration Act. This is a very good trend because it is going to enable us to keep abreast with developments especially in the commercial world.

Mr. Temporary Deputy Speaker, Sir, I was extremely annoyed by what the previous speaker said. He kept on praising an area in which I believe he has a lot of interest and I am sure that is not good for this country.

An Hon. Member: But that is a friendly country!

The Minister for Information and Broadcasting (Mr. Makau): The Standing Orders are very clear on that issue. Where is the February Eighteenth Resistance Army based?

Dr. Lwali-Oyondi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member who is a Cabinet Minister in order to declare Uganda, which is a friendly country, hostile to Kenya?

The Minister for Information and Broadcasting (Mr. Makau): You do not have to go far to get the truth. Recently, we were demonstrating against "Brigadier" Odongo and FERA.

The Temporary Deputy Speaker (Mr. Ndotto): Order! I do not think that was a serious point of order. I request hon. Members to be more serious. Hon. Makau is expressing his own opinion. You may like it;

you may not like it. He has his own opinion. He may be right; he may be wrong, but that is his own opinion.

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, it is now very clear as to where the hearts of the Opposition Members are.

The Temporary Deputy Speaker (Mr. Ndotto): Order! Hon. Makau, you had better stop addressing the Members of the Opposition. I think you are going to put yourself into problems very soon.

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, I know how to get out of problems.

As I was saying, this Bill aims at bringing arbitration in line with the current developments in the world. The Arbitration Act that we have adopted from the British Arbitration Act.

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

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

Mr. Mak'Onyango: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Dr. Kituyi to speak *Kibukusu* on the Floor of this House?

The Temporary Deputy Speaker (Mr. Wetangula): Order! Hon. Mak'Onyango, you are warned against trivialising the proceedings of this House. Carry on, Mr. Makau.

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, the importance of this Bill is that a lot of cases that have been pending for many years will now be dealt with faster.

What is more important, as far as this Bill is concerned, is the fact that the procedure of administration is brought out very clearly in this Bill. I speak about the international aspects because Kenya has its problems, especially in some cases that I would like to refer to, a case that I think hon. Martin Shikuku must be very much aware of because he is an old Member of this House. When we talk about liberalisation and investments, we should also be aware that a lot of international businessmen might come into this country with the aim of trying to pretend that they are investing, but at the same time, those investors, or those who pretend to be investors, are international crooks.

Mr. Temporary Deputy Speaker, Sir, I have a case that is a Ken Ren scandal, that is known by all Kenyans in this country when Kenyans were coned of a lot of millions of shillings. This case has been going on through international arbitration. Before the Attorney-General left, I had asked him all the years, even before coming to this Parliament about this issue. I think hon. Shikuku could be the only person that was in this Parliament by those days. This case of Ken Ren has been going on. The international arbitration that has taken place, I am told by the Attorney-General that they are about to finish the case but the area that I was interested in is that as we get into liberalisation and get into foreign investment and the opening up of people investing in various countries, we are likely to get into a lot of dispute that will call for international arbitration. Those that will come from other countries and invest in this country, chances are that there will be cases that will need international arbitration.

Mr. Temporary Deputy Speaker, Sir, we are told in the Arbitration Bill that the modernisation or getting ourselves abreast with the current development, as far as arbitration is concerned, we are told that this Arbitration Bill borrows a lot from the model law of international commercial arbitration of the United Nations Commission on International Trade Law. This is why I am saying that this Bill is extremely very important.

Mr. Temporary Deputy Speaker, Sir, when I speak about investments - I am happy that the members of the Press are here -when it comes to reporting of issues especially investments because I see this as a related field, I would like to appeal to the members of the Fourth Estate, the Press, to be responsible. I am appealing to both local and international members of the Press that we have had reporting whereby the source that is taken by the people reporting has been found not to be reliable. Recently, and this is something that the members of the Press should take very seriously, we have had banner headlines whereby the members of the Press quote other magazines or newspapers in the foreign media and here I have in mind the *East African Standard*--

Prof. Mzee: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Minister in order to attack newspapers without any substantiation and address them directly? They have no ability to defend themselves.

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir,

when we come to the arbitration proceedings, the members of the Press both Local and International, will be reporting. That is why it is relevant, and I am appealing to the members of the Press to be professional. I am in charge of that Ministry that is responsible for the Press. So, I have a right to urge and appeal to them. I know they are doing a very good job, but currently they report without professionalism. Is that right?

An hon. Member: Are you the judge?

The Minister for Information and Broadcasting (Mr. Makau): I know the rights of expression on that one.

*(Messrs. Mak'Onyango and Dr. Lwali
Oyondi stood on points of order)*

The Temporary Deputy Speaker (Mr. Wetangula): Order! Order the two of you. You are out of order!

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, all the cases of arbitration, whether they are local or international, the Press will be reporting. **Dr. Kituyi:** On a point of information---

The Minister for Information and Broadcasting (Mr. Makau): I do not want information from a man who speaks more about Uganda than his country. You are not a patriot. You should leave this country and go elsewhere.

(Laughter)

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

The Temporary Deputy Speaker (Mr. Wetangula): Order! Can I hear the point of order? Order, hon. Maundu!

Dr. Kituyi: Mr. Temporary Deputy Speaker, Sir, there are certain leverages you can allow to bad manners.

Mr. Temporary Deputy Speaker (Mr. Wetangula): What is your point of order?

Dr. Kituyi: Is hon. Makau in order to continue after, first, saying that I am a man-eater and not apologising, then this time to question my patriotism just because I am more knowledgeable about what goes on in friendly countries than he is?

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, I am aware that, he is more knowledgeable. If he happens to---

An hon. Member: Apologise!

The Minister for Information and Broadcasting (Mr. Makau): There is no question of apologising, if you happen to belong to two countries, then you are not a patriot because patriotism is to be proud of your country. You have been lecturing us on economic growth in Uganda and the question of employment in Uganda. What has that to do with what we are discussing here? You have taken no time to defend this country and you come and give lectures saying Uganda has this and that growth of employment. We know that country has come from shambles, and there is no base to start on. So, you cannot compare it to this country.

Dr. Kituyi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Regardless of the merit of the Minister's inebriation with my knowledge about Uganda, I wish that the Chair directs him to apologise for questioning my patriotism simply because I know some facts he does not know about a neighbouring country. I think he has to apologise over that one. He has also not apologised for saying that I am a man-eater. Could you oblige him to apologise while withdrawing?

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy [The Minister for Information and Broadcasting] Speaker, Sir, I do not even see what I am supposed to---

Mr. Shikuku: What about "women-eaters"!

The Temporary Deputy Speaker (Mr. Wetangula): Order! Order! Order! Hon. Shikuku, we have neither man-eaters, nor women-eaters in this Parliament. We only have Members of Parliament. All hon. Members are patriotic.

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, I assumed that hon. Shikuku was saying that with a light touch. So, I chose on this issue because we hope that in the course of reporting of these issues of arbitration, that the members of the Press in this country and the

members of the Press internationally will be able to give us reporting that he is accurate. That is all what I was asking the members of the Press to do because that is something that I believe is extremely very, very important.

Mr. Mak'Onyango: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to imply on the Floor of this House that journalists are not doing their jobs professionally when they are under him and he has failed to institute the right approach to make them function professionally?

The Minister for Information and Broadcasting (Mr. Makau): Mr. Temporary Deputy Speaker, Sir, my friend should realise that it is the responsibility of any interested party to keep on reminding members in the Fourth Estate of professional ethics. At the same time, I want to update him that I have made a statement saying that as far as the operations of the members of the Press in this country are concerned, that we are way ahead in the ongoing Task Force on the Press that I mentioned and recommended. So, there is no point of jumping the gun. What you are asking for is coming.

I had mentioned the Ken Ren issue and said that as we get more investments in this country, there is going to be need for arbitration, especially when we come to commercial issues. People in business find themselves with issues that need to be sorted out without wasting a lot of time. There have been cases between various companies whereby if they are having a dispute it takes many years to solve. That is why I am saying that this Bill should be supported and accepted by this House because it is going to sort out a lot of problems that businessmen face. If it takes about 10 or 20 years discussing an issue sometimes the issues at hand become useless to continue with because, if it is an arbitration that involves one commercial enterprise with another, the time factor might affect the dispute. If for example, there are various exchange rates when it comes to commercial arbitration, this has an effect. This is why I am saying that this Bill has come at the right time and it has come at a time that this country is encouraging investments.

I would conclude by appealing to the members of the Press to promote good image of this country in order for it to get investors.

Mr. Busolo: On a point of order, Mr. Temporary Deputy Speaker, Sir. I had hoped that---

The Temporary Deputy Speaker (Mr. Wetangula): The hon. Minister has left the Floor. Mr. Obwocha!

Mr. Obwocha: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity so that I can contribute to this Bill. This is an important Bill because it deals with a panel that is normally appointed to arbitrate on issues.

First, I would like to say that it has taken too long for the Attorney-General to repeal the current Act. As we know, there have been cases which require arbitration and yet the Act that has been in operation one would say was long expired. I would like specifically to touch on this issue of Ken Ren dispute arbitration. Now, the Controller and Auditor-General in his Report---

The Temporary Deputy Speaker (Mr. Wetangula): Mr. Obwocha! My understanding of a matter pending before arbitration is that it is not in any different from a matter pending before a court of law. If your comments are going to go deep into the matter pending, then I will rule you out of order.

Mr. Obwocha: Mr. Temporary Deputy Speaker, Sir, this is an issue that has been discussed in the Public Accounts Committee and that Report has been laid here. I am not discussing about the details of the way the arbitration has been done but I am saying---

The Temporary Deputy Speaker (Mr. Wetangula): Is the arbitration on or is it over?

Mr. Obwocha: Mr. Temporary Deputy Speaker, Sir, the arbitration is on. All I am saying is that the amount of money that has been spent by this country on this case is colossal. I am not going into the merits or demerits of the case.

The Temporary Deputy Speaker (Mr. Wetangula): You are perfectly in order to do so. Carry on.

Mr. Obwocha: So, Mr. Temporary Deputy Speaker, Sir, I would like to talk about the Ken Ren issue. We would like to know from the Attorney-General the effort the Government has made to save the people of this country this kind of money. The Report that was laid here, although it was overtaken by other matters like the Goldenberg issue, this is a matter that involved a lot of public funds. This is because the amount of money that has been used in this case involving public funds amounts to K£13,506,088.02.05. That is a colossal amount of Kshs 270 million. That is a lot of money. I do not know what we are chasing in this case because the people who were supposed to be investors, people who were supposed to bring some money into this country never came. We have ended up draining public funds in this case of arbitration. I would only say that if

this Bill was brought here before and had been enacted, we would not probably have gone to Europe to seek this kind of arbitration there and, of course, subsequently spend this kind of money in this exercise. It would be enough to leave that matter at that because we do not want to go into the merits and demerits of these investors who came into this country and squandered the money that belonged to the people of Kenya.

The other issue that I would like to take up within this Bill, although it is a good Bill, is on Clause 23. It states:-

"The parties are free to agree upon the language or languages to be used in the arbitral proceedings"

Now, Mr. Temporary Deputy Speaker, Sir, if they agree to do the proceedings in, say, Kalenjin or Kikamba, they would proceed to do that. Further, if they agree to do that in that language, what provision is there in this Bill as far as Clause 37 is concerned where the dispute is referred to the High Court and where the High Court has to set aside any matter that has been raised during these proceedings? I would have expected that the Bill, if indeed they want these proceedings to be in any language whether in Pokomo, Kimaasai or Kisii, would tell us what provision there is of translation in relation to the High Court. As we know, in some of the courts, the court clerks, although I am not imputing any improper motives against them, can mislead a judge.

Therefore, we would have expected that the Attorney-General, in drafting this Bill, would have considered ways of translating these proceedings into a language that the High Court will interpret. Unfortunately, he is not here at the moment. So, I do not know who is taking a brief for him. That is a very important area to consider.

Now, while we welcome this Bill, Sir, that it is good and it will go a long way to reduce the backlog of cases in courts, it is not a surprise that in our courts there are thousands and thousands of civil cases pending because we do not have enough personnel. In other words, we do not have enough judges and magistrates to take over these cases. In fact, in other areas, particularly in criminal law, there are so many suspects in remands. We had a chance to visit the Nairobi Remand Prison to see for ourselves who is there. That prison is terrible because the suspects are sleeping on the corridors.

The Assistant Minister for Local Government (Dr. Wameyo): Waache walale hapo!

Mr. Obwocha: I can assure, Dr. Wameyo, that he will also end up there one day!

They sleep on the corridors without any uniforms. When we interviewed some of them, such petty cases like, they were found loitering in Nairobi and that they did not have ID cards, have been in that remand prison for over two years. However, when they go for mention of their cases, magistrates are not ready to take up the cases simply because the police sometimes have not even finalised their investigations, or the files are not there. So, they are remanded day in day out, and they have been there for one or two years. This is very sad and we hope that similar cases involving civil matters will also be speeded up. Some of the cases have taken so long that sometimes they have been overtaken by events. For example, if there was a Mr. X who had a claim against Mr. So-and-So, and that case takes five years before it is arbitrated upon, now the circumstances may have changed greatly. The kind of environment may have changed. Even the case itself might have changed and it might be very difficult for the parties to agree, if there was no arbitration process agreed upon earlier.

Mr. Temporary Deputy Speaker, Sir, in support of this Bill, I think we need to encourage and further establish or enlarge our Faculty of Law in our University. Those of us who had a chance to read commerce at university were taught what is called Commercial Law, but it was very scant. The material that we covered was not enough to be an expert on this line. I believe that with all those subjects that these students take at University, they are not able to specialise in Commercial Law. Therefore, I would appeal that the Attorney-General, whose office is directly involved in the training of lawyers at the Kenya School of Law, and also those who are in charge at universities, to provide further training in Commercial Law so that in the event of these disputes being litigated here in Kenya, we have experts who can help this country in areas where disputes have arisen among businessmen and companies that are trading here.

I would also like to appeal that the number of experts that we do have in this country are not enough in as far as other professions are concerned. The restriction, for example, in the Department of Architecture, Design and Development at the University has not been broad enough. Therefore, these are areas or avenues that we would like Kenyans to be trained fully so that when one is appointed an arbitrator, people are sure he can perform because he is knowledgeable and he can provide expert information in that area.

Mr. Temporary Deputy Speaker, Sir, I would like to take this opportunity to congratulate the lawyers of this country for what they are doing in not only representing those who have been aggrieved but also by "pushing" with the Press for Constitutional reforms in this country. If other professionals were courageous and did what the lawyers are doing, I think, Kenya would be a better place to live in. I feel very sad that they are being abused everyday that they are spearheading things they do not understand. But I can assure those people, at any level they are, either in Government or wherever, that these lawyers know what they are doing. The issues they have raised, the Government ought to re-examine them properly. If they do not re-examine those issues now, there will come a time when they will say, "We wish we knew". At that time, Kenya would be like Rwanda and instead of us now looking at those issues, say, like the Constitutional reforms and say, "Look, this is our country, let us

come together and have an arbitration panel". This is what political parties, X, Y, Z, are saying. Let us sit together and build a better Kenya. We might find it too late. So, it is up to the Government now to make sure that they talk to other people. This is arbitration in itself. Let us talk to people since all of us want to form a government and rule people. We are not going to rule animals. So, these are the same Kenyans. So, these are the same Kenyans and it is better for us to talk over these issues and agree for the sake of a better Kenya.

Mr. Temporary Deputy Speaker, Sir, having commended lawyers, I want to say that the Attorney-General of this country has let us down. Initially, when he was appointed, he was a senior member of the bar and we thought he would bring sense into the Government. However, what we are seeing are different results---

The Temporary Deputy Speaker (Mr. Wetangula): Order, Mr. Obwocha! If you want to discuss the Attorney-General raise a Motion under Standing Order 73(3). You are out of order now!

Mr. Obwocha: Mr. Temporary Deputy Speaker, Sir, I am just expressing my dissatisfaction with the discharge of functions---

The Temporary Deputy Speaker (Mr. Wetangula): Mr. Obwocha, I have just ruled you out of order and if you persist in that issue, I will take action against you!

Mr. Obwocha: Mr. Temporary Deputy Speaker, Sir, in conclusion, I would like to say that we are part and parcel of this country. Those who are mismanaging this country will one day answer for their crimes. Those who are being given plots for peanuts and then selling them to the NSSF for millions of shillings will answer for those crimes.

With those very many remarks, I beg to support the Bill.

Mr. Mak'Onyango: Thank you, Mr. Temporary Deputy Speaker, Sir, for according me this chance to ventilate on this important Bill. At the outset, I would like to congratulate the Attorney-General for coming up with this Bill because, for one, I think it is going to help in enhancing the image of this country. It will also lead, I believe, to the creation of a few jobs here and there. With the new centre we may also be able to attract and draw from the experience of other professionals who might be taking interest in this country. In that regard, I see this Bill as a move in the right direction.

I am, however, concerned as to how the operation of this centre may affect some aspects of the functions of the High Court and vice-versa. I see a situation arising where decisions taken by our High Court may end up in the hands of the arbitrators at the centre. I have a feeling that if proper arrangements are not put in place, this could be a source of conflict between the centre and other national establishments. Maybe that is an area where, when the Attorney-General comes back to respond to this Bill, he will need to clarify more.

I am also concerned that much as we are talking of this Bill as being a development that could help to sharpen professionals like those in legal field, I foresee a situation in which our interests, as a country, might be compromised. I can foresee a situation where this centre might attract the best brains in various professions, especially the legal profession. I also foresee a situation where some of our magistrates could move to this centre and then we end up with a worse situation in terms of shortage of magistrates and judges. We are already complaining that too many cases are pending in courts as a result of shortage of judges and magistrates. So, if these professionals end up in this kind of a centre I can foresee a worsening of the current situation in our courts. If this happens, many of our people who suffer, might end up suffering still a great deal more than they do right now. So, care is needed in this respect so that we do not end up making a relatively bad situation worse. I would like the hon. Attorney-General to pay a little bit more attention to that.

Mr. Temporary Deputy Speaker, Sir, I also want to add my voice to the point on corruption raised by some of my friends. Given this kind of development I do see a situation in which, if we are not careful, we may end up getting ourselves overly embarrassed. As it has already been pointed out, we have numerous cases of corruption which will, in a number of cases, end up as issues to be arbitrated upon by this centre. So, since most of these things are done by our people, I do see a situation where unless we put our house in order first--- I think that this is what we need to do first. I would make a very serious plea that the Government makes some frantic efforts to put our house in order. In this way, instances that could give rise to shame for this country will not arise. If this is not done, cases will arise

where leaders and senior Government officials may become victims of machinations of our own making. So, I think that the Government should do something to minimise cases of corruption which, as of now, abound in this country. When the centre becomes operational, we do not want to end up with a situation in which the image of this country is tarnished. I am also concerned. The centre presupposes that all is well and working well. I do think the truth of the matter is that not enough has been done to clean up our system in readiness for this kind of facility. I am also concerned that not enough research seems to have been done to show how the operation of this centre is going to affect certain aspects of our national or regional activities.

So, I think it may be necessary for the Attorney-General, in responding, to tell the House how, for example, the activities of this centre are going to affect some of our regional institutions like the proposed revival of the East African Community. I am saying this because one would have thought that if we had this community in place and then we start up this kind of centre, we would be starting off from a ground that is already fertile enough in that within the region itself, we will be having in place harmonious relations to facilitate or enable the function of this kind of body. Given the kind of situation in which there seems to be a lot of uncertainty regarding the revival of the community, it does seem again that a thing like the revival of the community would have been a very ideal thing. If we speeded up this and then we started this centre, with the community in operation then, members of the regional economic community will then be able to draw on this kind of centre rather than start it the way we are starting it now without a certain amount of certainty as to the immediate usefulness of the centre. I have a feeling that we are starting off without a proper foundation being laid for the proper functioning of this kind of centre. One would have thought that, initially, we would have gone in with such things as, first of all, strengthening the regional co-operation in order to facilitate ready work for the proposed centre.

Mr. Temporary Deputy Speaker, Sir, there is one other thing that I would want some kind of attention to be focused on. Like I mentioned before, we do need to start doing certain things right. I have in mind such things as the allocation of land. You will agree with me that land is just about the most contentious issue and it for sure stands as one of those areas where some amount of arbitration will have to be done. We have numerous cases right now of illegal allocations of land. Unless we are careful to limit or put an end to such practices as illegal allocation of land, then, for sure, you can rest assured that as and when this centre becomes operational, very soon, we will be finding that a lot of what will be coming up will be our own shortcomings. These things will be coming up so glaringly that, at the end of the day, the Attorney-General would have ended up putting this country more to shame than enhancing or boosting its positive image. I would like to appeal that if the arbitration process that this Bill seeks to put in place is going to be of the greatest possible benefit to this country, then we have to look at how we handle some of the very contentious issues in order to avoid the worst.

I am also a bit scared because we are talking of a situation in which we are going to enhance our litigation, conveyancing and related activities. My fear is that we may end up with a situation whereby the very few personnel we have in these areas are going to move out. If they move out, a good many of our institutions, notably local authorities and other institutions that rely heavily on the services of such professionals, may end up suffering instead of gaining. So, these, to me, are some areas that do not seem to have been addressed adequately. It is, therefore, my submission that care is taken to address these particular areas.

There is also the question of how the Kenyan businessman is going to benefit from this development. It is again my fear that because of our way of doing things, a good many of our businessmen may end up suffering instead of benefitting from the activities of the process. Although, in the Bill, the Attorney-General says that definitely, both domestic and international trade are likely to benefit, I see a situation where a good many of them may suffer instead of benefitting. This is because a good many of our businessmen are not that well trained to be able to match the counterparts from elsewhere. So, we may end up with situations in which our own businessmen end up being victimised in whatever business arrangement that they have. At the end of the day, it is our businessmen rather than those from elsewhere who are likely to suffer most.

With these few remarks, I beg to support.

Dr. Lwali-Oyondi: Mr. Temporary Deputy Speaker, Sir, I would like to say one or two words on the Bill. First, it is good that the Attorney-General is trying to keep up with the world and, therefore, he is adapting this United Nations model law for international commercial arbitration. That being so, he has also given it a local twist to adapt it to Kenyan conditions, but while talking of such things and trying to harmonise ourselves with the international world, it costs nothing. The question comes: What is our mwananchi getting out of all these? Are we just trying to prove to be sophisticated in the international eyes when, locally we are not doing anything for the mwananchi? Instead of making his life a bit better, we are making it worse. Arbitration is good, particularly, when you look at it from the point of view of what is happening in the courts presently. Very rich people might start a dispute and the whole thing is taken to court and they make sure that what is taken to court is postponed until whoever has taken it there gives up or dies. The conditions become such that he just gives up. There are cases in court which are 10 years old which are still being postponed from time to time until hopefully, those who are looking for justice give up. We hope that this Arbitration Bill will reduce, as the Attorney-General has hinted time. But the question is this: The persons who are carrying out this are the same Kenyans. Have we disciplined ourselves enough or are we changing the name of justice or those bodies which have to carry out justice? By changing their names, do we change the nature? How will we get rid of the already embedded corruption in the Kenyan society? Who will be appointed to be arbitrator or arbitrators? Will it be the

same political appointees whose qualifications we shall have no idea, except their political affiliation? If it is that way, then this

Bill is of no use to Kenyans.

We are talking of arbitration. Have we been able to do well, for example, in the appointment of the DOs and the DCs in trying to settle disputes over mashambas for example? How well has it been? It has ended up, from our experience, in very corrupt deals that in the end had to go to court. So, this points out to one thing: that the Kenyans society needs to have some morals. Our moral fibre has been completely eroded and Kenyans are looking for no other solution and they are displaying their anger through the famous "mob justice" because they know in courts there may be no justice. On this arbitration, I hope it will get rid of what they call the rent tribunals. The rent tribunal, although it was supposed to expedite the problems between the landlord and the tenants, it has been too slow in that, only one rent tribunal court exists in Kenya. You can imagine it going all over the country, Garissa, Mandera coming back to South Nyanza and Bungoma and then going to Mombasa. First of all, it is dangerous for these tribunal people to travel on these dangerous roads of ours. As a matter of fact, one of the judges in the rent tribunal died in a road accident on his way to the court. So, I think if we have this arbitration, I hope that there will be either magistrates or lawyers set up in every local court so that whenever there are disputes between the landlords and the tenants, these arbitrators, instead of taking it to the normal court---

The Temporary Deputy Speaker (Mr. Wetangula): Dr. Lwali-Oyondi, you obviously have not looked at this Bill. Have you?

Dr. Lwali-Oyondi: Mr. Temporary Deputy Speaker, Sir, I am talking about arbitration.

The Temporary Deputy Speaker (Mr. Wetangula): Yes, this is commercial arbitration. It has nothing to do with rents and magistrates and whatever you are talking about.

Dr. Lwali-Oyondi: Mr. Temporary Deputy Speaker, Sir, if it is commercial, in my own understanding, I thought---

The Temporary Deputy Speaker (Mr. Wetangula): This is governing big commerce including international and national commerce. It has nothing to do with what you are talking about. That is what I am telling you.

Dr. Lwali-Oyondi: Mr. Temporary Deputy Speaker, Sir, I understand that it is talking about big companies *etcetera*, but I am talking about what is locally affecting us here. I am talking about a shopkeeper complaining about high rents by his landlord, that is also commerce as far as I am concerned. We cannot keep on talking about things that are beyond us. If that is the case, then they are of no use to us in this Parliament. We should be talking about things that are affecting our people directly and to me, the rent in respect of a shop or even a kiosk should be actually what we are talking about here because that is what is affecting our people. If we cannot talk about what is affecting our people now, then we are wasting our time and it is of no use for us even talking about this Bill because we have so much been mesmerised by these high sounding things and then we forget our people. We talk about commerce and the industry in Nairobi and block our own black Africans from taking part in that commerce and industry. They just see it passing along just as we see the sun and the moon passing by and we can do nothing about it.

We have to come down to the ground and talk about what is affecting our people here. When we talk of our people, I do not mean to be racial, but we talk about the black African who was punished during the colonial days and he is still being punished even more by the African Government itself, which he elected, and he is not allowed to do anything that is profitable. Even when he gets a licence and tries to operate as a petty trader, the same Government comes up at night and destroys his goods for no reason. The kiosks are demolished and they leave him with nothing. They want him to remain poor and that is why when we have such Bills, we have to ventilate exactly what is affecting our people, but not try to be very high-sounding when we live on earth and dance into the top of the world while other people are singing *Nyayo juu, juu zaidi* while they are still walking on the ground and without doing anything to assist their fellow Kenyans. This is the sort of attitude that we have to get away from and come down to the ground before *wananchi* pull us to the ground and we shall be *Nyayo* followers when they are on top of us.

Mr. Temporary Deputy Speaker, Sir, I would like to point out that the present system is not working properly. If there are disputes, courts should have arbitrators so that local disputes which affect local commercial undertakings are looked into. I do not mean to say that I am an expert on law, that is far from it, but this is a notion which has been expressed by even magistrates in their meetings. Apart from that, there has been interference which has been stated by the magistrates themselves and those versed in law because the executive has been interfering with court proceedings. Magistrates have been forced to re-write their decisions after they

have already arrived at their own verdict.

The Minister for Labour and Manpower Development (Mr. Masinde): On a point of order, Mr. Temporary Deputy Speaker, Sir. Can the hon. Member substantiate that some of the magistrates have been forced to re-write their rulings?

Dr. Lwali-Oyondi: Mr. Temporary Deputy Speaker, Sir, this is common knowledge. I am quoting from the deliberations of magistrates and this was publicised in the papers. If the hon. Minister has not read the deliberations that take place in our courts of the hotel cases around here--- That, in my authority, the magistrates were talking about that and if he does not know it, then we say that "let the sleeping dogs lie".

Mr. Temporary Deputy Speaker, Sir, I would like to proceed and say that if this sort of interference is going to continue---

The Temporary Deputy Speaker (Mr. Wetangula): Order! Dr. Lwali-Oyondi, you have just made some very outrageous remarks that magistrates are forced to re-write judgements and whereas hon. Masinde has required you to substantiate, in fact, a substantiation will violate the contents of Standing Order No.73. What you have said also violates that Standing Order. I order you to withdraw the same and carry on.

Dr. Lwali-Oyondi: Mr. Temporary Deputy Speaker, Sir, this was done openly and---

The Temporary Deputy Speaker (Mr. Wetangula): Order! I have made a ruling and it is not for you to debate it. Besides that, newspaper reports cannot be used as an authority to advance an argument on the Floor of this House.

Dr. Lwali-Oyondi: Mr. Temporary Deputy Speaker, Sir, people attended that meeting and---

The Temporary Deputy Speaker (Mr. Wetangula): Order! I have made a ruling. You must withdraw that remark.

Dr. Lwali-Oyondi: Mr. Temporary Deputy Speaker, Sir, I think it is unfair for a public statement, made in a public place---

The Temporary Deputy Speaker (Mr. Wetangula): Order! Dr. Lwali-Oyondi, you are a very decent Member of this House, and I do not wish to tangle with you. You made a remark that magistrates have been directed to re-write judgements. Hon. Masinde required you to substantiate and I have ruled that it is out of order to make such a requirement. You are more out of order by making such a remark and you have to withdraw it.

Dr. Lwali-Oyondi: Why do I have to substantiate the obvious?

The Temporary Deputy Speaker (Mr. Wetangula): Order!

Dr. Lwali-Oyondi: It is obvious in that it was stated publicly and everybody heard it.

The Temporary Deputy Speaker (Mr. Wetangula): Order! Order! I do not wish you to compete with the ruling of the Chair. You either withdraw or I take further action against you.

Dr. Lwali-Oyondi: Mr. Temporary Deputy Speaker, Sir, I do not think I should withdraw what was stated publicly and published in the local media and everybody---

The Temporary Deputy Speaker (Mr. Wetangula): Order, Dr. Lwali-Oyondi! The Chair will give you one last chance to withdraw that remark.

An Hon. Member: Ama aende!

Dr. Lwali-Oyondi: Mr. Temporary Deputy Speaker, Sir, it is really impossible for me to withdraw what was stated in public.

The Temporary Deputy Speaker (Mr. Wetangula): On that basis alone, and your disobedience of the ruling of the Chair, I have no choice but to curtail your speech and also exclude you from the remainder of the proceedings of this House.

Dr. Lwali-Oyondi: Thank you, Mr. Temporary Deputy Speaker, Sir. You will never---

An hon. Member: Kwa heri ya kuonana!

(Dr. Lwali-Oyondi withdrew from the Chamber)

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir---

The Temporary Deputy Speaker (Mr. Wetangula): I hope you want to contribute to the Bill?

Mr. Shikuku: Yes.

The Temporary Deputy Speaker (Mr. Wetangula): Carry on.

Mr. Shikuku: When one walks out the other one remains to carry on the fight. *Aluta continua!*

The Temporary Deputy Speaker (Mr. Wetangula): Speak to the microphone hon. Shikuku!

Mr. Shikuku: When one leaves, the other one is there to carry on the fight.

An hon. Member: But he has left without a fight!

Mr. Shikuku: Bw. Naibu Spika wa Muda, ukweli, kwa kawaida, ni mchungu. Ukweli huuma. Ukweli ni kwamba Mswada huu unahitaji kuweko na mapatano na masikilizano baina ya watu. Ikiwa mimi ninahitajika kusikilizana na bibi yangu kwamba akizaa mwaka huu, na mimi nizae mwaka ujao, hayo masikilizano hayawezezekani.

(Laughter)

An hon. Member: Hayo maana yake ni nini?

Mr. Shikuku: Bw. Naibu Spika wa Muda, wahesimiwa Wabunge wengine wanasema hawakusikia. Masikizano yanawezezekana ikiwa hawa watu wawili au vikundi viwili vikiweza kupatana ili wasikizane. Lakini, kwa mfano, ikiwa mimi sasa nitahitajika nisikilizane na bibi yangu kwamba mwaka huu azae na mimi nizae mwaka ujao, hayo hayawezezekani. Kwa hivyo, ikiwa ni masikilizano, lazima kuwe na gredi ambayo watu wanaweza kusikilizana. Mhe. Mbunge mwingine alizungumza hapa akasema: "Itakuwaje ikiwa kuna watu ambao wanaamini ufidadi na kuna wale wanaopinga ufidadi? Je hawa watasikilizana?" Haiwezekani! Hata imeandikwa kwenye Biblia kwamba, panapo Mungu na Shetani, hawapatani! Hata ukileta "arbitration" ya aina gani, Mungu na Shetani hawapatani. Sasa haya mazungumzo tunasema hapa ya arbitration, ni lazima yawe kwa watu wanaopatana, lakini wamekosana kidogo, na sasa wamuite mwingine awe arbitrator. Waambiane; "wewe leta mtu wako, mimi nilete mtu wangu na tusikilizane. Yale yatakayokatwa na arbitrator, mimi nitayakubali, na wewe pia uyakubali". Wakifanya hivi, arbitration itafanya kazi; la, sio hivyo, arbitration haitakuwa na maana.

Bw. Naibu Spika wa Muda, Mswada huu ukisomwa katika "Memorandum of Objects and Reasons", inasema wazi katika ukurasa wa 195, kwamba: "The object of this Bill is to repeal the Arbitration Act, Cap 49 of the Laws of Kenya and replace it with a new Arbitration Act which provides for both international and domestic arbitration". Nia ya

Mswada huu ni wazi kabisa. Iko hapa, hasa kwa yale mapatano baina ya watu katika nchi hii na nchi za ng'ambo. Domestic arbitration inahusu mambo ya nyumbani. Vurugu likiwapo katika nyumba yako, tangu hapo zamani, hata kabla ya Arbitration Act kutungwa, kulikuwa na wazee ambao walifanya arbitration ili wajue ugomvi ulitoka wapi, nani aliyeanza, shida ni nini, halafu mapatanisho yatapatikana. Hata mtu akifukuza bibi yake, kunakuwa na arbitration pia. Watu wanakuja kutoka pande zote mbili, wakae chini ili waangalie ni kitu gani kilicholeta vurugu, halafu mapatano yanapatikana. Lakini swali ambalo linaniumiza, ambalo mimi ninauliza na ninataka nijibiwe na Serikali hii tukufu, na pengine takatifu, ni: Itakuwaje tupatane ikiwa kuna ufidadi, na kuna wale ambao hawataki ufidadi? Je, watapatana namna gani?" Haki ndiyo dawa kubwa. Haki inaweza kupatikana katika arbitration. Haki ndiyo inashinda mapenzi. Haki inashinda amani. Haki ikishapatikana, mapenzi, amani na mambo mengine yatafwata. Lakini, kama hakuna haki, wewe umeninyang'anya shamba langu, umeuza choo ambako ningeenda kujisaidia, umechukua na imekuwa yako, public utility imekuwa yako, na sisi hatupati mahali pa kukojoa, basi mapatano hakuna. Hatuwezi kupatana. Je, tutapatana namna gani na huyu mtu ameshaninyang'anya hata choo?

Mr. Chepkok: (Inaudible)

Mr. Shikuku: Mhe. Chepkok ananiuliza habari ya choo, hajasikia hapa kwamba ploti zinauzwa na hata choo siku hizi? Na asije akashikwa huyu, atakuja kuingia kwa choo ambacho kimeshauzwa, na tutapata kesi nyingine hapa karibuni! Mhe. Chepkok atakuja kamatwa hivi karibuni akifikiria hicho ni choo cha umma; Ataona moto!

Kwa hivyo, Bw. Naibu Spika wa Muda, tuna shida kubwa katika Kenya hii. Hakuna public utilities, hakuna vyoo vya umma. Kwa hivyo, ninaambiwa---

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Wetangula): Order! Hon. Members, it is now time to interrupt our business. The House, therefore, stands adjourned until tomorrow, Thursday 6th July, at 2.30 p.m.

The House rose at 6.30 p.m.