

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 20th July, 1995

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

The following papers were laid on the Table:-

Annual Report and Accounts of Commission for Higher Education for the year ended 30th June, 1992 and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Commission for Higher Education for the year ended 30th June, 1993 and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Kenya Literature Bureau for the year ended 30th June, 1994 and the Certificate thereon by the Auditor-General (Corporations).

*(By the Assistant Minister for
Education (Mr. Komora) on behalf
of the Minister for Education)*

Annual Report and Accounts of Kenya Sugar Authority for the year ended 30th June, 1989 and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Kenya Sugar Authority for the year ended 30th June, 1990 and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and accounts of Kenya Dairy Board for the year ended 30th June, 1991 and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Kenya Dairy Board for the year ended 30th June, 1992 and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Kenya Dairy Board for the year ended 30th June, 1992 and the Certificate thereon by the Auditor-General (Corporations)

*(By the Assistant Minister for Education
(Mr. Komora) on behalf of the Minister
for Agriculture, Livestock
Development and Marketing)*

Annual Report and Accounts of National Oil Corporation of Kenya for the year ended 30th June, 1992 and the Certificate thereon by the Auditor-General (Corporations)

*(By the Assistant Minister for Education
(Mr. Komora) on behalf of the
Minister for Energy)*

Annual Report and Accounts of Local Authorities Provident Fund for the year ended 30th June, 1992 and the Certificate thereon by the Auditor-General (Corporations).

Annual Report and Accounts of Local Authorities Provident Fund for the year ended 30th June, 1993 and the Certificate thereon by the Auditor-General (Corporations).

*(By the Assistant Minister for
Education (Mr. Komora) on behalf of
the Minister for Local Government)*

ORAL ANSWERS TO QUESTIONS

Question No.585

REMOVAL OF DEFECTIVE VEHICLES

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

- (a) how many unroadworthy public service vehicles have been permanently removed from the roads between June, 1994 and May, 1995 in Nairobi, Mombasa, Kisumu, Nyeri, Nakuru, Meru and Thika;
- (b) why numerous matatus are allowed on the roads without side mirrors, indicators, proper tyres, among other things; and,
- (c) what is the Government doing to ensure that the traffic policemen enforce the provisions of the Traffic Act to the letter without influence or interference.

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

(a) Unroadworthy vehicles are moved from the road temporarily so that they can get back to the road once they are certified to be roadworthy. No public service vehicle or otherwise is ever removed from the road permanently.

(b) No matatu vehicle or otherwise is allowed on the road without the side mirrors, indicators and proper tyres as this constitutes a traffic offence.

(c) The policemen are under firm instructions to enforce the provisions of Traffic Act to the letter without fear or favour. On the other hand, any one caught trying to influence or interfere with the policemen in the course of their duty will be dealt with in accordance with the law.

Mr. Maore: Mr. Speaker, Sir, while protesting the deliberate omission of not having the written answer, I wish to ask the Assistant Minister to explain the presence of numerous public service vehicles that violate several traffic regulations, that have been written in the Traffic Act? Hoping that the Assistant Minister has gone through the regulations, I would like him to explain why vehicles are impounded very quickly by the policemen in the morning and after ten minutes, they are set free after the owners or drivers have bribed their way out by giving out either Kshs.20 or Kshs.1,000.

Now, that the Assistant Minister is aware of this, can he deny or accept that this is why we have many vehicles that virtually look unroadworthy even to a layman on our roads.

Mr. Sunkuli: Mr. Speaker, Sir, I honestly do not understand what the hon. Member is asking. If hon. Member want me to explain why motor vehicles have been caught by police eventually end up being on the road, I would like to say today in Kenya some of the busiest courts are traffic courts, because the policemen impound very many vehicles that are unroadworthy. When a vehicle is found to be unroadworthy, it is inspected.

After inspection the owner of the motor vehicle may be issued with a notice of prohibition order which prohibits him from using the motor vehicle on public roads until the defects have been rectified.

Mr. Speaker, Sir, if the defects are not rectified and the motor vehicle is on the road, the policemen usually arrest the owner of the vehicle or the driver, and take him to court and the traffic court deals with the person accordingly.

Col. Kiluta: Mr. Speaker, Sir, I think the problem of unroadworthy vehicles on our roads is on the increase despite what the Assistant Minister has said. The problem is two-sided; it is either with the drivers who have agreed to bribe the policemen and the policemen who have agreed to accept bribes from the drivers. Can the Assistant Minister consider increasing the number of plaincloth policemen to keep vigilance on the briber and the bribed so that we can reduce the number of unroad-worthy vehicles on our roads?

Mr. Sunkuli: Mr. Speaker, Sir, I do agree with the hon. Member, that actually quite a number of vehicles on our roads are unroadworthy. However, I would like to state here that the police are doing something about it. The Government, as the hon. Member may be aware, has intensified, in the last two months, efforts to get hold of offenders as the hon. Member has requested.

Mr. Speaker, Sir, I want to assure him that we will not relent; we will continue to improve our methods of arresting those are causing so many accidents on our roads.

Mr. Mulusya: Mr. Speaker, Sir, is the hon. Assistant Minister aware that in major towns taxis and unroadworthy matatus which are not insured and have no road licences and are completely unroadworthy start operating at night around 8.00 p.m.?

Is he further aware that such unroadworthy vehicles have caused many accidents at night and that the police are doing nothing about it because they do not patrol the roads at night?

Mr. Sunkuli: Mr. Speaker, Sir, the hon. Member has given me a very good hint and I will investigate that matter.

Question No.581

RECRUITMENT IN POLICE FORCE

Mr. P.N. Ndwiga asked the Minister of State, Office of the President:-

(a) how many people were recruited in the Police Force from Embu District in 1992, 1993 and 1994; and

(b) whether he could Table the list of those recruited.

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

(a) The number of people recruited into the Police Force from Embu District in the years in question cannot be revealed for security reasons.

(b) Arising from my reply to "a", part "b" of the Question does not arise.

Mr. P.N. Ndwiga: Arising from that absurd answer by the Assistant Minister, how does a number become a security issue? The truth of the matter is that nobody, not even one, from Embu was recruited into the Police Force in the years in question.

Mr. Speaker: Do not make a speech, Mr. P.N. Ndwiga!

An hon. Member: That is enough!

Mr. Sunkuli: That is not true, Mr. Speaker,

Sir.

Mr. Wamae: Mr. Speaker, Sir, we are all aware that no people from the Opposition areas are being recruited into the Armed Forces and the Police Force. Could the hon. Assistant Minister confirm that this is the case and if so, what is he going to do because we are all Kenyans and are paying taxes to the Government?

Mr. Sunkuli: Mr. Speaker, Sir, I do not know what areas are called "Opposition areas" in this country. It is not possible that the hon. Member has not read notices and advertisements in the newspapers indicating the areas where the Police Force will be carrying out recruitment exercise on particular dates. There are dates for every district in the Republic and there is no reason why the hon. Member should try to paint a black picture.

Mr. Gatabaki: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to continue misleading the House about the recruitment of people into the Police Force when he knows very well that such recruitment into the Police Force is specifically restricted to the "*Kamatusa*" communities - Kalenjii, Maasai, Pokot and Samburu?

Mr. Sunkuli: Mr. Speaker, Sir, hon. Gatabaki's total negative attitude towards the tribes he is baptizing is well known. He should not use the Floor of this House to further his malice against those communities. The hon. Member knows that young people from all communities in this country are being recruited into the Police Force and that, even for Kiambu District, a particular date has been set for the recruitment of people into the Police Force. I do not see the reason why he should use a microphone of this Chamber to make such malicious utterances.

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order! I believe that sometimes Members get attracted to a particular Question but that does not mean that we must disregard the rules; only one Member at a time on the Floor. Mr. Michuki has the Floor.

Mr. Michuki: On a point of order, Mr. Speaker, Sir. The Assistant Minister says that on the basis of matters of security, he will not mention the numbers of those recruited into the Police Force and yet, if you look at the Estimates of Expenditure under the Police Department the number of the personnel is shown. Could we get the truth about this matter? This is because the number of the police that we have is shown in the Estimates; it is public knowledge how many policemen we have in this country.

The hon. Member is asking, amongst those who have been shown in the Estimates, how many came from Embu District. Could he just say he has no answer rather than mislead us?

Mr. Sunkuli: Mr. Speaker, Sir, the Printed Estimates do not show how many policemen come from each tribe.

Mr. Achieng'-Oneko: Mr. Speaker, Sir, since the Assistant Minister has refused to tell us the number of those recruited into the Police Force from Embu, could he please tell us the total number of policemen recruited

countrywide during that period? This is because we would like to have a follow up immediately he gives us that figure.

Mr. Sunkuli: No, Mr. Speaker, Sir.

Mr. Wamalwa: Mr. Speaker, Sir, this is a multi-tribal country and Kenyans of all tribes live in all the districts of this country. Asking for the number of people from Embu who have been recruited into the Police Force does not mean that those recruited from Embu are necessarily Embians. What is dangerous, in terms of security, about simply saying how many people were recruited from Embu? It does not mean they are of Embu origin at all.

Mr. Sunkuli: Mr. Speaker, Sir, the Leader of the Opposition is just being clever. The people who ought to be recruited from Embu are actually Embians.

Mr. Ruhiu: On a point of order, Mr. Speaker, Sir. I think the hon. Assistant Minister has cast a very serious aspersion on the Leader of the Opposition; that he is trying to be clever. He is not trying to be clever; he is clever!

Mr. Speaker: All hon. Members are "very clever"!

Mr. P.N. Ndwiga: Mr. Speaker, Sir, this Question arose as a result of a lot of research into what happens and the method of recruitment of people from Embu into the Police Force and the Armed Forces. Under the years in question, not one person was recruited from Embu. The recruiting officers came to Embu and went away without recruiting anybody and yet our information indicates that there were people in Kiganjo Police Training College who were shown as having come from Embu in all these years. Is the Assistant Minister aware of that?

Mr. Sunkuli: Mr. Speaker, Sir, the recruitment into the Kenya Police is a very fair one and nothing of the sort could possibly have happened.

Question No.276

SUPPLY OF PLANTING SEEDS

Bishop Kimani asked the Minister of State, Office of the President, how many bags of maize seeds, beans and fertilizers have been allocated, and supplied to Nakuru North.

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

The following quantities of seeds were received and distributed to needy farmers in Nakuru North:-

Maize seeds-5.6 Tonnes	-5600 kg		
Beans seeds	-	53 Bales	- 1272 kg
Cowpeas	-	7 Bales	-168 kg
Green Grams	-	7 Bales	-168 kg

No fertilizers were allocated to farmers in Nakuru North.

Bishop Kimani: Mr. Speaker, Sir, the answer given by the Assistant Minister is very misleading because I have very needy people particularly in Ndogeri, Subukia and Gachura Locations. These people never got the seeds nor the fertilizers. They were forced to plant their own maize for consumption and now the crop in the field is very poor. This is because they never got the right seeds for planting and they were not provided with fertilizers. Could the Assistant Minister tell this House why my people were discriminated against? How did he expect the crops to do well without fertilizers?

Mr. Sunkuli: Mr. Speaker, Sir, as I have said, Nakuru North got a number of seeds. The particular area he is referring to got Hybrid seed maize of variety 614, 180 bags of 10kg, 20 bales of beans of 24kg and then 4 bales of cowpeas and 3 bales of green grams. As I said, we did not supply Nakuru North with fertilizer because the fertilizer we received in 1993 was not adequate and we emphasised on areas of the 18 districts which were badly hit by the drought.

Mr. Ndicho: Mr. Speaker, Sir, I once worked with the Ministry of Agriculture in Rift Valley in early 1980 and we used to receive these seeds from the Government to give to the farmers. Now, the truth of the matter is; the Government is giving these seeds and these fertilizers to all districts in the country. The problem, and I am asking the Assistant Minister to confirm or deny, is the agricultural officers and some other Government officers who are deliberately hiding these seeds and refusing to give the farmers in a bid to bring down the Government. The President himself has alluded to this by saying it is the civil servants, not the Opposition, who are undermining his Government. Can he confirm or deny?

Mr. Sunkuli: Mr. Speaker, Sir, as a policy, we have tried to ensure that all the districts which were badly affected by drought should be supplied with seed and fertilizer so that they can recover from the drought. Of course, it

is unfortunate that in some districts that certain civil servants who want to undermine the Government have actually tried not to supply this particular seed and that is what we have always been saying. We as a Government will be very successful if the civil servants will be less tribalistic and less inclined towards Opposition politics.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, could the Assistant Minister make sure that in future when such seeds are given out to a given officer, the Member of Parliament for the area and the Councillors are allowed to witness it and the modalities of issuing such seed are worked with the same?

Mr. Sunkuli: Mr. Speaker, Sir, it would be bad to introduce politics into this but it would be important that the local district development committees and the leaders be involved.

Mr. Speaker: Next Question, Mr. Murungi!

Question No.500

QUALIFICATIONS OF TEACHERS

Mr. Murungi asked the Minister for Education:-

(a) what the requisite academic qualifications are for P1, P2 and P3 teachers respectively; and

(b) what the starting salary of each category is.

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

(a) The following are the minimum requisite academic qualifications for teachers admitted into Primary Teacher Training Colleges:-

P1 - At least a third division KCSE pass in the previous system of education or a D+ in the 8-4-4 KCSE examination.

P2 - At least a fourth division pass in the old KCSE examination, a D grade pass in the 8-4-4 KCSE examination or a pass in Kenya Junior Secondary Education (KJSE) examination.

P3 - A pass at Kenya Certificate of Primary Education (KCPE) Examination of at least 15 points or a pass of at least 30 points in the Kenya Certificate of Secondary Education (KCSE) examination.

(b) The starting salary for the various categories is as follows:-

P1 teachers - Kshs3,695 p.m.

P2 teachers - Kshs2,870 p.m.

P3 teachers - Kshs2,360 p.m.

Mr. Murungi: Mr. Speaker, Sir, there is a great injustice and disparity between the starting salaries of P1 and P2 teachers in this country. We have treated our P2 teachers very unfairly. Although the difference between an aggregate D and D+ could be one point but in terms of the salaries, there is a difference of Kshs.825 p.m. between the salary of a P1 and a P2 teacher. What steps is the Ministry taking to correct this injustice and anomaly with the starting salaries of P1 and P2 teachers?

Mr. Komora: Mr. Speaker, Sir, if, in fact, we were to base our salaries on humanitarian grounds, there should be no differentials at all. In fact, we must have these differentials because of the fact of the various grades and performances of our school leavers. The system does not apply only to teachers, it applies to a whole Public Service and even in private companies, these differentials exist. Generally, salaries are reviewed now and again and in accordance with Government policy, the lower grades are normally given a higher increase in terms of percentages than the higher grades.

Mr. Obure: Mr. Speaker, Sir, the difference of salaries between a P1 and a P2 teacher is Kshs.825. Knowing that a lot of teachers are leaving the teaching profession for greener pastures, could the Assistant Minister consider increasing the basic salaries of the teachers to be Kshs.5,000 so as to keep the teachers in the profession?

Mr. Komora: Mr. Speaker, Sir, that is a general economic policy for the whole country but, in fact, we are not aware of the fact that Primary school teachers are leaving the system.

Mr. Murungi: Mr. Speaker, Sir, I asked this Question after I received a delegation of P2 teachers in my Constituency. Could the Assistant Minister consider increasing the salaries of P2 teachers because, as you know, many of them in the rural areas have many children and the salary of Kshs.2,870 cannot even pay school fees? Could the Assistant Minister consider increasing their salaries at least to a minimum of Kshs.3,200 p.m. so that they and their children can live decently?

Mr. Komora: Mr. Speaker, Sir, may I suggest to the hon. Member to ask his P2 teachers to endeavour to upgrade themselves to higher grades for better salaries. **Mr. Icharia:** Mr. Speaker, Sir, the teachers' salaries are the same all over the country. We find teachers in the City live below the poverty level because the cost of living in Nairobi is very high. When will the Ministry introduce a City allowance to enable the teachers to live a decent life?

Mr. Komora: Mr. Speaker, Sir, the problem of low paid salaries is not for teachers alone. It is for all public servants.

Mr. Speaker: Next Question now!

Mr. P.N. Ndwiga: On a point of order, Mr. Speaker, Sir. Did you hear the Assistant Minister say that the issue of salaries is for all workers? Is he in order to imply that the kind of salaries which have been mentioned here are adequate when we know that we have entrusted teachers with a lot of responsibilities?

Is he in order to infer what I am just saying? Is he in order to say that teachers are comfortable with this kind of salary, and that even the civil servants have similar salaries while we know that it is absolutely not true? Take an example of a teacher---

Mr. Speaker: Order, Mr. Ndwiga! Can you wait until we come to an education Motion or Bill or whatever, and then you can express those sentiments? I understand why you are saying this, but you are totally out of order. You are not rising on a point of order. Next Question, Mr. Mcharo!

Question No. 582

REHABILITATION OF GROGAN CANAL

Mr. Mcharo asked the Minister for Land Reclamation, Regional and Water Development:-

- (a) whether he is aware that in 1993/94, a sum of Kshs.200,000/- was allocated for the rehabilitation of the Grogan Canal in Taveta but that no work was done in that year;
- (b) whether he is further aware that in 1994/95, a further sum of Kshs.500,000/- was again allocated for the rehabilitation of the same canal but, so far, the rehabilitation work has not yet started; and
- (c) if the answers to "a" and "b" are in the affirmative, what action the Minister is planning to take to ensure that the rehabilitation work on the canal is started in order to avoid the funds yet again being returned to the Treasury.

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that Kshs.200,000 was in 1993/94 financial year allocated for the rehabilitation of Grogan Canal in Taveta.

However, no work was done in 1993/94 financial year because the local leaders did not mobilise the community in time to clear the banks of the 7 km. canal for rehabilitation work to start.

(b) I am aware that the Financial Year 1994/95, Kshs.500,000 was again allocated for the rehabilitation of the same canal. At the end of the financial year, rehabilitation work was at an advanced stage.

(c) In view of the answer given in part (b), no funds were returned to the Treasury during the last financial year.

Mr. Mcharo: Mr. Speaker, Sir, I am afraid the answer given by the Assistant Minister is not very correct because the wananchi had worked quite a lot in clearing the canal so that the Ministry could rehabilitate the canal to be useful to the farmers there. The problem is that the officers on the ground did not perform their duties as expected of them, and I thought they should be disciplined. However, could the Assistant Minister tell us what kind of work has already been done which is at an advanced stage, and whether the money, Kshs500,000, is adequate to complete the canal rehabilitation?

Mr. Ligale: Mr. Speaker, Sir, I have already confirmed that the Kshs500,000 allocated in the last financial year has been committed. Materials have already been bought and work should start any time from now.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, if I understood the Assistant Minister well, must the local people do a job by themselves before anything is done by the Government? Is that not asking too much?

Mr. Ligale: Mr. Speaker, Sir, that is not asking too much. It is well known that there is cost-sharing in most of the services that are provided by the Government, and in this case the community is supposed to be mobilised to clear up the canal while the officers and the materials voted for by the Government would do the rest of the work.

Question No. 584

COLLECTION OF MARINE PARK FUNDS

Dr. Otieno-Kopiyo, on behalf of **Prof. Mzee,** asked the Minister for Tourism and Wildlife:

- (a) how much money was collected from the Mombasa Marine Park between 1987 and May, 1995;

and

(b) how the money was spent.

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

(a) A total of Kshs29,650,000 was collected from the Mombasa Marine Park between August, 1989 and May, 1995. There was no revenue collected from the Park earlier than August 1989.

(b) The money was spent as follows:-

(i) A total of Kshs23,500,000 was spent on Game Park and Game Reserve Management as well as Conservation.

(ii) Community support through boatmen and fishermen project received Kshs870,723.

(iii) A total of Kshs3,800,000 was spent on education materials and public awareness.

(iv) A total of Kshs1,032,273/- was spent on research and monitoring activities.

(v) Boatmen Association was allocated a revolving fund of Kshs200,000.

Dr. Otieno-Kopiyo: Thank you, Mr. Speaker, Sir. This is a very pathetic situation that is obtaining at the Coast. First of all, before the beach was declared a Marine Park, there were fishermen and boatmen who used to derive their livelihood from fishing and taking tourists to see the coral reefs and so on. Now, the Kenya Wildlife Service charges 5 dollars per person for people to enter the park. The local fishermen whose economic way of life has been changed do not have access to any of this money. Worse still, the Ministry does not consider it prudent to invest part of the money they collect back into the industry so that the local people can obtain jobs. So, they have spent Kshs23,500,000 in management which I suppose is paying salaries for people who work there. Could the Assistant Minister now consider giving part of this money to the Mombasa Municipality for them to be able to maintain the infrastructure and also to put some into the fishing industry so that the local people could benefit?

Mr. Kisiero: Mr. Speaker, Sir, as I have already said, local fishermen do benefit from these funds because we spend money on community support for their community development projects such as Nyali, Bamburi and Utange Fishermen Groups whom we gave Kshs122,500 last year to buy fishing gear. We have also given the same group another Kshs7,320 for membership identification cards. At the same time we have established a revolving fund for them of Kshs200,000 which is taken in form of loans. They repay and we keep on re-lending them. So, we are already assisting the local fishermen. As to the case of Mombasa Municipality, there has been no request from Mombasa Municipality and, therefore, it is a matter that we cannot consider now.

Dr. Kituyi: Mr. Speaker, Sir, if you paid some attention to the hon. Assistant Minister's reply, you will find it pitiable that after collection of Kshs29,650,000, he is celebrating the allocation of Kshs200,000 into a revolving fund as a contribution to the local fishermen. This Government gave assent recently to the sentiment that game management and conservation is only sustainable if it primarily benefits the local people. As we speak, the most precious Marine Park in Kenya East of Shimoni, North of Wasini Island, 100 per cent of the tourists are transported there by a monopoly called "Glassboats Company" owned by a white man who is a foreigner and who runs a hotel in the area. Can this Ministry undertake to gradually ease out foreigners from competing with locals in transporting of tourists on these cheap glassboats into the marine parks as a step towards implementation in sustainable marine park management?

Mr. Kisiero: The Government and the Ministry would like to continue encouraging the local people to participate in the tourism industry at the Coast. We would be very happy to assist as many people as possible and ensure that they are brought into the mainstream of tourism industry at the Coast.

Mr. Farah: Mr. Speaker, Sir, we have heard time and again renowned wildlife conservationists like Dr. David Western say that conservation has got to have a human component. Out of 100 per cent which is raised from that industry, only 3 per cent is ploughed back to the people, while 97 per cent is used to take care of the fish. Which is more important, the people who live on the fish or to take care of the fish? Can the Assistant Minister tell us why he felt it wise to use 97 per cent of the income and only use a meagre 3 per cent to try and take care of the people who live on fish for their livelihood?

Mr. Kisiero: Mr. Speaker, Sir, there are other aspects of benefits to this country through this exercise. Through proper management and conservation of the fishing industry at the Coast, we get much more money, more than the Kshs29 million mentioned here. We get much more money through tourists visiting the country and, therefore, we cannot limit our interest only to this issue of the little amount of money that the Kenya Wildlife Service (KWS) gets out of fish. So, I think that, that aspect of tourism as a whole should be considered when you are talking about this.

Mr. Mwavumo: Thank you, Mr. Speaker, Sir. Could the Assistant Minister, when dishing out this money, involve the locals so that we are sure of where the money is going?

Mr. Kisiero: Yes, Mr. Speaker, Sir.

Mr. Shikuku: Mr. Speaker, Sir, arising from the Assistant Minister's reply, I think I heard him say that over

Kshs. 1 million is used for research. If that is so, could he tell us the results of that research? What were they researching on? Instead of giving the local people that money they spent on research which was over Kshs. 1 million, what was the outcome of that research?

Mr. Kisiero: Mr. Speaker, Sir, research involves such issues as finding out the distribution and diversity of ecological use, trying to identify threats to fish such as water pollution through sewerage, oil spillage and effluent pollution. Also, research on the over-utilization of fish, coral, mangrove and so on is carried out so that we may determine plans for management purposes, particularly the breeding sites, commercial zones, artificial areas and so on. So, research plays a very important part in the fishing industry.

Dr. Otieno-Kopiyo: Thank you very much, Mr. Speaker, Sir. Now that most of the money goes into game parks and game reserves management as well as conservation, one would presume that some of this money is spent on remuneration of workers in terms of salaries and so on. Why are the indigenous Coastal people, who have been economically deprived anyhow, not involved in the management and employment at the marine parks? The indigenous people of the Coast are not benefiting as a result of this large sum that you are paying out. Could you consider, as a matter of policy, the people you throw out of employment because of the new laws are absorbed into the employment of the KWS?

Mr. Kisiero: Mr. Speaker, Sir, we agree that we shall always cooperate with the local people because without their cooperation tourism cannot succeed.

Question No. 589

FINAL COFFEE PAYMENTS

Mr. Mutani asked the Minister for Co-operative Development which coffee co-operative societies in Nithi Constituency have not effected the 1992/93 final payment to the farmers.

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

Out of the ten co-operative societies in Nithi Constituency it is only Kiera Coffee Co-operative Society which has not paid the final payment to the farmers.

Mr. Mutani: Mr. Speaker, Sir, I am surprised to hear that it is only Kiera Co-operative Society that has not made its final payments to farmers but before I ask the second question, can the Assistant Minister tell us why Kiera Co-operative Society has not made the final payments?

Mr. Titi: Mr. Speaker, Sir, this is a simple question. The hon. Member is with the people and he is supposed to give us the correct answer. He knows that there was a problem because the farmers and the committee members could not agree among themselves. This dispute caused this delay. They could not even deliver their coffee for sale and it was not until August 1993 that coffee was delivered.

Mr. Mwiraria: Thank you, Mr. Speaker, Sir. Arising from the answer given by hon. the Assistant Minister, is he aware that non-payments of dues to the farmers by co-operative societies is more likely to lead to the destruction of those societies following the liberalization of sale of coffee because many of the farmers are now selling coffee to individuals who have coffee mills instead of taking the coffee to the co-operative societies? What is the Ministry proposing to do to stop this eminent destruction of societies?

Mr. Titi: Mr. Speaker, Sir, that is a good question but the solution can be found at home, not in the Ministry, because all the co-operative societies are managed by the people themselves. So you can get that information.

Mr. P.N.Ndwiga: On a point of order, Mr. Speaker, Sir. The Assistant Minister has said that solutions to these problems can be found at home. The co-operative sector is very important in coffee-growing areas and the reason why we have these kind of problems is because the Ministry of Co-operative Development, together with the Ministry of Agriculture, Livestock Development and Marketing, have been dragging their feet on liberalization of marketing of coffee. That is what is killing the co-operative societies back home. Is the Assistant Minister in order to tell us that the solution to this problem will be found at home when the solution is in his office?

Mr. Speaker: Order! I will allow the Assistant Minister to respond because of the interest of the question but, in the same breath, I am asking you this evening to go and study what a point of order really is. Proceed!

Mr. Titi: Mr. Speaker, Sir, that is almost a general question, but the farmers are supposed to elect members to run the societies. We have no direct control over the coffee societies.

Mr. Wamae: Mr. Speaker, Sir, would the hon. Assistant Minister direct that all coffee societies must pay farmers up to date, for 1994/95 financial year, with immediate effect? Would he direct that today or even tomorrow?

Mr. Titi: Mr. Speaker, Sir, thank you very much. I wish we had such power, we could direct, but the money is not with us; it is with the co-operative societies. So, ask your people to pay the farmers since they have the

money.

Mr. Speaker: Next Question, Mr. Salat.

Question No.492

IMPLEMENTATION OF MOTION

Mr. Farah, on behalf of **Mr. Salat**, asked the Minister for Public Works and Housing when he will implement the Motion passed by this House in 1993 urging the Government to make the Bura-Galmagalla-Hulugho Road passable during the rainy season.

The Minister for Public Works and Housing (Prof. Ng'eno): Mr. Speaker, Sir, I beg to reply.

Improvement of the Bura-Halmagalla-Hulugho Road to all-weather standard as passed by the House in 1993 has not been implemented in part because it has not been approved and prioritised by the Garissa DDC. The Ministry will, however, look into the road after the DDC takes the necessary action. In the meantime, the Ministry is concentrating on the district high priority roads along the Bura-Masalani-Ijara-Hulugho Road ---

Dr. Lwali-Oyondi: On a point of order, Mr. Speaker, Sir. The Minister is talking, but we cannot hear him. He is just mumbling to himself. He is not talking loud enough.

Mr. Speaker: Order! It does help everybody if there is low consultations and also those taking the Floor make themselves audible. So, can we have both! Proceed, Mr. Minister! Hon. Members are complaining that they cannot hear you!

The Minister for Public Works and Housing (Prof. Ng'eno): That is not my fault, Mr. Speaker, Sir. It is because they were consulting in high tones.

Mr. Speaker, Sir, we have not implemented the Motion as passed by this House in 1993 because Garissa DDC has not taken it as a priority.

Mr. Farah: Mr. Speaker, Sir, can the Minister give us a break and spare us this "scrap trap on standard answers"? This particular road, when the Motion was drafted, it was amended through his own indulgence "that we can make it passable". It has been a priority for the last 15 years or so. Can he tell us why, if the Government is prepared and in a position to airlift provisions during the rainy season at very expensive cost, it is not going to make this road passable?

Prof. Ng'eno: Mr. Speaker, Sir, the hon. Member is correct. I did amend that Motion to make it read: "We will make it passable"; which we have done. In fact, we are now preparing to grade the whole road of 160 km to make it even more passable during this financial year, 1995/96, at a cost of Ksh640,000.

Mr. Farah: On a point of order, Mr. Speaker, Sir. The hon. Assistant Minister wants to take the House for a ride and he is also misleading it. The Question asks the Minister to make the road "passable" and he says that the road has not been prioritised by the Garissa DDC, which is not true. He then comes here and tells us that they are making it passable. Can he make himself clear on that? There is an element of misleading the House in his answer.

Prof. Ng'eno: Mr. Speaker, Sir, the Garissa DDC has, as a priority, the following:- The gravelling of 26 km Garissa-Dalda Road A3, and the proposed gravelling of 30 km, Garissa-Modagashe Road C81, proposed spot gravelling of 30 km, Garissa-Bura Road. The road the hon. Member is talking about is not a priority, but I did say that we will do spot-patching and make it passable. In fact, it is passable at the moment.

Mr. Fallana: Mr. Speaker, Sir, arising from the Minister's reply, I would like to inform him that it was a Motion brought to this House, debated and passed and not a Question. But that Motion was not implemented because the Garissa DDC did not prioritise it, according to the Minister. However, according to the understanding of the Minister here, who is superior, this august House or the Garissa DDC?

(Applause)

Prof. Ngeno: Mr. Speaker, Sir, I want hon. Members to understand here because they might bring up this matter again. The DDC is the one on the ground and, therefore, knows which roads are important. Therefore, in as far as this road---

Mr. Mulusya: On a point of order, Mr. Speaker, Sir. Is the hon. Minister in order to impute that whatever is passed by this House is subject to prioritisation by the DDC? What are we doing here then?

Prof. Ng'eno: Mr. Speaker, Sir, if the hon. Member can reduce his excitement, then he will be able to listen. First of all, the DDC is a body to which all hon. Members belong. In fact, all hon. Members are members of DDCs and---

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. I think we need your guidance here. We know our institutions and we know that Parliament is the top authority on this land. Now, if we have to take into account what the Minister has told us, are we to believe that whatever we do here in this House is nothing or subject to another authority? Otherwise, I think we should all resign and go home!

Mr. Speaker: Order! Just to make the hon. Members not to go home, the Chair does not believe that any DDC is superior to this House!

(Applause)

Prof. Ng'eno: Mr. Speaker, Sir, I think the truth must be noted here. I am sure you know, as well as any hon. Member in this House, that Private Members' Motions are accepted by the Government in good faith, but they do not carry the "mandatory" requirement that they must be implemented because money will not have been provided for that.

So, I amended the Motion in good faith and told the hon. Member that we would make the 160 kilometres of that road passable. But that cannot be done without proper budgetary provision.

Mr. Farah: On a point of order, Mr. Speaker, Sir. Is the Minister in order to tell us that Kshs790 million is too much money to be spent on a road in North Eastern Province (NEP), even when the province voted 100 per cent for KANU and the Member of Parliament for that area is in KANU? Is that what he is telling the House?

Prof. Ng'eno: Mr. Speaker, Sir, that is not what I am saying. I am saying that to incur that kind of expenditure, a proper budgetary provision must be made. The reason for my amending the Motion was to buy time to spot patch up---

Mr. Ogur: On a point of order, Mr. Speaker, Sir. I did not know each region has a category of financing so that Kshs790 million is too much for NEP. Then, how much is enough for the NEP?

Prof. Ng'eno: Mr. Speaker, Sir, the hon. Member has completely failed to follow my argument. My argument is this, the way to provide for money to be used for whatever programme is not through a Private Member's Motion, which was the case here. I only accepted to assist the hon. Member who brought that Motion by amending the Motion to provide for spot patching of the road using the money that we were able to set aside for that purpose. In fact, Kshs790 million can be spent in the NEP, but that must be done through the normal budgetary procedure.

Mr. Speaker: Hon. Members, Question Time is up. Next Order!

POINTS OF ORDER

REINSTATEMENT OF SENIOR CHIEF MAENDE

The Assistant Minister, Office of the President (Mr. Sunkuli): On a point of order, Mr. Speaker, Sir. Yesterday I promised to investigate an allegation raised by the hon. Kituyi, that a certain Mr. William Maende was promoted to a senior chief following his having been accused of a sexual offence. I have investigated this matter and found that, indeed, the hon. Member was right in saying that Mr. Maende was reinstated to his former position after the police had investigated his case. The police investigated the case of this particular chief. Then after sending the file to the Attorney-General for advice, it was decided that there was no sufficient evidence with which to charge Mr. William Maende in court. Due to that fact, there was no reason for my office not to reinstate Mr. Maende to his position. However, my investigations showed that Mr. Maende was a senior chief as from 1987 and not subsequent to the alleged offence. Therefore, it is not true to say that he was promoted after our investigations.

PROTECTION OF MUGUMO TREE IN THIKA

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. I am rising over something that is reported in today's issue of the *Daily Nation* regarding a holy tree called "*Mugumo*". This tree was planted in Thika by the late President Kenyatta on a spot where a previous *Mugumo* tree stood. A Kikuyu seer called *Mugo wa Kibiro* had foretold that when the first *Mugumo* tree falls down the colonial Government in Kenya would come to an end. The tree did fall down and then we got Independence. It was then that the late Kenyatta planted another *Mugumo* tree in the same spot in 1969.

I am asking the Ministers for Lands and Settlement, Local Government and Environment and Natural Resources to cancel allocation to some individuals of the area where this *Mugumo* tree is, because subsequently these people will uproot this tree. Will the Ministers give this House an undertaking that this tree will be protected, because it already has presidential protection?

PERSONAL STATEMENT

EMERGENCY PROCUREMENT OF DRUGS

Mr. Anyona: On a point of order, Mr. Speaker, Sir. I rise to make a personal statement under Standing Order 69 about a matter---

(There were loud consultations in the Chamber)

Mr. Speaker: Order, hon. Members! Can we hear what hon. Anyona is saying? He is quite a distance from here!

Mr. Anyona: Mr. Speaker, Sir, I was saying that I rise to make a personal statement about a matter which took place in the House yesterday as follows.

During my contribution on the Vote of the Ministry of Health on Tuesday, I said that there was a non-professional deputy director at Kenyatta National Hospital (KNH), and asked the Minister to explain the reasons for it. I also said that the recent emergency procurement of drugs and other medical products did not materialise.

In his reply yesterday, the Minister for Health alleged that:-

"Hon. Anyona argued that he did not want to see non-professionals at the KNH".

I did not say anything of the kind and the HANSARD will bear me out. After all, the sweepers and cleaners are non-professionals and so I could not have said that; I know better than that. Secondly, the Minister said,

"Hon. Anyona has a grudge to grind because he knows that a fellow Kisii was removed from the KNH and so he has things to say which are non-professional and improper".

Here the hon. Minister was imputing improper motive on me contrary to Standing Order 73(4). I have no axe to grind or grudge as imputed by the Minister. The Kisii who was removed from the KNH, Dr. Agata, was the Director, and not Deputy Director of the KNH. I do not know if Dr. Agata was removed for tribal reasons. But I am above and beyond tribal inclinations and sentiments. I have had no motive in raising the matter except that I wanted the Minister to explain the appointment in order to clear the air about whispering campaigns within the KNH and the Ministry of Health. I do not know whether the Minister is aware of this campaign, but I am even told that the Head of the Public Service is involved in the campaign.

The Minister also said that the emergency procurement of drugs was not a failure. I have documents here to prove that the procurement was a disastrous failure. I shall lay these documents on the Table of the House. These documents are one, a memorandum to the Minister dated 30.6.94, which I gave him and whose copy I tabled in the House before. Two, a letter to the Minister dated 10.2.95. Three, a special report dated today, 20.7.95, on the collapse of health services in the country prepared by myself. Lastly, statistics on the emergency procurement to show that there was a failure of that particular procurement. I will lay these documents on the Table now.

(Hon. Anyona laid the documents on the Table)

COMMUNICATION FROM THE CHAIR

QUESTIONS BY PRIVATE NOTICE

Mr. Speaker: Order! Hon. Members, I would like to apologise to the House. It skipped my attention that we had, as a matter of fact, two Questions by Private Notice. I apologise to the House and I will order that they be given priority on Tuesday, next week. I am sorry. Next Order!

BILLS*Second Reading*

THE ARBITRATION BILL

(The Attorney-General on 5.7.95)

(Resumption of Debate interrupted on 13.7.95)

Mr. Speaker: Mr. Shikuku was on the Floor last time, but he is not in. Mr. Kiraitu Murungi, you can take up that time.

Mr. Murungi: Thank you, Mr. Speaker, Sir, for giving me an opportunity to contribute to this important Bill.

I think this is a good Bill in so far as it seeks to repeal the Arbitration Act, Cap 49 of the laws of Kenya which, in the words of the Attorney-General, is now outdated. The Bill is also good in the sense that it seeks to introduce into this country the model law on International Commercial Arbitration of the United Nations Commission on International Trade Law. This is what we have always asked the Attorney-General to do. We have asked him to review our laws so as to put them in line with the current international thinking and practice.

While congratulating the Attorney-General on this very good Bill, we think that his priorities in selecting the Bills are wrong. Since 1992, the Attorney-General has mainly specialised in introducing non-controversial Bills on trade and commerce. We have had Bills on insurance and mainly monetary matters. However, the Attorney-General has safely steered out of those urgent matters which concern Kenyans like freedom, human rights and so forth. We are in a situation where, when our house is burning, the Attorney-General chooses to run after the rats. We have been complaining about the oppressive colonial laws like the Public Order Act, the Chiefs' Authority Act, Societies Act and such other laws which are used to oppress Kenyans and deny them their basic rights. We have not yet complained about the arbitration process in this country. Arbitration does not have the sense of urgency and immediacy which these colonial laws have.

So, we do not know what criteria the Attorney-General used in bringing in the Arbitration law and not a law to repeal---

Mr. Speaker: Order, Mr. Kiraitu Murungi! What Motion are you debating? Certainly, it is not this Bill.

Mr. Murungi: Mr. Speaker, Sir, I am debating the Arbitration Bill, 1995, and I am only questioning its premise. I am asking the Attorney-General why he chose to bring the Arbitration Bill this time and not the Bills that we have been asking him to bring. To whom is the Attorney-General listening? Is he listening to the Kenyans or to the United Nations and other bodies out there? While we have no quarrel with the Bill, we want the Attorney-General to listen to us and bring a Bill to repeal the Chiefs' Authority Act, the Public Order Act and other laws which are oppressing the Kenyans. I think I have made my point on that. Let me go back to the Bill.

Mr. Speaker, Sir, hon. Biwott would like to repeal the Constitution. That is not our request. Our request is for a constitutional review and restructuring.

Mr. Biwott: On a point of order, Mr. Speaker, Sir. Is hon. Murungi in order to mislead the House when it is he who wants all the laws of this country to be repealed so that we can have anarchy?

Mr. Murungi: Mr. Speaker, Sir, you know that I am a law-abiding citizen. I love peace, and it is hon. Biwott who has been the mastermind of anarchy in this country.

(Applause)

It is hon. Biwott who would like the Constitution repealed so that there can be anarchy.

Mr. Biwott: On a point of order, Mr. Speaker, Sir. I am quite sure that the hon. Member is speaking his own mind and not that of the law-abiding Nicholas Biwott who believes in the laws of this country and in rules of this society, even those which are traditional and which are respected by a decent Kenyan.

Mr. Speaker: Order! If hon. Kiraitu Murungi wants to debate hon. Biwott, he should bring a substantive Motion. As of now, you are out of order. In fact, you are both out of order. Can we now discuss the Bill and stop discussing other Members? Mr. Murungi, you now have my warning that you are becoming irrelevant. So, will you be relevant to the Bill, and be serious?

Mr. Murungi: Mr. Speaker, Sir, I will take your warning seriously, but as I have heard, it is also addressed to hon. Biwott, so, I hope he is not going to interrupt me.

Basically, we have no problem with this Bill. As I have said, it is good law. It will simplify the administration of justice in this country and it is going to make us more efficient in delivering justice to our people. The Bill could not have come at a more appropriate time. At this time, our courts have been very inefficient in delivering justice to our people. Apart from being inefficient and slow, justice in this country is one of the most expensive commodities. For a herdsman to pay costs, filing fees, legal fees to lawyers, VAT, witness expenses, disbursements of all kinds, he will need to sell the entire herd of cattle in order to bring a simple grievance to our courts. The corridors of our courts have become corridors of chaos. We, lawyers, are spending whole days and weeks sitting outside the courts, hanging around the corridors, waiting for our cases to be called. It is taking an

average of between four and five years for a simple contract matter to be disposed off in our courts. As if that is not enough, there are complaints of corruption at every level of our Judiciary. We have had cases where we won in courts but the files disappeared before execution. You remember sometime back in 1970, there was a magistrate and a clerk who were convicted of corruption at the High Court. I remember the words of the clerk who told a litigant who at that particular time was the accused "What are you doing coming to court; what are you waiting for? In these courts, it is only fools and those without money who go to jail". The philosophy of that clerk seems to have permeated the entire Judicial process so that these days it appears that it is only fools and poor people without enough money who get injustice in our courts. Those people with money can use their money to protect injustice.

Mr. Speaker, Sir, apart from this, our courts are alien institutions. They are very intimidating. Ordinary litigants appearing in court finding people who are robed, wearing hairs which is not theirs, wonder whether they are in Kenya or in another country.

An hon. Member: Watch out, Mr. Speaker!

Mr. Murungi: I am not talking about Mr. Speaker, I am talking about the Judges in the High Court. These people wonder whether they are dealing with the normal Africans or different species of human beings. I remember one case when I went to represent an Indian lady in the High Court and she whispered to me "Can I ask you something or am I going to be put in jail by the Judge?" The litigants do not know what rights they have within a court of law. They are not sure whether they are saying the right or wrong things. So, the entire court room itself undermines our own system of justice because people are not relaxed. People do not understand the language of the lawyers and the judges who seem to be talking a jargon which is different from ordinary Kenyans and they do not even understand the mannerism in the court.

The High Court of Nairobi is also intimidating through its own majesty of buildings in the many corridors. I have met lawyers from upcountry whose cases were dismissed in Chamber No.48 upstairs while they were busy on the ground floor looking where Chamber No.48 was. Even lawyers themselves cannot find their way around the court! How do you expect litigants to find their way? There are all those problems and I think that it is high time we looked for alternative systems of providing justice to our people and one of those systems is one that the Attorney General has brought through the Arbitration Bill, where litigants will participate in the justice system of this country and where litigants will be able to choose who their judges are going to be.

Mr. Speaker, Sir, we have been making a mistake in this country that law is the only regulatory force in society, that it is only through law that we can get justice. The customs of the people and public morality, as hon. Dr. Kituyi is telling me, religion, gossip and even threats of scandals themselves are important instruments of social control and they could be used and they could play a key role in arbitration of even commercial disputes. I do remember one case which we, as lawyers, had dismissed as hopeless. One Asian businessman had loaned another Asian businessman a sum of KSh500,000 way back in 1970s. By then, KSh500,000 was a lot of money, but there was no written documents. The borrower just went to the lender's house and was given KSh500,000 and promised to return it in two weeks' time and that was it. This gentleman approached several lawyers who asked for a piece of paper. They asked him "do you have any written contract for that money?" Since he did not have any written document, they told him that it is his word against the person he claimed had loaned him the money and they did not give the case any chance in the courts. Then later, I understand that this gentleman appeared before one of the lawyers and he told the lawyer that all he wanted was a meeting between him and the person he loaned the money. Just a face to face meeting and that they should have a Koran so that if the man who received the money will lift the Koran and say that he never got the money, then he was willing to write off the debt. The Asian elders organised a meeting to take place and a Koran was brought and the man who was given the money could not have courage to raise the Koran and deny having received that money. So, the matter that had defeated us as lawyers was sorted out very easily through the Koran by a few elders from the Asian community from his religion. Instead of us rushing to courts all the time and using this very expensive and inefficient legal structures, these systems of settling disputes through the churches and other alternatives which our people believe in should be explored. This Arbitration Bill has a target group which is different from the majority of our people. The Bill, when it becomes law, will be very useful in adjudication of international disputes. It will be very useful in sorting the difference between one multi-national company and another. It will also be useful in dealing with cases of top businessmen in this country. Do not be cheated that the arbitration process itself is not an expensive process. Arbitration fees can be very expensive because they are charged at professional rates. We need, either through this Bill or another Bill, a Bill which will introduce arbitration which is within the reach of the common man in this country. There is no arbitrator who you will approach today and not charge you more than KSh20,000 because arbitrators use a time scale. You sit with him there discussing your problem and he records the speech!. Even if the fees is KSh3,000 or KSh4,000 per hour, in one day, you are going to pay the arbitrator at least KSh10,000! Even that arbitration will be above the reach of the majority of Kenyans.

[Mr. Speaker left the Chair]

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

We would be happy if the Attorney-General could think of an arbitration tribunal which the majority of our people can afford.

I know that in Sri Lanka, they have what they call the Conciliatory Boards Act of Sri Lanka. I would like to request the Attorney General to look at that Conciliatory Boards Act of Sri Lanka because it provides a framework for simple conflict resolutions within society. The Sri Lankan Act encourages local people to settle their disputes through the reconciliatory boards rather than through the courts.

Mr. Temporary Deputy Speaker, Sir, what we have in mind is an arbitration tribunal or a conciliatory body which will be manned by the ordinary people themselves; it should not be manned by experts. The Arbitration Act that we have will need people who are trained in a branch of law called Arbitration. The conciliatory bodies are the thing for us in the rural areas. If it is in Maasailand, we will get an experienced *mzee* from the Maasai community who is respected by the people; he will sit on that board and resolve the disputes of the Maasai community within the context of Maasai traditions and Maasai customary law and they will come up with binding decisions. If it is in Samburu, there will be a conciliatory board comprising of respected Samburu elders. So, the conciliatory board has actually more flexibility than the Arbitration Bill and it will bring justice closer to the people. It will bring justice which is consonant with public morality; with the concept of justice and morality of those people.

Mr. Temporary Deputy Speaker, Sir, what I am calling for is really an informal and an unofficial system of justice where disputes are settled in a free atmosphere. I know that in the old Meru community when the *wazees* were listening to these kinds of cases they normally slaughtered a goat to be eaten by the defendants and the plaintiffs. That helped to create a relaxed atmosphere when those disputes were being discussed and settled. So, this kind of forum, of an arbitration tribunal composed of *wazees*, will guarantee the system against injustice. The corruption that we have in courts can very easily go also into arbitrators. This is because even trained arbitrators could also accept bribes just like the judges or magistrates do. But if the people doing so are respected Maasai elders, respected Meru elders and other people, the wananchi themselves will be able to choose people who are incorruptible; people who are above manipulation by the powerful and the rich.

With those few remarks, Mr. Temporary Deputy Speaker, Sir, I would like to congratulate the Attorney-General once more for introducing this very good Bill and again appeal to him to bring before this House, before very long, a constitutional reform Bill and several other Bills for the repeal of those oppressive colonial laws. That is what Kenyans are waiting for. That is the job that we have been sent by our people to ask the Attorney-General to do; not to bring us laws up there in the sky.

Thank you, Mr. Temporary Deputy Speaker, Sir.

The Assistant Minister for Commerce and Industry (Mr. Osogo): Mr. Temporary Deputy Speaker, Sir, my observations on this Bill are going to be subject to requesting the Attorney-General to make certain clarifications regarding what I think are omissions in the Bill and a few other things that I do not understand. I do not know whether a third-party could request for arbitration. It is not specified in the Bill as to whether a third-party which finds that two warring parties seem not to be initiating arbitration, could request for arbitration between the two warring parties. I do not think that the Bill contains such a provision. I have in mind what is going on between the GEMA communities and the *Kamatusa*, which is a sort of an arbitration. I have requested the hon. Member for Kerio South, Mr. Biwott, to initiate a similar discussion between the Luhyas and the Elgon Maasai on what happened when the Bukusu fled the Mt. Elgon area.

The Assistant Minister for Tourism and Wildlife (Mr. Kisiero): On a point of order, Mr. Temporary Deputy Speaker, Sir. I presume hon. Osogo is referring to the Sabaots because we do not have Elgon Maasai in Mt. Elgon District.

The Assistant Minister for Commerce and Industry (Mr. Osogo): I was referring to the Sabaot, Mr. Temporary Deputy Speaker, Sir. I am a Mnyala and I would be interested to see arbitration between the Bukusu who left Mt. Elgon District and the Sabaots so that the Bukusu people can go back to their land. I could initiate or request for that type of arbitration although I am not involved; I would be a third-party. That is why I was requesting the Attorney-General to consider initiating that type of thing. I did not agree with the Member for Molo when he issued a Press statement the other day saying that people from all the other tribes that were affected by the clashes have resettled. That is not true. Quite a number of Bukus are still living in mission stations in Bungoma. They have not gone back to their land. I have been discussing that issue privately with hon. Biwott and I suggested to him that since he initiated the discussions that are going on now between GEMA and *Kamatusa* communities, and which have

been termed secret and which I think are very valuable, he should also consider initiating that type of dialogue between other people. This is because we need that type of dialogue to enable our people to live in peace. I pleaded with him to initiate similar discussions which should involve my brother from Mt. Elgon, hon. Kisiero, so that we should also start talking to enable our displaced people to go back to their land. That is one thing I wanted the Attorney-General to clarify.

Now, coming to the Bill, I would like to refer to Clause 3(2)(b) which says:-

"In the case of a body corporate, that body is incorporated in or its central management and control is exercised in Kenya---"

Mr. Temporary Deputy Speaker, Sir, this means that a body corporate will also request for arbitration. Does this body corporate also include political parties? I am asking this question so that we may know whether political parties can be included. What has been going on in FORD(K) could also be brought under arbitration so that they do not continue fighting and---

Dr. Otieno-Kopiyo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Osogo in order to allude to the very successful arbitration among FORD(K) Members and which has taken everybody by surprise including the *Kamatusa* and Kikuyu communities?

The Assistant Minister for Commerce and Industry (Mr. Osogo): Mr. Temporary Deputy Speaker, Sir, I am sure you have decided not to make a ruling on that one because you know that I am very much in order. I am very much in order to express my views and opinions on this matter. Some photographs were published in the newspapers showing one FORD(K) member being carried high like an animal being taken to the slaughterhouse. Such fellows need arbitration. So, I was wondering whether that particular clause could include a provision to cater for a situation such as the one we saw in Kisumu recently.

Dr. Toweett: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to imply that if the Speaker does not say anything about a certain point of order it is taken that the Chair is in agreement with what the hon. Member on the Floor is saying?

The Temporary Deputy Speaker (Mr. Ndotto): Leave that to the Chair, Dr. Toweett. Continue, Mr. Osogo.

The Assistant Minister for Commerce and Industry (Mr. Osogo): Mr. Temporary Deputy Speaker, Sir, the hon. philosopher is trying to put up his philosophy. So, it was not a point of order that my friend hon. Toweett raised. While on a---

Dr. Toweett: On a point of order, Mr. Temporary Deputy Speaker, Sir. But mine was a point of order. Are we to assume and accept that when the Speaker is silent or when one asks for a point of order, the Speaker's silence is accepted that the Speaker is right?

Mr. Temporary Deputy Speaker (Mr. Ndotto): That was his own opinion and that is also your opinion. I want hon. Osogo to continue. I do not think that is a very important point of order. Continue, hon. Osogo.

The Assistant Minister for Commerce and Industry (Mr. Osogo): Thank you, Mr. Temporary Deputy Speaker, Sir. I was continuing to comment on body corporate as provided for in Clause 3.2 (b). I have not had the opportunity or the advantage of looking at the Act on the interpretations in court. I looked for it, but I could not find it, and I wonder if the body corporate is also addressed in legal language as "he". I hope when the Attorney-General replies, he will tell us what the Act on interpretation says about a body corporate being referred to as "he" in this Bill. I am saying so because in several places in this Act, the word "he" is used and from my knowledge, "he" implies "she" also, but I did not have the opportunity of having to look at the Interpretation Act to find out whether a body corporate could also be referred to as "he". If it is not, the Attorney-General will find a way of defining a body corporate here, that it is also included in this clause because there are so many "hes" in this Bill, and I do not want to find ourselves in a situation whereby the wiggled old gentlemen in the courts on Benches take again exception of us having passed a Bill which they are going to say something about like the Narcotic Bill which was passed here, and which I spoke very strongly about. Eventually, my speeches are coming out as things that were true, and that I was not happy with.

Mr. Temporary Deputy Speaker, Sir, coming to page 176 on Clause 3, I have said the third party there in Sub-Clause 5, which reads:-

"Where a provision of this Act, except Section 31, leaves the party free to determine a certain issue, such freedom includes the rights of the parties to authorise a third-party, including an institution, to make that determination".

Mr. Temporary Deputy Speaker, Sir, the third party comes in, but it is coming in a different context; not in the context I was referring to, but it could request for arbitration. It is coming in a different context, but there is no third-party there. So, my question is that third-party should also be used to request for arbitration. Mr. Temporary Deputy Speaker, Sir, I now come to page 177 Clause 6. That one deals with the matter being before the court, and it

says:-

"A court before which proceedings are brought in a matter which is the subject of an arbitration, agreement shall, if a party so applies not later than the time when that party enters appearance or files any pleadings, or takes any other step in the proceedings, stay the proceedings and refer the parties to arbitration unless it finds"

I am coming to Sub-Clause 2 where it says that:-

"Notwithstanding that an application has been brought under sub-section (1) and the matter is pending before the court, arbitration proceedings may be commenced or continued and an arbitral award may be made."

Mr. Temporary Deputy Speaker, Sir, that also appears in Clause 14 (3). I am confused there. Here matters have been referred to court and this Clause allows proceedings on the matters referred already in court to continue and even ruling or award be made on the proceedings. What will be the use of the court then, on the matter being in the court? What will the court do if the matter has been brought before it, but the tribunal is still continuing with the matter and gives award, and Clause 14 (3) has got a similar provision, and it says:-

"If a challenge under any procedure agreed upon by the parties or under subsection (2) is not successful, the challenging party may, within 30 days after having received notice of the decision rejecting the challenge, apply to such competent authority as the Attorney-General, may by notice in the Gazette, designate to decide on the challenge and the decision of such competent authority shall be final and not be subject to appeal, but while such an application is pending before such competent authority, the arbitral tribunal, including the challenged arbitrator may continue the arbitral proceedings and make an arbitral award."

Mr. Temporary Deputy Speaker, Sir, matters are proceeding before a competent authority, but this tribunal is also continuing. These two, I hope the hon. Attorney-General will let us know how the two will continue, and who will have money to finance both. These are poor people wanting arbitration. One of them disagrees and goes to court, and he requires, of course, to hire an advocate for the court, so is the other party who will go to defend himself again in the court. But meanwhile, those are continuing in the court and the tribunal is proceeding. They have again to provide some other personnel to continue with the arbitration. That amount of money, where is it going to be found so that these two could go either simultaneously or one after the other? Why can't the tribunal not stop these proceedings and wait for the courts ruling so that after the court has made a ruling on what has been before it, then the arbitration tribunal could proceed? I do hope that my friend the Attorney-General will probably make me a bit wiser on that one.

Mr. Temporary Deputy Speaker, Sir, I will read Clause 8(2).

"The authority of an arbitrator is not revoked by the death of any party by whom he was appointed."

Now, that brings me back to what I said about the corporate body. That Clause refers to death of a party. Now, a corporate body may also die by being dissolved. Now, what happens to corporate body which is dissolved? Will it also be regarded as having died? Coming to Clause 9 (a) it reads:-

"Any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or through the mailing address; --"

I have no problem with all these other modes of communication except for the delivery being made through the mailing address. Our postal services in this country are not that perfect and letters take a long time in the Post Office. For example, when I post a letter in Nairobi to my home and my home is not far, it takes nearly three weeks to reach Port Victoria. I would like the Attorney-General to understand that our postal services are not that good and relying on mailing address is not going to help the parties. So, some other way should be substituted. You can use registered mail because that will show when one received the mail because one has to sign a book in the Post Office before a registered mail is delivered to him. So if a mail is registered it will be better. I would like this section of the Bill to be amended to include registered mail rather than ordinary mailing. On receiving a registered mail, one signs a book on the date he receives a mail and in this way, in case of any delay, one can find out when it was actually received. I am afraid that by leaving that Clause as it is, we will be putting ourselves into a lot of problems. Indeed, in Clause 9(2) the Attorney-General now includes registered mail. If he prefers registered mail in sub-clause 2 where it says "habitual residence or mailing address by registered mail--" I would like even that Clause 9(1) (a) to include registered mail.

I have come to Part III which deals with the composition of Jurisdiction of Arbitral Tribunal. It says in Clause 11 (1)

" The parties are free to determine the number of arbitrators"

Clause 11 (2) goes further to say:-

"Failing such determination, the number of arbitrators shall be one."

I need clarification on that Clause too. Take an example where there are two parties wanting arbitration and they do not agree on the formation of the arbitrators but they are told that if they fail then the arbitrator will be one. We are not being told who is going to appoint that one arbitrator. The two fellows have failed to appoint an arbitrator but first, there is a proviso that if they fail, one is going to be appointed.

We are not being told who appoints that one arbitrator. The Attorney-General should take note of that because I am sure that the wiggled people on the Bench will be asking who appointed the one arbitrator and there will be a lot of going by default when such cases come up in courts of law.

Further on in Clause 12 (2)(a) it reads:-

"The parties are free to agree on a procedure of appointing the arbitrator or arbitrators and failing such agreement-

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator and the two arbitrators so appointed shall appoint the third arbitrator."

That is alright. That means that the two arbitrators will appoint their own arbitrator. Each party will appoint an arbitrator but if they are required to be three, then the two will appoint the third arbitrator. That is alright but my question is: If they fail to appoint the third one, what happens? It is not explained what happens in case there is a failure there. There should be some explanation as to where they move to when that deadlock is reached. It further says in sub-Clause 3:-

"If-

(b) in the case of one arbitrator, the parties fail to agree on the arbitrator; the appointment shall be made, upon application of a party, by the High Court"

That means that if they have failed to appoint an arbitrator one of them goes to the High Court and the High Court will appoint the arbitrator accepting one application to the High Court. My question is: If the other party does not agree or is not satisfied with the appointee of the High Court, where does that party go to? That very Clause 12 (5) says that the decision by the High Court is final and this is repeated in various places.

There has been talks of Kenya having a Supreme Court which will be over and above the Court of Appeal. Now, if we subject these people to the High Court only and they do not go to the Court of Appeal at all in their deliberations, what will happen? There is no place where a Court of Appeal is appearing except one place which I will come to later on. Are we really being fair with the parties that would have enjoyed the privilege of making their submissions to a Court of Appeal? Maybe the Attorney-General will tell us why he has excluded the Court of Appeal throughout the arbitration. It goes on to say in Clause 12(6) and these are now the costs of arbitration:-

"The High Court, in appointing an arbitrator, shall have due regard to any qualifications required of an arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account the advisability of appointing an arbitrator of a nationality other than those of the parties"

Mark that one, Mr. Temporary Deputy Speaker, Sir. I would also like the Attorney-General to mark that fact. But we are not told who is going to pay for that arbitrator to come here. It is only said that "the parties will bear the cost". Now, a nationality who is not a Kenyan, he might come by either air or some other means. If he is appointed from Singapore, he will travel all the way to Kenya. Who will bear that cost? The Bill is silent here, but it should be clarified as to who is going to be responsible for the cost of such a person travelling all the way from his country of origin to Kenya to arbitrate.

The same goes for Clause 32(6)(a) on page 188. It also deals with costs, and it says and quote:-

"The costs and expenses of an arbitration, being the legal and other expenses of the parties, the fees and expenses of the arbitral tribunals and any other expenses related to the arbitration, shall be as determined and apportioned by the arbitral tribunals in its awards under this section, or any additional awards under section 34(5)". Now, Clause 34(5) says and I quote:-

"If the arbitral tribunal considers the request made under subsection (4) to be justified, it shall make the additional arbitration awards within 60 days".

So, that is part of the cost I was querying about a person who is going to be appointed from outside the country or from another nationality to be an arbitrator. People who are arbitrated upon, sometimes they are very rich, if they are fighting over business. But sometimes they might be fighting over small *shamba* and they are the "ordinary Osogo son of Nakhwanga in Bunyala" with somebody else who cannot afford. So, I think, we should look at it in the light of that, but not always in the light of rich fellows like the "big magnets" in international businesses who are going to fight and require arbitration. Even small fellows might also require arbitration. So, let us consider all the---

QUORUM

Mr. Gitau: On a point of order, Mr. Temporary Deputy Speaker, Sir. I note that there is no quorum and this is a very important Bill. So, something ought to be done about it.

The Temporary Deputy Speaker (Mr. Ndotto): Yes, there is no quorum. Can the Division Bell be rung?

(The Division Bell was rung)

The Temporary Deputy Speaker (Mr. Ndotto): Okay, we now have a quorum. Continue, Mr. Osogo.

The Assistant Minister for Commerce and Industry (Mr. Osogo): Thank you, Mr. Temporary Deputy Speaker, Sir. I was making comments on the clauses that I do not understand. I move to Clause 14 on page 180. Clause 14(2) gives the period by which a party should be able to raise an objection. It says:-

"Failing an agreement under subsection (1), which says that the parties are free to agree on a procedure for challenging an arbitrator, subsection (2) says that if that fails, failing an agreement under subsection (1), the party that intends to challenge an arbitrator shall, within 15 days after becoming aware of the composition of the arbitral tribunal or after becoming aware of any circumstances referred to in section 13 (3), send a written statement of the reasons for the challenge to the arbitral tribunal".

I would like to plead with the Attorney-General to increase the 15 days to 21 because 15 days are very short. With the postal system that I have described earlier, I think 21 days would be good enough or long enough for the party wanting to challenge to submit its statement. But it further says that,

"he will send a written statement of the reasons for the challenge to the arbitral tribunal and unless the arbitrator who is being challenged withdraws from his office or the other party agrees to the challenge the arbitral tribunal shall decide the challenge".

There gain, a party is objecting to a member of the tribunal and if the parties do not agree, the tribunal itself will decide upon that challenge. My question is, what about if the arbitrator is only one, which is provided for in the Bill? Is he supposed to decide for himself against the party which has challenged him? So, the Attorney-General should clarify what will happen if the tribunal is composed of only one arbitrator. How will he deal with the matter where, as an arbitrator, he is being objected to?

Mr. Temporary Deputy Speaker, Sir, I will now go to clause 16 (1)(b) which says,

"Unless otherwise agreed by the parties, where an arbitrator, other than a sole arbitrator, or a presiding arbitrator is replaced any hearing previously held may be held afresh at the discretion of the arbitral tribunal".

This is going to be different from what happens in the courts. The provision says that if one of the members of the tribunal dies, unless he is the only one, the tribunal will use its own discretion and continue with arbitration. If the arbitrators were two, whoever comes will continue with the proceedings from where he found them. The courts have a different procedure from this one here. If one of two judges dies the whole case begins afresh. I do not know why a similar procedure is not provided for here in the case of arbitration, so that if one arbitrator dies, provided the arbitrators are two or more, all the evidence which has already been given should be given afresh so that the new arbitrator has the advantage of knowing what happened.

Then clause 16(3) provides,

"Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalidated solely because there has been a change in the composition of an arbitral tribunal".

Again, that is ultra vires clause 13(4), which says,

"A party may challenge an arbitrator appointed by him or in whose appointment that party has participated only for reasons of which he becomes aware after the appointment."

So, if I become aware that the person I have appointed has some interest in the agreement I have with the other party, I should be able to challenge that arbitrator. I definitely do not understand how these two clauses will work if they remain part of the Bill. Mr. Temporary Deputy Speaker, Sir, clause 17(1)(a) states,

"An arbitration clause which forms part of the contract shall be treated as an independent agreement of the other terms of the contract".

Of course, I am not a legal person and definitely I do not understand this provision. How does an arbitration clause standing by itself become an agreement? May be the Attorney-General will explain and give us an example of what such a clause would mean.

Now, clause 17(8) provides as follows:-

"While an application under subsection (6) is pending before the High Court, the arbitral tribunal may continue the arbitral proceedings and make an arbitral award".

Again Clause 18(3) has a provision that is similar to this one. I am only wondering whether it is not a waste of time for the court and tribunal to proceed on the same matter concurrently. This is really disturbing because of the wastage of money and time on such proceedings.

I am told that this is a commercial Bill and, perhaps, the Attorney-General will tell us that businessmen have a lot of money and will be able to have the proceedings handled in that way. But there will also be small businessmen who might enter into this kind of a thing.

Still, I think there is a typing error in Clause 18(3). This is because it refers to a request to be made under subsection (3) and yet it is the subsection (3) itself. It must be that it was meant to refer to either clause 2 or subsection (2) of this clause because it is not possible to refer in subsection (3) to a request which is to be made under the same subsection (3), unless the wording contains the words "under this subsection".

Clause 35, section 2. (b) reads:

"An arbitral award may be set aside by the High Court only if the High Court finds that the subject matter of the dispute is not capable of settlement by arbitration under the law of Kenya or; (ii), the award is in conflict with the public policy of Kenya".

The "public policy of Kenya" is very wide and, of course, public policy will probably be of the Kenya Government. I am not able to comprehend what, in this case, the court will not be satisfied with. What policy? Public policy, as such, can be anything. There is Government policy, the Opposition may have its own policy, an ordinary person might have his own policy too. That is rather wide. May be, the Attorney-General will tell us what he means by this "public policy" which the court will think is in conflict with the award.

Mr. Temporary Deputy Speaker, Sir, I am nearly ending. I am on page 193, on Miscellaneous Provisions. I would like to deal with the part that talks about bankruptcy. We are told here in clause 38 (1) that: "Where it is provided by a term in contract to which a bankrupt is a party, any differences arising out of or in connection with the contract, shall be referred to arbitration. Then if the trustee in bankruptcy adopts the contract, that term is enforceable by or against so far as relates to those differences". A bankrupt person is being brought into this thing when he is still bankrupt. I thought a bankrupt person is like somebody who is dead. He is already shelved and kept in cold storage. How is he going to be brought to life and be a party to a contract for this type of thing? However, may be, the Attorney-General will explain that to me. I think it is out of my ignorance on law that I have failed to understand it.

Lastly, I will come to page 194. That is the only place where an appeal court is being referred to. In the whole of the Bill, there is no appeal after the High Court, but there is now a Court of Appeal appearing. This is in clause 39, sections (2) and (3). Section (2) says: "On an application or appeal being made to it under sub-section (1), the High Court may, as appropriate; (a) determine the question of law arising, (b) confirm, vary or set aside the arbitral award or remit the matter to the arbitral tribunal for re-consideration or, where another arbitral tribunal has been appointed, to that arbitral tribunal for consideration. Section (3) says: "Notwithstanding Sections 5 and 34, an appeal shall be made in the Court of Appeal against a decision of the High Court under subsection (2): (a) if the parties have so agreed that an appeal shall lie".

Now, in all other provisions, appeals to the Court of Appeal from the High Court have been denied. However, here, they say that subsections 5 and 34 notwithstanding, matters will come from the High Court to the Court of Appeal. May be, we will be told why the Court of Appeal has been allowed in this particular clause and denied the parties in all the provisions of the other clauses. As I said, a Bill of this nature is very important. It is a good Bill and I am glad to hear that there is another Bill coming for small men like ourselves. This is a Bill for the *Bourgeois* who have got big money and big businesses to fight over among themselves in arbitration. We hope the one for the small people that is coming will have certain provisions that will enable the small man to get justice from such arbitration. As I said, arbitration is a very good thing. It enables people to talk if they have not been talking. I think the Bill is very good and I do very much support the learned gentleman from the Opposition who spoke before me, that the Bill is good but clauses such as the ones we lay-people do not understand should be clarified so that when we pass a Bill of this nature, we know exactly what it is. It should be interpreted properly by the legal wizards and we have many in this House.

With these remarks, I beg to support the Bill.

The Temporary Deputy Speaker (Mr. Ndotto): Well, it looks like there is no other Member who wishes to contribute. The Attorney-General may reply.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, as usual, I am ever ready; I beg to reply.

I would wish, first of all, to thank all those who contributed to this Bill. In fact, all those who contributed have indicated their support for the Bill. All of them made very constructive suggestions and I think I will try to go through some of the points where clarification was needed.

However, let me, first of all, say that this Bill will improve considerably the administration of the justice

system in this country. In as much as it will improve the administration of the justice system, it will, in fact, be enabling the people of this country to do that which any organised society does to provide a system of an amicable resolution of disputes. In any civilised society, the matters that come first and foremost are matters of law and order. The other matter is how disputes between the various people in that country can be resolved amicably rather than by resort to physical means.

The Bill which is before this House will improve considerably the system of resolving disputes in this country. I am the first to say that this is not the only way of resolving disputes. It is one of the many ways of resolving disputes. The first and foremost method of resolving disputes, as you know, is through the court system, but the court system can be prolonged because of the legal technicalities that are involved. The court system can also be quite cumbersome. It can also make what an hon. Member here said, a system which the ordinary man in this country does not understand. It can even go further and create a system which even the elite of this country do not understand, and only the people who are trained in law like judges, magistrates and lawyers understand.

As I said when I was moving this Bill, it is my hope that when this Bill is passed that first at the domestic level, we should be able to use the arbitration procedures more. If we use more of the arbitration procedures, we would be able to release the courts which are now over-burdened, particularly with civil cases, with the result that the average time for hearing of civil cases can take not just five or six years, but can even take a decade before a dispute is settled.

Mr. Temporary Deputy Speaker, Sir, arbitration is just but one method, the other method, of course, is the court. A number of comments were made in this House about the small claims, which are important to the people involved, but which are small in terms of monetary value concerned. Does this apply to them? A number of cases were quoted, particularly, relating to land disputes. Will this Arbitration Bill apply to them? I would like to state that this Arbitration Bill applies more to commercial-orientated disputes, both at the domestic and international levels. When we come to issues such as land disputes, we have a separate legislation which relate to that. When we come to what one would say, small claims, we are contemplating and thinking of putting in place, systems which are already in place in other countries, whereby the small claims can be dealt with at the local level in a very expeditious manner.

In January, this year, I visited France and one of the issues that I was very much interested in was how in that country, they are able to deal with small claims at the local level. They have instituted small claims courts in France, which deal with those types of disputes at the local level. For example, if you have a claim against somebody whom you may have given two chickens or one goat or whatever at the local level and you are not being repaid back, that can be dealt with at the local level almost the same day and a ruling given which is obeyed. Hon. Murungi also referred to Reconciliation Boards Act in Sri Lanka, which deals with these type of claims. I know that also in America they have these type of systems which deal with small claims. So, the matter of small claims is a matter of concern to the Government and I can assure this House that sooner rather than later, we shall be bringing an appropriate legislation which will deal with those type of claims where there will be laymen to deal with small claims at the local level in a very expeditious manner.

Mr. Temporary Deputy Speaker, Sir, the Bill that is before this House is a Bill which concerns mainly commercial disputes and when I moved this Bill at the beginning I did mention that the world has become smaller, not just through technology *etcetera*, but through trade and commerce. Consequently, more disputes have arisen and will arise, not just within the country because the social problems and development that have taken place in this country, but also regionally. We are aware, of course, of the efforts being made through East Africa, through the Treaty for Eastern, Central and Southern Africa, SADAC, through the African Economic Treaty, *etcetera*. We are aware of efforts being made even at the continental level to see whether we can increase the trade, not just between the developed and the developing world, but within the African continent.

Dr. Lwali-Oyondi: On a point of order, Mr. Temporary Deputy Speaker, Sir. This is a very important Bill and would I be in order to ask the Attorney General to tell us in concrete terms, the commercial value of amounts that will be involved as commerce begins from a kiosk upwards?

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, the thread that goes through this Bill is the principle of flexibility which is not there when one is referring to civil process before the courts. That is why most of the clauses refer to where two parties agree. So that if I have a dispute with hon. Member for Othaya, and God forbid that I will have a dispute with him, if it is a dispute of KShs.5,000 and if both of us feel that this dispute should go to arbitration and that we should follow this Act, then we shall go through this Act, even if the process itself maybe more expensive. In other words, it is really up to the parties themselves to agree. We are providing a forum under this Bill where parties can agree to go to arbitration. We are providing a forum under this Bill where the parties themselves can agree on the arbitrator and we are also providing a forum in this Bill where the parties can even agree on the procedure for appointing an arbitrator. We are providing a forum in this Bill where the parties can agree on the language to be used and where the parties on the rules of procedures to be used when the arbitration is being heard.

Therefore, to answer your question, what this Bill is doing is to provide that forum and that forum will be there and will be more focused on commercially-oriented cases. Obviously, in a dispute concerning a kiosk owner, he may very well feel that maybe to go through this procedure may be too expensive for him. I do not know. But at the end of the day, he may well discover that maybe it is good to use this procedure rather than go to court where the procedure can be complicated or can be long drawn out and can take a long time. He may very well feel, although it is a small amount "let's agree on having an arbitrator; we all have confidence in him, let's just put our case to him without the necessity of cross examination and all sorts of technicalities and let him determine. And whatever he decides, should be final".

Mr. Temporary Deputy Speaker, Sir, a number of very important points were made. I do---

The Temporary Deputy Speaker (Mr. Ndotto): Order, hon. Attorney-General. Although the point raised by the hon. Member is valid, now you should be replying to the hon. Members' views. I think when we come to the Committee Stage, then the hon. Member can raise those points Clause by Clause. I think the Attorney-General is now replying to the hon. Member's views.

The Attorney-General (Mr. Wako): Thank you very much, Mr. Temporary Deputy Speaker, Sir. A number of points were raised. Hon. Dr. Kituyi talked of the traditional culture and the modern commercial culture. I do agree with him that the arbitration procedure is in both cultures and also in our African traditional culture. Therefore, this is not something new. The concept of arbitration is not something new in Africa today. Hon. Obwocha and hon. Makau mentioned a number of cases involving Kenya which have been handled in Paris through arbitration. They specially referred the Ken-Ren scandal.

First of all, I can say that the Bill that we are passing will be a Bill which will provide the enabling legal environment for a centre to be established in Nairobi and for arbitrations of this nature which may involve people from different nationalities or companies which are formed in different countries and so on can also be heard here.

As I said earlier, Mr. Temporary Deputy Speaker, Sir, these international commercial arbitrations are not heard here. The Ken-Ren arbitrations have been heard at The Hague, London and in Paris. There are various arbitrations going on at The Hague, London and in Paris. I would like to inform this House that, at least, with the arbitration that is going on in Paris, we are awaiting an award of that arbitral tribunal very soon. But it did teach us a lesson. What was that lesson? The lesson was that because the arbitration is based in Paris, which is in the Developed World, of necessity the arbitrators also come from the Developed World and of necessity also the people to argue out our claims and so on, also come from the Developed World. We had our own officers, lawyers and advocates going there but they had really to assist the attorneys in those countries and hence the great urge by the Third World countries that time has come when we also in the Third World must have an international commercial arbitration centre based in a Third World country and Nairobi is the ideal place; so that when we have disputes of this nature, not necessarily involving Kenya but involving other countries, they should feel at liberty to come here. If they do come here then invariably---

Dr. Otieno-Kopiyo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Now that the Attorney-General is replying to our views, and he is making a very good suggestion, why did he not put it in the Bill, that any conflict that occurs in this region should be settled in Nairobi? Why is he afraid of making that bold suggestion?

The Attorney-General (Mr. Wako): It is because this august National Assembly cannot pass a Bill which affects, directly, other countries unless those other countries have agreed by treaty and then we can enforce it here. That is the reason why I cannot make that bold suggestion.

Mr. Temporary Deputy Speaker, Sir, as I was saying, this Bill will provide that enabling legal environment. As far as Ken-Ren is concerned, all the submissions have been made and I am very hopeful that the verdict will be positive; that it will be in our favour, particularly the arbitration that is taking place in Paris.

Mr. Temporary Deputy Speaker, Sir, hon. Obwocha also mentioned the issue of translation facilities. Obviously, when the Bill is passed and we do have a Centre, then that Centre will provide the translation facilities for the arbitrations being held here in Nairobi.

Hon. Mak'Onyango talked about the conflict that might exist between the arbitration procedure and the judicial system in this country. I do not myself foresee any possible conflict between the Judiciary and the arbitration procedure under the Bill. If there is such a conflict then the conflict will be resolved by our laws in this country under this Bill and also under the Judicature Act and other Acts which give jurisdiction to the Judiciary.

Hon. Mak'Onyango also mentioned the issue of misappropriation and corruption. Those are criminal matters and criminal matters are not subject to arbitration procedures. As far as criminal matters are concerned, we prosecute and if one is found guilty he becomes a guest of the Government with everything supplied to him.

Hon. Mak'Onyango also raised the issue on how the Centre, if it is established, will affect other regional institutions such as those being established under COMESA. It will not affect those institutions; it will supplement the

work of those institutions.

Dr. Lwali-Oyondi made many comments about the economy of this country, particularly about the Kenyanisation of the economy of this country. Of course, that is a matter that the Government is tackling. Even His Excellency the President has been very keen on ensuring that the privatisation process does not result in these State Corporations being sold to foreigners. We would very much want the World Bank and other donors to give us the funds to enable our own people to own/buy these parastatals which are being privatised. However, I can also say that the passing of this Bill will enable the "Third Worldisation" of the international commercial process in the world. This is because, as I said earlier, the centres for this are in the Developed World and, therefore, the fact we can soon start having some in the Third World is to enable that international commercial process also to be "Africanised", if I may say so. I use the word "Africa" in the sense of the continent of Africa.

Mr. Temporary Deputy Speaker, Sir, I would like to thank hon. Murungi for congratulating me for moving this Bill. He said that I should bring repeal other laws and so on. He also said that I am bringing non-contentious Bills to the House. I think he wanted me to bring a contentious Bill in Parliament and it is soon coming in the form of the Registration of Political Parties Bill.

I would like to thank the last speaker here, hon. Osogo; a person who has been a Cabinet Minister for many years. He has been in Parliament for a long time; since Independence, and he has passed very many laws through this Parliament. In his contributions, he always goes clause by clause; to try to seek clarification on various matters and I would like to thank him for that. I do hope that having passed very many laws in this country, together with other old Members here, a system can be found where they can be trained and further their education in law so that, at the end of the day, they can also become advocates. If they become advocates they can also become arbitrators under this Bill.

Mr. Temporary Deputy Speaker, Sir, hon. Osogo did raise a number of issues. As I said, really this Bill does not cover the type of arbitration between the various communities that hon. Osogo was referring to. I do not even know whether there is arbitration going on or just talks. But this Bill does not cover those types of situations. It only covers commercial arbitrations.

He did ask a question as to whether body corporate includes political parties. As the law stands now, the term "body corporate" does not include political parties. But under the forthcoming Bill on the registration of political parties, there is a clause which makes political parties body corporates. So, if that Bill is passed by this House, then political parties will become body corporates.

He also raised a question as to whether a third party can request for an arbitration. I think if you read the definition of a party in this clause, that in a sense will answer you. In this clause "a party" means:-

"A party to an arbitration agreement and includes a person claiming through or under such a party."

Also Clause 4 which is very important talks about the arbitration agreement and says:-

"An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement."

Therefore, if that third party is also party to that contract, he can include himself there, but if he is not a party to that contract, if he just wants to come into it because of his own interest, I do not think he will be allowed to be party to the arbitration process.

Mr. Temporary Deputy Speaker, Sir, hon. Osogo also touched on a number of issues such as why the High Court decision is final and is not appealable to the Court of Appeal. The whole process of arbitration is not only to simplify the procedure, but also to ensure that none of the parties employs the usual technique that we normally have in court where if he knows that he has a weak case, he can delay the hearing of the case for a long, long time to the frustration of the person who was committed to the agreement and he wants the agreement implemented or was a valid claim under the agreement. Therefore, this whole procedure - and he did not complain about the time limits of 30 days and-what-not - is to get the arbitration process moving. Either of the parties can frustrate the arbitration procedure, if, for example, he just fails to agree on the arbitrator. So, a mechanism must be put into place as to what would happen if that party fails to agree. Either of the party can frustrate the arbitration process by simply saying, "I do not want this man as the arbitrator" on very flimsy grounds, and unless you give him time limits within which something must happen, that may be the position for years and years on end. So, hon. Osogo, the time limits and the finality of the High Court decisions on some of these procedural points are matters which enable the arbitration process to proceed, and in fact, are matters which give the arbitration process the advantage over and above the usual Judicial process. In other words, we want an arbitration to start and end quickly rather than to start and it goes on for many days. Then there is no advantage to have an arbitration process. It might as well go to court and argue out in court and finalise it there.

The arbitration process can only have an advantage over the Judicial process if the arbitration process results in expeditious and efficient handling of commercial disputes. You did say that the Court of Appeal is only mentioned at once in one place on page 194. It is true that it is mentioned there, but if you look at page 194, it relates to questions

of law arising in domestic arbitrations. In other words, this Clause does not apply to international arbitrations. It is only domestic arbitrations, the law being applied to the Kenyan law. The Court and the Court of Appeal are the authorities on the interpretation of that law, and therefore, if there is any question of law which the arbitrators cannot handle, because most of the arbitrations are not necessarily to be handled by lawyers. If it is a building contract, for example, it may very well be that the best person to handle that arbitration is not a lawyer but an architect. If it is a dispute relating to livestock, for that matter, it may very well be that the best arbitrator to handle such a situation is somebody like hon. Dr. Lwali-Oyondi here, and not a lawyer. Therefore, when hon. Dr. Lwali-Oyondi is hearing that dispute and questions of law arise, he may wish to be guided by the High Court, and that is why domestic arbitrations only is permitted. It makes sense and is reasonable that reference can be made to the High Court and thereafter to the Court of Appeal.

International commercial arbitrations are another animal. In fact, the purpose of this Bill is to reduce and minimise what I may, inverted commas, call "Interferences by the local judiciary in international commercial arbitrations". Although that arbitration is being held in Kenya, it may not necessarily be applied to the Laws of Kenya. It may be applied to the Laws of England or the Laws of Malaysia or some other country. It may be relating to parties who are not even subject to the jurisdiction of this country. Therefore, it becomes important that when one is dealing with international commercial arbitrations, the national courts should have the minimum say in the hearing of that international commercial arbitration here. That is why Court of Appeal again is not mentioned in these matters.

So, Mr. Temporary Deputy Speaker, Sir, there are quite a number of points that were raised by hon. Osogo on the question of the mailing address and so on, and I thank him for pointing out the typographical error in Clause 3 or somewhere there. I will definitely draw the attention of the drafting people on that typographical error. All other issues raised, hon. Osogo, you can rest assured that they are well catered for and there are good reasons why it is placed in this way.

As I said earlier, this Bill is not just the brainchild of my office. This Bill is a reflection of United Nations Modern Law on Arbitrations. That modern law is a modern law which took many years to draft where many experts, top people in the arbitration world, coming from all sorts of legal systems; the Common Law System, the Civil Law System and so on, met together and have produced this modern law. This Bill reflects as much as possible that modern, and therefore, I am in fact proud that we are amongst the very first countries in Africa to introduce it. Therefore, it will put us one step ahead in trying to have the International Commercial Centre here in Nairobi.

Mr. Temporary Deputy Speaker, Sir, I would wish to thank all the hon. Members for the valuable contributions they made and I beg to move.

(Question put and agreed to)

(The Bill was read a second time and committed to a committee of the whole House tomorrow)

Second Reading

THE CHILDREN BILL

The Minister for Home Affairs and National Heritage (Mr. Lotodo): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Children Bill be now read a Second Time.

Concern has been expressed on the right of welfare of children based on recognition that they are most vulnerable segment of society.

Mr. Temporary Deputy Speaker, Sir, it has been the subject of numerous international instruments, so far, passed among them the most recent being the Convention on the Right of the Child which took place in Geneva in 1989 which Kenya ratified the following year 1990, thereby assuming international obligation to safeguard the rights and welfare of children. Under these obligations, states which are parties are required to organize and manage their domestic legal machinery in such a manner as to give fulfilment to the terms of the Convention. The Bill aims at fulfilling our obligations fully.

Hon. Members, the purpose of the Bill is to consolidate, amend and update the law relating to children. The Bill consolidates, with amendments, the major statutes on our Children Laws namely:- (i) The Children and the Young Persons Act, Chapter 141, Laws of Kenya, (ii) Adoption Act, Chapter 143, Laws of Kenya. (iii) The Guardianship Act, Chapter 144, Laws of Kenya. I would like now to highlight some of the aspects of the Bill.

Among the objects of the Bill set out in Clause 3 are as follows:-

- (a) To promote the children.
- (b) To implement the provision of the United Nations Convention of the Rights of the Child of 1989.
 - (c) To promote welfare of the family.
 - (d) To assist parents to discharge of their parental responsibility; and,
 - (e) To establish and promote and to assist in the establishment and promotion of services and facilities within the community designed to advance the well-being of children and to co-ordinate the use of such services and facilities.

I would like to draw the attention of the hon. Members to Part II of the Bill which deals with the protection, discipline of children and to highlight the following Clauses:-

(1) Clauses 5-21 cover the establishment of the Children's Courts which will replace the current Juvenile Courts. At the moment we have Juvenile Courts but when this Bill is enacted the Juvenile Courts will cease and we shall have Children's Courts.

(2) Clauses 22-26 cover the establishment of a National Council of Children's Services to exercise general supervision and control over the planning, financing and co-ordination of child welfare activities and to advise the Government on all aspects thereof.

(3) Clauses 27-29 cover the appointment of the Director of the Children's Services and sufficient children's officers.

(4) Clauses 30-46 cover the establishment of children's remand homes, approved schools, appointing our local Authorities as agents and their management and supervision

(5) Clauses 47-48 deal with approval of societies and voluntary institutions who operate in the area of care, protection and control of children.

(6) Clauses 49-80 deal with who is a child in need of protection or discipline and penalty cruelty to neglecting children and disciplinary protection connected thereto.

Mr. Temporary Deputy Speaker, Sir, Part III of the Bill comprises Clauses 80-91 which make provision for maintenance and custody of children while Parts IV, V and VI thereof make provision for supervision of children in foster care, adoption and guardianship respectively.

The enactment of this Bill will occasion additional expenditure of public funds. It is however, not possible to indicate at this stage the amount of anticipated expenditure. This is a very important Bill and I am sure hon. Members have been waiting since last year for this Bill to be brought to this House. Therefore, I would like to limit my speech so as to give the hon. Members enough time to contribute on this important Bill.

I beg to move.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to second this very important Bill.

It is a Bill that concerns children. Any society which really has to think about its own survival, its own existent in future, must address itself on issues relating to children. If the society does not take care of its children or is not concerned with the development of her children, then that society sooner or later is bound to disintegrate. The social fabric of that society is bound sooner or later to be torn asunder. Therefore, as hon. Members debate this Bill, they should do so with the seriousness that it deserves because it is a Bill that can, if passed, put in place the necessary laws and the structure which would enable meaningful decisions both administrative and policy to be made for the advancement and for the promotion of the interests of children.

I am also very happy to second this Bill because it results from the Task Force that was set up to look into laws and other issues relating to children. As hon. Members are all aware, the Government did set up ten Task Forces to look into the various aspects of our laws. I am now pleased to note that on the Order Paper today, we have two Bills which have emanated from the work of the Task Forces. One, it is this Bill which I have the honour and privilege to second and the other is the Council of Legal Education Bill which arose out of the Task Force that I set up under the management of the Kenya School of Law.

Mr. Temporary Deputy Speaker, Sir, I take this opportunity to inform this august Assembly that very soon we shall be having another Bill because the Task Force on Court Brokers and Auctioneers has now finalised its job. I have received an advanced copy of the report which will formally be handed over to me soon. The recommendations will be debated by the Cabinet and I hope that very soon I shall be tabling in this House the Court Brokers and Auctioneers Bill.

There are, of course, other Bills which are coming to this House emanating from the Task Forces and I would like to take the opportunity to correct the wrong impression that has been created that these Task Forces have to complete all the work under their mandate before Bills can be brought to this House. When I launch every Task Force - and most of them have mandates which cover a wide range of Bills - I did inform them that they should from time to time, submit interim reports, and that it may very well be that on a given aspect of their mandate, they can, in fact, report conclusively of that mandate. Therefore, some of the Bills that are coming into this House have emanated from

the Task Forces and, in particular, their interim reports. In fact, they have reported on that aspect of their mandate and are still proceeding to consider other aspects of their mandate.

The Government promised this National Assembly last year that beginning this year, we shall begin debating Bills which emanate from the Task Forces, as we have begun to do so ---

Dr. Otieno-Kopiyo: On a point of order, Sir. Could the Attorney-General who is my friend tell us from which Task Force the Political Parties Bill emanated?

The Attorney-General (Mr. Wako): When I do move that Bill in this House, I will, of course, give the entire history of it. But to answer the hon. Member, I can tell him that the drafting of that Bill begun in August, 1993, by the Task Force on Public Order and Security Laws.

Mr. Mulusya: On a point of order, Sir. Is the hon. Attorney-General not totally out of order to discuss issues pertaining to Task Forces while there is a specific Bill in front of us which should be seconded? What do the Task Forces have to do with this Bill?

The Temporary Deputy Speaker (Mr. Ndotto): Order! I think, hon. Mulusya, you are right. I think, hon. Attorney-General, while hon. Members are enjoying what you are telling them about the Task Forces, I think, we are dealing with the Children's Bill at the moment, and I request you to confine yourself to that.

The Attorney-General (Mr. Wako): Sir, of course, I stand guided by your wise ruling. I was merely responding to a question asked by the Member of Parliament. So, I was merely obeying you since you did not object to the question by the hon. Member. So, I thought that I should reply to it.

Mr. Ndicho: On a point of order, Sir. Is the hon. Attorney-General in order to refer to hon. Members here by their parties, Ford(K), Ford(A), DP and so on? After all, they are all hon. Members of Parliament. So, he does not have to say from which party one comes from. Of course, we also know that he comes from the ruling party, KANU!

The Temporary Deputy Speaker (Mr. Ndotto): Order, hon. Ndicho! That was with a light touch! Continue, Mr. Wako.

The Attorney-General (Mr. Wako): Sir, you are right; that was "with a light touch"!

This is the first Bill to come before this House which has emanated from the Task Forces that the Government set up. Members of the Task Force were many and I would like to take the opportunity to pay tribute to the work they did. The Task Force was chaired by Lady Justice Effie Owuor who is a Judge of the High Court and also a Commissioner of the Law Reform Commission. It also included Mrs Z. Wandera who was Town Clerk of Nairobi; Mrs Nyaga, Director of Children's Department; Muthoga, a prominent Advocate; Dr. Onyango, a Senior Lecturer in Sociology at the University of Nairobi and also chairman of UNCAN; Dr. S. Muli Musime, who is a Criminologist by profession; Dr. F. Manguyu, Chairlady of Kenya Medical Women's Association and was also recently elected as the First Lady from Africa to be the Vice-President of the International Medical Women's Association. I do congratulate her on this occasion. It also included Miss Amadi E. Kezia; Mrs E. Masiga, the Chief Inspector of Schools; Mrs Makasi; Prof. J.B. Ojwang' who is a well-known Constitutional Lawyer; Mrs G.W.M. Katambo who is Senior Principal State Counsel and also assisted by Mrs Margaret Nzioka from my Chambers.

This Task Force begun its work and I may say that it has done a very useful job. In addition to those I have just mentioned - the initial appointments - as it went on, more were added to enrich the composition of the Task Forces.

So, we also had Mrs. J. Kabeberi Macharia who is a Lecturer in the Faculty of Law, University of Nairobi; Mrs. C. Makasi who represented the Chairman of the Child Welfare Society of Kenya, and so on. We have a Prof. Abdul Aziz who is a professor of linguistics.

So, Mr. Temporary Deputy Speaker, Sir, you can see from the composition of the Task Forces that they did not only involve officers in Government who are concerned with these issues, or only members of the Judiciary, but they also involved important Non-Governmental Organisations which are concerned with issues relating to children. This is important because I do believe - and that was the whole philosophy behind the Task Forces - that we should put heads together from the Government and the private sector of people who have a basic interest in the subject matter to be discussed. I am glad to say that they have not failed us on this occasion. They came up with a very good report and also, if I may add, a very good Children's Bill.

What was their method of inquiry? First, they researched---

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Attorney-General in order to go to the extent of telling us what method the Task Force used when he has not even provided us with the report that the Task Force came up with? What he is doing would only have made sense if we had copies of this report! In that case, we would then be interested to find out how members of the Task Force went about their work.

The Temporary Deputy Speaker (Mr. Ndotto): Mr. Munyasia, he is perfectly in order. Hon. Wako, continue.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I thank you for that ruling. I

have brought the hon. Members the cream of the results, which is the Bill before the House, because I think hon. Members are entitled to it.

So, research was done on provincial basis. Even children themselves were involved by way of conducting school essay competitions. The members of the task force visited Cairo in Egypt so as to, at least, look at the issue from the Muslim point of view. They visited the provinces throughout the country, but I do not want to belabour the details of the visits.

Sometime in 1990, the United Nations Organisation (UNO) passed a Convention on the Rights of the Child and Kenya was among the first signatories to that convention. Also later on the Organisation of African Unity (OAU) passed its own African Charter on the rights of the child. I am pleased to inform this august House that Kenya played a very significant role in the drafting of the OAU Charter on the Rights of the Child. I can inform this august House that after a series of seminars held in African countries, including here in Nairobi, I was mandated to draft that Charter. We drafted it and it was considered at the OAU. I was unable to attend the reviewing session but I sent hon. Murungi there to represent me and present the draft. So, when it comes to issues relating to the rights of the child, I can say that Kenya has made its input into that.

I am telling hon. Members that at the international and continental levels Kenya has played its part as far as drafting and formulating conventions relating to the rights of the child are concerned. At the local level, I am glad to say that Kenya has become the first country to be able to convert that UN Convention on the Rights of the Child into local legislation, that is this Bill. So, in as much as Kenya attaches importance - and rightly so - to the issues relating to the rights of the child, I think, as a society, it is placing its emphasis in the right direction. All of us must address the problems which children are facing.

Mr. Temporary Deputy Speaker, Sir, the UN Convention on the Rights of the Child deals with issues such as child survival, development and protection. In as much as various issues are concerned, I would like to say that the Children's Bill focuses on child protection and the necessary environment for the child to develop. There are other issues - I want to make this clear right from the beginning because it is what may have caused some confusion from the beginning - which are being addressed. We shall be having a number of amendments to various Acts on other issues relating to the children. For example, issues like the right of the child to education are dealt with under the relevant Act, the Education Act. There could be issues relating to health and so on, and these are being addressed. When a number of people read this Bill they asked, "Where are provisions on the right of the child to education, shelter, health and so on?". Those rights which are already provided for under our Constitution are also provided for under the existing legislations and those legislations will be amended in such a way that the rights of the child contained in them will be enhanced and promoted.

This Bill has also consolidated the many Acts which relate to children. We have more than 66 different legislations dealing with children. This Bill consolidates, in as far as it is possible, some of those Acts. It consolidates at least four of those Acts. These are the Adoption Act, the Children and Young Persons Act, the Guardianship of Infants Act and the Legitimacy Act. The other Acts, as I said, will have to be dealt with in separate amendments. A number of people have been saying that apart from education, public health, and shelter issues the penal laws in this country do not adequately protect the child, particularly in relation to child abuse, sexual or otherwise.

However, I do agree that, in fact, there are some sections of the Penal Code where the law protects the adults more than the child when prescribing penalties which will be imposed if somebody is sexually abused and so on. Therefore, there is need for rationalisation of the Penal Code and the punishment thereunder in so far as they relate to the child and to the gender issues, even to women, the disabled and so on. The Task Force did make recommendations relating to the type of amendments that we need to carry out in the Penal Code. Those recommendations are also being refined by the Task Force which has been set up to consider the reform of penal law and procedure, which Task Force is chaired by Retired Justice Luta. I would like to inform this House that those issues which may have been of concern to a section of those people interested in the welfare of children are issues which are already being dealt with. That is why I think UNICEF, knowing all these, was able to come up and say "This is the first initiative from Africa to put into domestic laws the United Nations Convention on the Rights of the Child. We have looked at the totality of everything and we support the initiative".

Mr. Temporary Deputy Speaker, Sir, I thought that this general background would be necessary. Let me also give a background as to how we have arrived at where we are today as far as the laws relating to children are concerned. Before I go to the Bill itself, I would also want to comment on the fact that one cannot, in matters of legislation on social or private matters, legislate really for everything. One can never say that the law is a solution to all the problems. It can never be. What the law can do, and this is what this Bill is doing, really, is to provide the necessary environment in which these pressing social problems that confront the children and the society as a whole can be addressed and a solution found. You cannot legislate for everything. In addressing social problems, apart

from the laws, what is important is correct governmental policies and correct measures. What is also important is that the attitude of everybody in the community in addressing these issues should be positive. In fact, even before you form your attitude to address the issues, there has to be some concern and compassion of the problem. Every Kenyan must be moved with concern and compassion to say; "These are the children; these are the problems; what can I, as a Kenyan, do to help alleviate the problems being confronted by the people to whom we shall be handing over the continuation of our society; the people to whom we shall entrust the future leadership of this country".

Therefore, I would like to take this opportunity to appeal, particularly, to all Kenyans, first of all, to develop a concern, a compassion and an interest in addressing the big problems that we have in this country which directly affect children. These include issues such as education, shelter, health, being enabled to earn a living and so on. All of us must be concerned with these issues and, more so, this august Assembly, consisting as it is of Elected Members. So, it is in that context now that one must address this Bill.

I would like to thank the hon. Member of Parliament who is also a colleague in the Cabinet, hon. Lotodo, the Minister for Home Affairs and National Heritage, for the very able manner in which he has introduced what is contained in this Bill to this august Assembly. I know we have worked very closely together with hon. Lotodo in this matter. We have attended a number of conferences and seminars together, and both of us are concerned with the welfare of the children in this country. The Children's Bill, as he rightly pointed out, has very many sections, all numbering 169 clauses. The Children's Bill, as is usual, starts with a Preamble: "An Act of Parliament to amend and consolidate the law relating to children, to make provision for the adoption, custody, maintenance, guardianship, protection and discipline of children or for connected purposes". This Bill, once passed by this Parliament, will come into force on the date that the Minister will appoint.

Mr. Temporary Deputy Speaker, Sir, I know this Bill has been in circulation since February, 1995 and I am quite sure that hon. Members have carefully gone through its contents. Therefore, I would not like to bore them with going clause by clause, the way I have done with the Arbitration Bill and many others. I am sure the hon. Members have an interest in this Bill because each one of them is a father; I do not see any lady hon. Member here, but if they were around, I would have said, each one of them is a father and a few of them are mothers. What has come out in this Bill is the equal responsibility of parents in the up-bringing of children.

Mr. Temporary Deputy Speaker, Sir, I would have wished to touch on a few Clauses, but I do not think it is necessary. However, I would want to draw the attention of the hon. Members to Clause 4 of the Bill.

Mr. Mulusya: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Kariuki to cross the Floor as if he is somewhere in Laikipia, just like an antelope? Is he in order?

The Temporary Deputy Speaker (Mr. Ndotto): Order, hon. Kariuki! I am sorry I did not notice that one, but hon. Kariuki, might you have done that?

Hon. Members: He just passed here!

Mr. G.G. Kariuki: Mr. Temporary Deputy Speaker, Sir, the hon. Member always wants to find fault with me. Of course, I did not do that.

Hon. Members: Oh, yes, you did!

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir---

The Temporary Deputy Speaker (Mr. Ndotto): Order, hon. Shikuku! Hon. G.G. Kariuki, I am advised that you did not bow at the Bar. Could you go back and bow before sitting down?

(Hon. Kariuki bowed at the Bar)
(Applause)

Dr. Otieno-Kopiyo: On a point of order, Mr. Temporary Deputy Speaker, Sir. A serious matter has just arisen. Hon. Kariuki was asked whether he did actually breach the Standing Orders and he denied it. What do we do about that untruth? Are you going to punish him somehow or say something because he is a hon. Member of Parliament?

The Temporary Deputy Speaker (Mr. Ndotto): Order! Hon. Kariuki has already complied with the rules of this House and we will proceed. Hon. Attorney-General have you finished?

An hon. Member: Next time throw him out!

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I wish to draw the attention of the hon. Members to Clause 4 of the Bill which states:-

"That, a court or a person who exercises in respect of a child any power conferred by this Act, shall treat the interest of the child as a first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to:

- (a) secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest; and,
- (b) conserve or promote, as far as possible, a satisfactory relationship between the child and other persons whether within his family, his domestic environment or the community at large.

That Clause is important because it underlines all that follows. It underlines the attitude that one must have when you are dealing with a child. The interest of that child is first and paramount. I would not like to go into details of Part 2 which provides for protection and discipline of children. The Act now provides in children's courts a system which would promote in a more amicable manner, a solution to the child's problem. In fact, as you know, our courts are open courts when dealing with adults and any person can go there and witness in a very peaceful manner.

Mr. Kamuyu: Even Court No.1.?

The Attorney-General (Mr. Wako): Everybody even people from Dagoretti can go to Court No. 1 and so on. The courts are normally open courts for everyone to attend to witness what is going on. But when it comes to a child, we are restrictive and Clause 6 states that:

"In the children's court those who would be there would be members and officers of the court, obviously the Magistrates, clerks *etcetera*".

Parties to the case before the court are advocates and witnesses directly concerned with the case. Also those who will be entitled to there are parents or guardians of any child brought before the court and the *bona fide* representatives of newspapers or news agencies and such other persons that the court may specifically authorise to be present.

The purpose of this is really to ensure that those who attend the children's court, are those who have a direct interest in that child, but not just every Tom, Dick and Harry or every *mwana* and Njoroge. I think that it is an important Clause.

Mr. Temporary Deputy Speaker, Sir, I would even go further than this and I hope that when we come to discuss the Bill relating to Press law, which has even come to this House and we are working on it. When come to discuss that one, we should be able to discuss the extent to which the journalists can disclose the name of the affected child. For example, in the United Kingdom and France, one cannot disclose the name of the child who is being tried for whatever reason and it may very well be that, that is a matter we shall also have to consider in this country. We consider about the non-disclosure of children identities, particularly those who have been assaulted *etcetera*, as it can affect them throughout their entire life psychologically. So, I wish to draw your attention to that one.

Mr. Temporary Deputy Speaker, Sir, the other provisions are more or less straightforward.

Mr. Kariuki: On a point of order, Mr. Temporary Deputy Speaker, Sir. I saw hon. Ruhii contravening the same Standing Order. When he came in, he stopped for a while and did not go back to bow from the right place. Can he bow now?

(Laughter)

The Temporary Deputy Speaker (Mr. Ndotto): Order! I know that---

Mr. Kamuyu: Unaelekea wapi?

The Temporary Deputy Speaker (Mr. Ndotto): Order, hon. Kamuyu! Hon. Members, I know that you are very busy, but are you forgetting a simple rule of bowing at the Bar before you come into the House? Hon. Ruhii, please can you go back and bow?

Mr. Ruhii: On a point of order, Mr. Temporary Deputy Speaker, Sir---

The Temporary Deputy Speaker (Mr. Ndotto): Please, can you go back and bow?

Hon. Ruhii: On a point of order, Mr. Temporary Deputy Speaker, Sir---

The Temporary Deputy Speaker (Mr. Ndotto): Hon. Ruhii, I am asking you to go back and bow.

(Hon. Ruhii went back and bowed at the Bar)

Mr. P.N. Ndwiga: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for hon. Kamuyu to say that we have a problem with short men in this House?

(Laughter)

The Temporary Deputy Speaker (Mr. Ndotto): I am sorry, I did not hear that. It is not on record that hon. Kamuyu said that.

Hon. Kamuyu: Mr. Temporary Deputy Speaker, Sir, I did not say that. Hon. Attorney-General, proceed!

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, the other clauses are more or less straightforward, but I would like to refer to Clause 16 where every court, in dealing with the child who is brought before it, shall have regard to his welfare, and shall, in a proper case, take steps for removing him from undesirable surroundings and ensuring that proper provision be made for his maintenance, education and training.

The other clause that I would wish to draw hon. Members of Parliament to is Clause 18(2) which states that: "No child under the age of ten years shall be ordered by the Children's Court to be sent to an approved school unless---

Dr. Lwali-Oyondi: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Attorney-General has been referring to Clause 18(1).

The Attorney-General (Mr. Wako): What Clause are you reading? If you are reading Clause 18(2), I think you will be able to follow. The HANSARD Report is there to clarify that situation, but I meant 18(2). "No child under the age of ten years shall be ordered by Children's Court to be sent to an approved school unless there is no fit person or approved orderly institution willing to take care of him and---"

The hon. Minister did refer to the setting up of the National Council of Children's Services. I would like to draw hon. Members' attention to the provision there---

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. I think we are having two different Bills here. The one I have is different. If you look at the pages that the Attorney-General is referring to, for example, on page 14, that is where you get Clause 12, but in the Bill that I have, from Clause 12 you go straight to page 31 where we have Clause 52. Now, we maybe having different Bills, I do not have Clause 18.

The Attorney-General (Mr. Wako): In your book Clause 18 is in which page?

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir, Clause 12 is the last on page 14, but clause 52 is on page 31.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I was reading Clause 18.

Mr. Temporary Deputy Speaker (Mr. Ndotto): Order! You cannot be standing the two of you at the same time; one of you must be seated. Continue Attorney-General.

The Attorney-General (Mr. Wako): Mr. Deputy Temporary Speaker, Sir, actually it is true that he is using a particular Bill which is very light and it is not heavy as mine. It does have one section missing; that is true. I do not know why the hon. Member for Butere is always the victim all the time of this type of thing because I remember in the last Session again, he received a copy which had a few things missing! I do not know why he is always the victim. Maybe, he may have to refer to the Bible at some stage!

The National Council of Children's Services is provided for in Clause 22. What I would like to bring the hon. Members' attention to is the composition. The composition, of course, has a number of Ministries responsible for children is provided for there and when at an appropriate stage, we shall be adding another Ministry; the Ministry of Health. It is very much concerned with issues related to children, but somehow it was not reflected in this particular Clause and we shall amend it to include the Ministry of Health.

I want to draw the attention of hon. Members of National Assembly to the fact that there will be on that Council nine persons representing Non-Governmental Organisations (NGOs) engaged in child welfare activities. They will be nominated not by the Government but by the National Council of NGOs. So, we do recognise the importance of NGOs which have no other objectives or interests other than the interest of promoting the welfare of children.

Mr. Temporary Deputy Speaker, Sir, it is that Council that will address the type of administrative measures which can be taken to address the problems of children in this country. I think the hon. Minister did mention all other Clauses and I do not have to go into them. With those few remarks, I beg to second.

(Question proposed)

Dr. Otieno-Kopiyo: Mr. Temporary Deputy Speaker, Sir, I was quite pleased to receive a copy of this Bill in my Pigeonhole because my presumption at that point was that this could be a Bill dealing with the rights of the child as mentioned by the Attorney-General. It is true that some sections of this Bill deal with setting up of legal rights of the child. I must say from the very outset that in terms of the UN Conventions, on the rights of the child of 1989, this Bill was far short of the expectations expressed in that Convention. This Bill exclusively deals with laws relating to certain aspects of the child's problems but it ignores, absolutely almost, the other problems that children in our society face. As the Attorney-General has recognised and attempted to preempt the House, this Bill does not address the economic issues that affect the child. It talks not of the rights of the child to education, health, shelter or even nutrition. It talks of only a child in conflict. If I were to be allowed, I would first of all - I am not proposing an amendment - but they rename the Bill to be "The Bill on the Conflict of the Child", because this Bill does not talk

about the basic issues that affect children in a growing under-developed African nations like Kenya. We do not have to go far but to start even with the introduction up to the short title, straight to Clause 5 - Children's Courts. We are already seeing conflicts this child is in with the society and so a court is required immediately to start dealing with the problem that is assumed the child has gone into conflict with his/her own society.

Mr. Temporary Deputy Speaker, Sir, the second issue that I want to address is the question of the allegation made by the proponents of the Bill, where they said that they wanted to streamline and thus consolidate all the different laws relating to children. The Attorney-General informed us there are a whole 66 of them. This Bill only affects four of them. Those are the ones he enumerated and I will not go into them for I do not want to bore you now, but he has left out, for example, the Registration of Births and Deaths Act, Cap.149, The Marriage Ordinance Act, Cap.150, Maintenance Ordinance Act, Cap.154 and numerous others, so that the danger we are faced with is that this Bill takes away from the child certain rights attempting to protect him/her under Government custody or some approved school or remand home. But it does not provide the child with more facilities like, the opportunity to live in a normal society that could be provided for, if the economic issues that were omitted in this Bill were addressed.

Mr. Temporary Deputy Speaker, Sir, my very strong recommendation from the outset is to recommend to the Attorney-General and the Minister for Home Affairs, to take this Bill back and try and incorporate all the other sections of the Bill that are not here which relate to the issues that result in the social problems. The social problems do not arise in a vacuum, they arise within a normal society. Why did the children fall victims of this social problems? I was imagining that this Bill would attempt to address those shortcomings in our society. For example, if we ensured the children get education and if we ensured a certain minimal basic economic rights for children, then they would not turn out to be thieves. I can predict that the Bill was drawn up with the street children in mind and, most specifically the children with their mothers in the streets or the parking boys. That was useful, but it does not come close to addressing the main issues that we want.

ADJOURNMENT

Mr. Temporary Deputy Speaker (Mr. Ndotto): Hon. Members, it is now time for interruption of business and the House stands adjourned until Tuesday, 25th July, 1995 at 2.30 p.m.

The House rose at 6.30 p.m.