

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 10th April, 2003

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

The Report of the Departmental Committee on the Administration of Justice and Legal Affairs on the Anti-Corruption and Economic Crimes Bill, 2003.

(By Mr. Muite)

NOTICES OF MOTIONS

Mr. Sungu: Mr. Deputy Speaker, Sir, I beg to give notices of the following Motions:

REPEAL OF PRICE CONTROL ACT

THAT, this House do grant leave to introduce a Bill for an Act of Parliament to repeal the Restrictive Trade Practices, Monopolies and Price Control Act, Cap.504, of the laws of Kenya, and replace the same with appropriate law, entitled the Competition Act, in order to reduce monopolization and collusion behaviour between firms, and for matters incidental thereto and connected therewith.

INTRODUCTION OF CONSUMER PROTECTION BILL

THAT, in order to ensure comprehensive protection of the Kenyan consumer, this House do grant leave for the introduction of an Act of Parliament entitled, the Consumer Protection Bill to establish consumer protection law that will contribute towards the improvement of consumer welfare and for matters incidental thereto and connected therewith.

ORAL ANSWERS TO QUESTIONS

Question No.180

ARREST OF MESSRS. MWAKONDO AND NYANGE

Mr. Mganga asked the Minister of State, Office of the President, to explain under what circumstances two young men namely, Messrs. Stephen Taari Mwakondo, Nganyi Nyange and a minor, Mwatibo Nyange were arrested on 18th January, 2003 and booked at Voi Police Station on the same day.

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

(a) I am aware that Messrs. Stephen Mwakondo Mwachihhi and George Nganyi Nyange were arrested on 18th January, 2003, by Kenya Wildlife Service rangers on patrol within Sagala Ranch in Taita-Taveta District. The suspects who were arrested for being in illegal possession of game meat were escorted to Voi Police Station where they were booked and taken to court. They were charged under the Wildlife Conservation and Management

Act, Cap.376, Laws of Kenya.

Mwatibo Nyange was not booked at the Voi Police Station.

Thank you.

Mr. Mganga: Mr. Deputy Speaker, Sir, I am very surprised to hear this answer from the Assistant Minister. He has said that the two gentlemen and a minor were found with game meat. The truth of the matter is that, the three young men were found near a scene where a baboon had been killed by dogs. Is the Assistant Minister suggesting that the people of Taita eat baboon meat?

Mr. Tarus: Mr. Deputy Speaker, Sir, I am sure the police can differentiate between a dead baboon and game meat which has been slaughtered.

Mr. Mganga: On a point of order, Mr Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House that the police can differentiate between game meat and baboon meat, when it was clearly stated that when the three people were taken to the police station, they were actually found with baboon meat? What we are asking is, were they found with baboon meat or a baboon carcass?

In Taita, even a dog cannot eat baboon meat!

Mr. Deputy Speaker: I thought the Assistant Minister said that "the people were charged." So, if they were charged, what was the outcome?

Could we get an answer from the Assistant Minister, notwithstanding what Mr. Mganga is asking about differentiation between game meat and baboon meat?

Mr. Tarus: Mr. Deputy Speaker, Sir, the two gentlemen who were arrested were charged and fined Kshs5,000 or a sentence of six months imprisonment.

Mr. Deputy Speaker: So, the judgement has been entered. We do not need to proceed any further. Do we?

Mr. Shitanda: Mr. Deputy Speaker, Sir, could the Assistant Minister tell us who killed the baboon?

Mr. Deputy Speaker: Mr. Shitanda, this is not a courtroom? The magistrate who tried the accused persons passed a verdict and the people were fined. Now, should this House be involved in wanting to know who killed the baboon?

Mr. Shitanda: Mr. Deputy Speaker, Sir, but they were charged for the death of the baboon and the hon. Member says that, it is not those young men who killed the baboon. So, who killed the baboon?

Mr. Deputy Speaker: Order! Order, now! I think the magistrate was in a better position to seek evidence on that matter, and we are not going to do that.

Next Question, Mr. Mwenje!

Question No.091

CONFISCATION OF FAKE CURRENCY

Mr. Mwenje asked the Minister for Finance:-

(a) how much fake currency has been confiscated by the Government during the last one year; and,

(b) what effect this has had on the economy.

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

(a) During the last year, a total of Kshs6,433,400 worth of fake currency was confiscated.

(b) Considering that there is approximately Kshs56 billion currency in circulation on daily basis, the effect of the fake currency on the economy was negligible.

Mr. Mwenje: Mr. Deputy Speaker, Sir, we all know that in 1992, there was a lot of fake currency printed, which circulated in this country.

Last year, we had the same information that a lot of money was printed for campaign purposes. We have never been told, even the one that we knew of in 1992, whether all the fake currency which was printed was ever withdrawn from the general circulation. The printed money affected the economy of this country very badly, and we still believe that we are feeling the same effect today. Could the Assistant Minister clarify whether all the money which was printed in 1992 was actually collected? If there was any other money printed last year, who was printing it and where was it being printed?

Mr. Angwenyi: On a point of order, Mr. Deputy Speaker, Sir. Are we talking of printed currency or fake money?

Mr. Mwenje: Mr. Deputy Speaker, Sir, any money printed which is not legal tender is actually fake

money.

Mr. Katuku: Mr. Deputy Speaker, Sir, as I said in my response, the Question was specific on fake currency confiscated last year. I am talking about Kshs6 million which was confiscated. We did our best and arrested those who had printed fake money. We took them to court and some of those cases are still pending in court. As far as the question of mopping up the fake currency is concerned, that is what has already been done. With regard to 1992, if the hon. Member is interested to know, I agree with him that the fake currency affected our economy. We are still feeling the effects and we are trying our best as a new administration, to ensure that the printing of fake currency is not repeated in this country.

Eng. Muriuki: Mr. Deputy Speaker, Sir, could the Assistant Minister tell us whether the Kshs6 million which he says was confiscated was in Kenya currency or they also collected money from neighbouring countries which is causing a lot of confusion in border towns?

Mr. Katuku: Mr. Deputy Speaker, Sir, some of the money was in dollars and Kenya currency. However, I gave the total in Kenya currency.

Mr. Manoti: Mr. Deputy Speaker, Sir, what is the Ministry going to do to make sure that the same problem does not recur? Are they prepared to change the current currency?

Mr. Katuku: Mr. Deputy Speaker, Sir, the Ministry has put in place measures to ensure that there is vigilance and investigations are carried out. We have the Banking Fraud Investigation Department at the Treasury which always goes around to do sampling in order to arrest those who are involved in this. More so, we are also doing our best to create awareness so that once a person comes across such money, he can be able to inform the relevant authorities for necessary action. We are doing public awareness and strengthening the Investigation Department so that this does not recur. In terms of printing the fake currency, we are very strict and as a Ministry, we are not ready to compromise on standards as far as this is concerned.

Mr. Manoti: On a point of order, Mr. Deputy Speaker, Sir. My question was very simple. I asked him whether they are prepared to change the present currency because it is very easy for the current currency to be duplicated.

Mr. Katuku: Mr. Deputy Speaker, Sir, the current currency is not easy to duplicate. All the necessary security measures are in place and we are satisfied with the standard of our currency. There is a secret water mark and a court of arms which cannot be duplicated very easily.

Mr. Mwenje: Mr. Deputy Speaker, Sir, could the Assistant Minister tell us whether they were able to impound those machines which were printing money? At the same time, as he was asked, since it is easy to make the fake notes which appear as good as our money, when are they going to change the current currency so that they can incorporate the portrait of the present President?

Mr. Katuku: Mr. Deputy Speaker, Sir, I think that was the main purpose of this Question. As far as the Government is concerned, we have not yet come up with a policy on this issue, but soon if that need arises, we will inform the House accordingly.

Question No. 163

TREASURY CIRCULAR ON PUBLIC INVESTMENTS

Mr. Wanjala asked the Minister for Finance:-

- (a) whether the Treasury has ever issued circulars to parastatals advising them on how and where they should invest their excess funds;
- (b) whether he could table those circulars; and,
- (c) what action he is taking against parastatal heads and their boards for disobeying those instructions.

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

(a) Yes.

(b) I hereby table the following Treasury circulars: Treasury circular No.2 of 11th February, 1988; Treasury circular No.7 of 27th October, 1989; Treasury circular No.4 of 8th April, 1992; Treasury circular No.10 of 15th July, 1992; Treasury circular No.14 of 22nd September, 1998; and, Treasury circular No.12 of 29th November, 2002.

(c) The Treasury is investigating all parastatals that lost deposits in commercial banks in order to establish whether these parastatals had Treasury authority to deposit their surplus funds in those banks. For those parastatals where investigations have been completed and evidence of flouting of the Treasury circulars have been

established, the Chief Executives involved are expected to appear in court. As you may have heard, some of them already appeared in court today.

(Mr. Katuku laid the document on the Table)

Mr. Wanjala: Mr. Deputy Speaker, Sir, Kenyans have lost a lot of money because of the Government being negligent in investigating matters. These circulars which were issued detailed the direction of the Cabinet for strengthening financial management and control in State corporations. They were very clear. They instructed the Chief Executives where to deposit money. This was from 1988 and yet, even the first Chief Executive who started disobeying this circulars has not been arrested alongside others. Up to 9.00 a.m. today---

Mr. Deputy Speaker: Order, Mr. Wanjala! This is Question Time. Could you ask the Question?

Mr. Wanjala: Mr. Deputy Speaker, Sir, why has it taken this Government a very long time to arrest Mr. Meme and Mr. Hussein?

Mr. Katuku: Mr. Deputy Speaker, Sir, investigations have been going on, and you will agree with me that the parastatals are too many. We have already concluded a few and for the interest of the hon. Member, we have taken some people to court including the person he has in mind.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, we should thank Mr. Wanjala for bringing up this Question. If you look at circular No.10 of 1992, it states very clearly that before funds are invested in any commercial bank, the chief executive and the board must show cause why such funds cannot be invested in Treasury Bills. We have seen these transgressions over the years. Could the Assistant Minister tell us why they have not also taken the board directors to court while they are taking the chief executives and why such boards have not been disbanded?

Mr. Katuku: Mr. Deputy Speaker, Sir, I agree with the hon. Member that in some cases you will find that board members have also a case to answer. In other cases you might find that the chief executive has a case to answer. As I said, since we took over power from KANU, we have put our machinery on the ground. We have been able to conclude about 10 of the cases in the last 100 days while the previous administration never even took one case to court. We are doing our best. As far as the NARC Government is concerned, nobody will go scot free. I want to assure the hon. Member that we are doing our best. We will take all of them to court. There are no sacred cows in this case. I want to assure the hon. Member that even those board members who will be found guilty will be taken to court.

Mr. Shitanda: Mr. Deputy Speaker, Sir, could the Assistant Minister tell us what action he will take against chief executives of banks that loaned out money that is not recoverable?

Mr. Katuku: Mr. Deputy Speaker, Sir, the information I have is quite terrible. Going by the figures I have, Kenyans have lost a total of about Kshs6,993,514,395.85 in those banks. I want to assure the hon. Member that we are making every effort to recover whatever amount we can from those banks. We have passed over this matter, as the Treasury, to the relevant Government Ministry to handle it so that we can see how much we can recover from the banks. For the interest of this House, I wish to table the figures I have quoted, indicating what amount each parastatal has lost and where, so that this House can be of assistance. This is an indication of the commitment by the NARC Government to fight corruption. I hereby, on my own volition, table a list of all the parastatals which have lost money, how much has been lost and the total amount lost.

Mr. Deputy Speaker: Mr. Assistant Minister, you are taking too much time with your answer.

Mr. Katuku: Mr. Deputy Speaker, Sir, I was just being generous to the House. I hereby table the list of the money lost in different parastatals, for the interest of the hon. Members and as a sign of our commitment to fighting corruption. I would also like to table a list of people who have been taken to court in relation to this. We are serious and we will not rest in the fight against corruption.

(Mr. Katuku laid the documents on the Table)

Mr. Wanjala: Mr. Deputy Speaker, Sir, during the State Opening of Parliament, the Head of State told us to help him fight corruption. However, a whole Cabinet Minister came out openly in public to protect a chief executive officer who has appeared in court today. The Minister exonerated that officer from allegations of corruption and claimed that he is "Mr. Clean". What steps will this Government now take against the Minister who was obstructing the police from carrying out investigations? Will these chief executives be sacked or will they go back to their offices?

Mr. Deputy Speaker: Order, Mr. Wanjala! You should ask one question at a time.

Mr. Katuku: Mr. Deputy Speaker, Sir, I said from the word go that we are not sparing anybody. The

hon. Member has mentioned this issue here before and I want to assure him that among the people who have gone to court today, we have Francis Chahonyo, Prof. Julius Meme, Dr. Muita---

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

Mr. Deputy Speaker: What is it? The Assistant Minister has hardly answered the question.

Dr. Khalwale: Mr. Deputy Speaker, Sir, you have heard clearly Mr. Wanjala asking what the Government will do about this issue. Is the Assistant Minister therefore, speaking on behalf of the Government or the Ministry?

Mr. Deputy Speaker: Order, Mr. Khalwale! The Question has been directed to the Minister of the Kenya Government. Are you questioning the integrity of this Assistant Minister? You are out of order.

Continue, Mr. Assistant Minister.

Mr. Katuku: Mr. Deputy Speaker, Sir, I am speaking on behalf of the Government. I was just reading out the names of the people who have gone to court in connection with this saga. We have Joshua Kiptoon of the Pyrethrum Board of Kenya, Mr. Isaiah---

Mr. Poghio: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to purport to be answering the question concerning what steps he will take about another Minister? Does he have the capacity to do that?

Mr. Deputy Speaker: Indeed, Mr. Assistant Minister, you are simply using your documents to divert the attention of the House from the Question. You should lay those documents on the Table and answer Mr. Wanjala's Question.

Mr. Katuku: Mr. Deputy Speaker, Sir, I am building the grounds to answer Mr. Wanjala's Question. I said that the people who have gone to court include Isaiah Kiplagat because of Post Bank; Prof. Julius Meme and Dr. Muita because of Kenyatta National Hospital; Francis Chahonyo because of Kenya Sugar Board and the Postal Corporation of Kenya; Mr. William Chelashaw because of Kenya Tourist Development Corporation; Dr. Cheruiyot because of Kenya Pipeline Corporation and Mr. Ben Mtuweta because of NSSF, among others.

In relation to what the hon. Member asked, as far as I am concerned, we have never had any obstruction in investigating any person in this country. If he has any evidence, let him bring it forward.

Mr. Khamasi: Mr. Deputy Speaker, Sir, the Assistant Minister has not answered the question posed by Mr. Wanjala. The question was simply this: We have seen a spirited campaign by a Minister trying to protect a civil servant. What will this Government do about that Minister?

Mr. Katuku: Mr. Deputy Speaker, Sir, I am not aware.

Question No.203

RELIEF FOOD SUPPLIES TO TURKANA PRIMARY SCHOOLS

Mr. Ethuro asked the Minister for Education, Science and Technology what plans he has put in place to ensure that food supplies in Turkana are delivered to schools in time in order to improve on the low enrolment rate in the area.

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

The Ministry has contracted transporters of foodstuff for the year 2002/2003 to transport 578 metric tonnes of maize, 142 metric tonnes of pulses and 20 metric tonnes of vegetable oil for 55,000 pre-primary and primary school children in Turkana District as a whole.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I sought to know what plans the Minister has put in place to ensure that food supplies in Turkana District are delivered to schools in time, and not how many transporters have been contracted. Transporters could be contracted and supply the food to schools at the end of the term. Turkana is a food deficit district. Last year, we had 55,000 children in our schools. However, this year, a District Education Board (DEB) meeting was told that the pupil enrolment in schools had dropped by 5,000 children, because food supplies did not reach the schools in time. This Question is actually a result of that DEB meeting. So, the Assistant Minister should provide an appropriate answer to my Question.

Mr. Gumo: Mr. Deputy Speaker, Sir, Turkana is the largest district in the country. So, at any given time, the district receives the largest amount of food supply. The contracted transporters have been instructed to ensure that they deliver the food supplies to schools on time. The Questioner is aware that his district is big. Also, the hon. Member knows that transport in that district is difficult. So, there is bound to be some delays in the delivery of food supplies to schools. However, we will ensure that food supplies for next term reach the schools before the

term begins.

Prof. Oniang'o: Mr. Deputy Speaker, Sir, this is an area of interest to me. Is the Assistant Minister aware that, in fact, this might be the only food that children in that district rely on? If the answer to that question is in the affirmative, could he tell us how much ration each child gets?

Mr. Gumo: Mr. Deputy Speaker, Sir, I have not calculated the ration that each child gets. However, as I said before, the amount of food supplied to schools is enough. Also, because some children eat more food than others, it may not be easy for me to know the exact amount of food given to each child.

Mr. Karaba: Mr. Deputy Speaker, Sir, I would like the Assistant Minister to clarify whether the word "schools" covers secondary schools.

Mr. Gumo: Mr. Deputy Speaker, Sir, the said food supplies are for primary schools.

Mr. Omingo: Mr. Deputy Speaker, Sir, you have heard the Assistant Minister say that Turkana is a vast district. We know for sure that the Armed Forces have many idle trucks. What is he doing to mobilise them to minimise the costs of transporting food supplies to schools instead of contracting private transporters?

Mr. Gumo: Mr. Deputy Speaker, Sir, that is a good proposal which we will look into.

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

Mr. Ethuro: Mr. Deputy Speaker, Sir, you have heard the Assistant Minister admit that because of the vastness of Turkana District, food supplies do not reach schools in time. The problem is not distribution of food supplies within the district. The problem is that the food supplies that come from the Ministry's Headquarters do not reach the district in good time. So, could the Assistant Minister arrange to borrow supplies from the National Cereals and Produce Board (NCPB) when he realises that supplies from his Ministry will delay? This matter concerns the Ministry of Education, Science and Technology and that of Agriculture and Livestock Development.

Mr. Gumo: Mr. Deputy Speaker, Sir, transporters always collect food supplies from the NCPB depot that is nearest to schools. In fact, most of the food items do not come from Nairobi. Only vegetable oils and other food items that are not available at given depots come from Nairobi.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I come from Turkana District. I once worked for non-governmental organisations, including the World Food Programme. So, I know where the foodstuffs that are supplied to schools in that district come from. Sometimes, food items are [**Mr. Ethuro**] transported by big trucks belonging to M/s Bayusuf Limited to Lowdwar via Kainuk, because of the delays occasioned in Nairobi.

Mr. Deputy Speaker: What is your point of order?

Mr. Ethuro: Mr. Deputy Speaker, Sir, could the Assistant Minister respond to the Question properly? He does not seem to know what he is talking about.

Mr. Gumo: Mr. Deputy Speaker, Sir, if the hon. Member knows the answer to the Question, then why should he ask for an answer from me? He seems to know the answer to the Question.

(Laughter)

Mr. Deputy Speaker: Order! Order!

Mr. Mwenje: On a point of order, Mr. Deputy Speaker, Sir. I came back from Turkana District yesterday. I was in the company of the Departmental Committee on Administration, National Security and Local Authorities. Is the Assistant Minister in order to mislead the House that food supplies to schools in the district are collected from the nearest NCPB depots, when the two NCPB depots nearest to that area do not have any cereals stocks at the moment?

Mr. Gumo: Mr. Deputy Speaker, Sir, food supplies are only collected from those depots when they are available in those depots. When the depots in that area do not have food stocks, we collect the supplies from Nairobi or from other depots that are relatively near to the district.

Mr. Deputy Speaker: Let us proceed to the next Question.

Question No. 193

CONSTRUCTION OF BUMPS ON ELDORET-MAILI
TISA ROAD JUNCTION

Mr. Samoei asked the Minister for Roads, Public Works and Housing:-

(a) whether he is aware that 16 people have died in the last one year at Sigowet Shopping Centre

on the road between Eldoret and Maili Tisa junction; and,

(b) when he is going to erect road bumps to curb over-speeding along the road section in question.

The Minister for Roads, Public Works and Housing (Mr. Raila): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that only one person died at Sigowet Shopping Centre in the last one year, and not 16 people as has been alleged.

(b) My Ministry has no intention of erecting road bumps to curb over-speeding along the road section in question, since bumps are not recommended on an international trunk road. However, this can only be an option in a densely populated area.

Mr. Samoei: Mr. Deputy Speaker, Sir, knowing Mr. Raila as a very qualified engineer, I can only believe that he has been misled. In only one accident, which happened in January, 2003, three people died, and I am talking about accidents that have happened at that section of the road in the last one year. As I speak, the local residents of Sigowet Shopping Centre have actually erected crude bumps. Those bumps pose a great danger to road users. It is incorrect for the Minister to claim that it is not possible to erect road bumps on the said section of the road, because five kilometres away, at Maili Nne Trading Centre, there are road bumps. Sigowet Shopping Centre normally has its market days on Mondays and Fridays, and about 15,000 people attend. I do not know what, in the Ministry's view, population warrants the erection of road bumps on any given road. So, when is the Minister going to consider putting up road bumps on this particular section of that road, and how many people does he want to die for him to accept that this is a very serious matter?

Mr. Raila: Mr. Deputy Speaker, Sir, the Government takes the lives of Kenyans very seriously. The shopping centre known as Sigowet is also known as Baharini Shopping Centre and is located between Maili Nne and Maili Tisa. There occurred 15 accidents in the year 2002 between Maili Nne and Maili Tisa in which three people died, four were seriously injured and 28 were slightly injured. I would like the hon. Member to note that only one fatal accident happened in Baharini or Sigowet Shopping Centre.

Over the said period of time, three accidents happened at Maili Nne, but there was no death. At Sirikwa Quarry, there were three accidents, leading to one death, and at Baharini or Sigowet Shopping Centre, there were four accidents, leading to one death, one serious injury and eight minor injuries. At Maili Tisa, 15 accidents happened, one of which was fatal, leading to one serious injury and five minor injuries. So, a total of 15 accidents happened, three of which were fatal, leading to four serious injuries and 28 minor injuries. As I said, the road the hon. Member is talking about is part of Road A104, which connects Nairobi, Nakuru, Eldoret and Malaba Towns. It is an international trunk road. Although some centres have bumps, they are put there particularly, depending on the density of the population. But we also know that sometimes, bumps do cause accidents. We put them selectively, depending on the number of people in the markets.

Mr. Poghiso: Mr. Deputy Speaker, Sir, I drive along that road every time I go to West Pokot. The local people have actually constructed huge bumps using clay. Either the people are going to continue building their own bumps or the Government is going to come in and construct proper ones. Is the Minister going to allow them to build their own bumps or he will construct them? I believe he can do something about it.

Mr. Raila: Mr. Deputy Speaker, Sir, I have said that we do carry out constant investigations along that highway, right from Nairobi to the border. We erect road blocks as and when they are necessary. There are some illegal roadblocks which are put by bandits or thugs for different purposes. I think those are the ones that the hon. Member is referring to.

Mr. Samoei: Mr. Deputy Speaker, Sir, I think the Minister is making a big joke out of a very serious issue! For him to call the residents of Sigowet bandits, it is actually an insult. Could you order him to withdraw the word "bandits", if at all he made the remark in reference to the people of Sigowet?

Mr. Deputy Speaker: Order! Mr. Samoei, I did not hear the word "bandits"!

Mr. Samoei: Mr. Deputy Speaker, Sir, he mentioned the word!

Mr. Deputy Speaker: Did he use the word in relation to the people?

Mr. Samoei: Yes!

Hon. Members: No!

Mr. Deputy Speaker: Proceed, Mr. Samoei!

Mr. Samoei: Mr. Deputy Speaker, Sir, as we are talking, that is a very serious issue. I am pleading with the Minister to have special consideration and if need be, travel to that particular section of the road. As we are talking, there are road bumps erected by the local people because of that serious problem!

Mr. Raila: Mr. Deputy Speaker, Sir, I did not refer to the people of Sigowet as bandits! What I told the hon. Member was that there are a number of illegal roadblocks which are put by bandits, thugs and criminals for purposes of robbing people! I am sure that the hon. Member has come across some of them. Some of them are erected using stones and poles. So, I did not refer to those people as bandits. What I am saying is that my Ministry carries out constant inspection of that highway, right from Nairobi to Malaba. Where we establish that there is need for a roadblock, we shall construct it.

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

Mr. Deputy Speaker: Order, Mr. Samoei! The thing is that if you have a question, stand so that I can give you a chance! That is because it is now 45 minutes since Question Time started and we have to make progress.

(A mobile phone rang in the Chamber)

Mr. Deputy Speaker: Whose mobile phone is that? Maj. Madoka, you are ordered out of the Chamber for the rest of the sitting.

(Maj. Madoka withdrew from the Chamber)

Mr. Samoei: On a point of order, Mr. Deputy Speaker, Sir. What we are talking about--- You heard the Minister state very well that between Maili Nne and Maili Tisa, which is a distance of less than four kilometres, there have been 16 road accidents. The two fatal accidents, as the Minister has said, occurred between Sirikwa Quarry and Baharini. Between Sirikwa Quarry and Baharini is just half a kilometre. That is why I am saying---

Mr. Deputy Speaker: What is your point of order!

Mr. Samoei: Mr. Deputy Speaker, Sir, my point of order is this: How many lives of the people of Sigowet need to be lost for the Ministry to erect road bumps on that road, to save the lives of the people!

Mr. Deputy Speaker: Order, Mr. Samoei! That is not a point of order!

Mr. Samoei: Mr. Deputy Speaker, Sir, this is a very serious issue!

Mr. Deputy Speaker: Order, Mr. Samoei! You are ordered out of the Chamber for disorderly conduct! I will call the Sergeant-At-Arms! Mr. Sergeant-At-Arms, get him out!

(Mr. Samoei withdrew from the Chamber)

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

Question No. 135

COMMENCEMENT OF ROADS 2000 PROJECT
IN EASTERN PROVINCE

Mr. Ndambuki asked the Minister for Roads, Public Works and Housing:-

- (a) what happened to the Kshs700 million which was set aside for the construction of roads in Eastern Province under the Roads 2000 programme; and,
- (b) when the works on those roads will commence.

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

(a) A total of Kshs258,517,567 has been spent on procurement of vehicles, management and supervision consultancy, financial and technical auditing and improvement of various roads in eight districts of Eastern Province, while Kshs152,577,158.10 has been committed for improvement of various roads in Eastern Province up to 31st December, 2003. The balance of Kshs278,965,244 is expected to be carried over to the second phase of the programme.

(b) The works on the roads in Eastern Province funded under the European Commission Roads 2000 programme commenced in July, 1999.

(Loud consultations)

Mr. Deputy Speaker: Order, hon. Members! Could you consult quietly, please?
Proceed, Mr. Ndambuki!

Mr. Ndambuki: Mr. Deputy Speaker, Sir, the Kshs700 million was given during the *El Nino* rains and it was supposed to be used for gravelling and constructing bridges on some of the roads in Eastern Province. You come from there and you know how bad those roads are because they have not been repaired. Could the Assistant Minister tell us why he spent Kshs258,517,567 to buy vehicles instead of gravelling the roads in Eastern Province?

Eng. Toro: Mr. Deputy Speaker, Sir, the money was given by the European Union, through an agreement between the Government of Kenya and the EU. The EU gave Kshs700 million to finance the implementation of the Roads 2000 Programme in eight districts. I have already given the hon. Member a list showing how the money was spent, the details of how it was spent in each of the eight districts in Eastern Province, the consultants, the contractors and the scope of work that was carried out. Some of the works are ongoing and others have been completed. I will lay the list on the Table of the House.

Mr. Kagwima: Mr. Deputy Speaker, Sir, could the Assistant Minister tell us why roads in some of the areas shown on the list were not repaired under the Roads 2000 Programme? Why were some areas discriminated against? For example, the former Tharaka/ Nithi District has been included in the list, yet no road in Tharaka Constituency was done under the Roads 2000 Programme.

Eng. Toro: Mr. Deputy Speaker, Sir, the districts which were covered under the Roads 2000 Programme were Meru Central, Meru South and Meru North Districts, and I think Tharaka Constituency is in one of those districts.

Mr. Muturi: Mr. Deputy Speaker, Sir, is the Assistant Minister satisfied that out of Kshs700 million, which was meant to repair roads that were destroyed by the *El Nino* rains, Kshs200 million was used to procure vehicles and pay for consultancy services? This money should have been used to repair roads.

Eng. Toro: Mr. Deputy Speaker, Sir, Mr. Muturi, the Opposition Chief Whip, is actually challenging the Government he served because it was the one that spent the money on other things instead of repairing roads. Whether I am satisfied or not, the services were procured and there is nothing we can do about it at the moment.

Mr. Munya: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister aware that work on the road section between Kagaene and Kiguchwa Market is not ongoing? The works stopped because the culverts made for the road were substandard. They were not reinforced. The works have been stopped by the District Roads Engineer. When will the works on this section of the road commence? Will the Assistant Minister stop the contractor from using the substandard culverts?

Mr. Deputy Speaker: Ask one question at a time, Mr. Munya!

Eng. Toro: Mr. Deputy Speaker, Sir, according to my records, the works are ongoing. If they are not ongoing, I will have to find out the reason why they were stopped.

Mr. Ndambuki: Mr. Deputy Speaker, Sir, according to the list the Assistant Minister has given, there were some roads in my constituency which were earmarked to be repaired under the Roads 2000 Programme, for example, Kikoko-Kalongo-Kyuasini Road. The District Roads Engineer announced that this road would be repaired under the Roads 2000 Programme. Could the Assistant Minister consider repairing the road using the remaining amount of money?

Eng. Toro: Mr. Deputy Speaker, Sir, the balance of Kshs278,965,274 will be used to implement the second phase of the Roads 2000 Programme. If the road the hon. Minister has referred to is a priority project, it will be included in the second phase of the Programme.

(Several hon. Members stood up in their places)

Mr. Deputy Speaker: Hon. Members, there is a time limit for Question Time. We have just about five minutes to the end of Question Time. Therefore, no other issue on that Question should be raised.

Question No. 186

DISBURSEMENT OF IFAD LOANS IN THARAKA DISTRICT

Mr. Kagwima asked the Minister for Agriculture and Livestock Development:-

- (a) how many applications for grants and loans from IFAD have been approved in the last three months in Tharaka District;
- (b) how much money has been dispatched to the beneficiaries in the same area; and,
- (c) how much is available for application and use in Tharaka District.

(There was power failure)

Mr. Deputy Speaker: Order! Hon. Members, due to power blackout, I will adjourn the House for 15 minutes! I hope by that time, power will have been restored!

(The House adjourned temporarily at 3.30 p.m.)

(Power was restored at 3.35 p.m.)

(The House resumed at 3.40 p.m.)

Mr. Deputy Speaker: Hon. Members, we will now continue. Mr. Kagwima was on the Floor.

Mr. Khamasi: On a point of order, Mr. Deputy Speaker, Sir. This is a very serious matter. It is unacceptable for business of the National Assembly to be disrupted because of lack of power. We know that we have got a standby generator in this building, whereby we understand that as soon as electricity from the mains goes off, the generator comes on automatically. I think we will require a statement from the Chair as to why this disruption has got to happen very regularly when Parliament is in session because we vote money time and again even, for Parliament to make sure that the generator is maintained properly. Why should this disruption of business happen time and again?

Mr. Deputy Speaker: Order, hon. Members! I want to say that I am equally concerned that such a thing could happen and hence business of the House of the Kenya National Assembly is disrupted, owing to power failure when, in fact, it has a standby generator. I have made enquiries and the Clerk's Office has informed me that there is an overload, but that is no excuse. I want to assure the House that action is being taken to ensure that this disruption does not occur again and if necessary, to replace the standby generator. Please, I want to assure hon. Members that the Chair takes it very very seriously and I think we owe an apology to hon. Members.

Proceed, Mr. Kagwima!

Mr. Kagwima: Mr. Deputy Speaker, Sir, before the lights went off, I had already asked Question No.186 and the Assistant Minister was on the Floor answering it.

The Assistant Minister for Agriculture and Livestock Development (Mr. Munyao): Mr. Deputy Speaker, Sir, I know where you and I come, from "miracles" and "impossibles" happen. I am not involved in what happened to the lights, although I could.

Mr. Deputy Speaker, Sir, I beg to reply.

(a) My Ministry has mobilised communities in Tharaka District to identify feasible and implementable proposals for funding under local initiatives, a component of IFAD. The communities have identified ten proposals as follows:

<u>Division</u>	<u>No of proposals</u>
Northern Division	1
Southern Division	7
Central Division	2

Under the loans component of IFAD, two irrigation schemes, namely Mitunguu-Tunyai-Muthangacwe and Marimba-Ntorone have been identified. These proposals are currently under screening and evaluation in accordance with the guidelines provided by IFAD before the release of funds.

(b) The ten identified proposals are worth Kshs912,000 and the communities are requesting for grants worth Kshs505,000 to implement the proposals. However, the funds have not been dispatched to the beneficiaries, since the proposals are still being screened and evaluated as required by the guidelines provided by IFAD.

(c) Kshs1,380,000 is available under grants to support local initiatives and rural access roads in Tharaka District. This amount is already provided for in the printed estimates for the financial year 2002/2003. On the other hand, the funds available under loans are determined by the projected size, community preparedness to

receive and utilise the loans and conditionalities of the lending institutions.

Mr. Kagwima: Mr. Deputy Speaker, Sir, I thank the Assistant Minister for the answer but looking at part "a" of his reply, in the North Tharaka Division, I personally disbursed about seven proposals. The Assistant Minister says that they have identified only one project in the entire division. In the Central Division, I also witnessed more than five proposals being forwarded and he says there are only two proposals. Nevertheless, as we are talking, we are only two months away to the end of the financial year. If the funds have not been disbursed, what is going to happen when the new financial year comes?

Mr. Munyao: Mr. Deputy Speaker, Sir, I am happy the hon. Member appreciates the efforts the Government made in that area. An amount of Kshs1.3 million is available. I will direct the Ministry to make sure that the funds are available before the close of the current financial year.

Mr. J. Nyagah: Mr. Deputy Speaker, Sir, I know Tharaka District very well. I think the District Agricultural Officer (DAO) is deliberately slowing down this programme for ulterior motives. Could the Assistant Minister take into account that, that is a real possibility and it could be sabotage on the part of the people of Tharaka?

Mr. Munyao: Mr. Deputy Speaker, Sir, I would expect that officer, who is being discussed, to have totally changed from that old KANU behaviour to the current aspirations of the NARC Government. If that is the case, he must be told now, and I hope he is listening, that the NARC Government will have no time for him. So, he had better work.

Mr. Kagwima: In terms of timeframe, when do I expect the money, since we have only two months before the close of the current financial year, so that I can ask the DAO to start the project?

Mr. Munyao: Mr. Deputy Speaker, Sir, I am sure the hon. Member does not expect me to write a cheque now. But I have given directions which should be followed. Let him go back to Tharaka, confident that the money will be there. But if it will not be there, then next week he can inform me. The NARC system is working well.

Mr. Deputy Speaker: Next Question, Mr. A.H.M. Mohammed!

Question No.257

PROVISION OF WATER TO MANDERA WEST

Mr. A.H.M. Mohammed asked the Minister for Water Resources Management and Development:-

(a) whether he is aware that there is no single permanent source of water in Mandera West; and,

(b) what plans the Ministry has to provide water to the area residents.

The Minister for Water Resources Management and Development (Ms. Karua): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware that Mandera West has no permanent source of water.

(b) In recognition of the above fact, my Ministry has constructed a total of 28 communal water pans and ten sub-surface water tanks in Mandera West. The ten sub-surface water tanks are all operational. However, due to excessive evaporation and seepage, the pans hold water only for a period lasting two to four months. It is for this reason that the underground tanks of between 100 to 500 cubic metres have been constructed to augment water supply from the pans. Other measures being taken by my Ministry to supply water to the residents of Mandera West include; one, construction of seven sub-surface dams at Hullo, Emole, Gither, Sake, Erestene, Kubdishan and Bulla Mpya which is going on and the works will be completed by September, 2003. Two, desilting of the existing pans. During the current financial year, Erestene Water Pan has been earmarked for rehabilitation at a cost of Kshs2 million.

Mr. A.H.M. Mohammed: Mr. Deputy Speaker, Sir, while I appreciate the answer given by the Minister, I wish to state that water being a very essential commodity, the people of Mandera West waste a lot of time in conflict resolution. They have to move from district to district and even cross the border in search of water. 40 years after Independence, when other Kenyans are asking for clean piped water, the people of Mandera West are asking for raw water. Could the Minister, therefore, consider undertaking a thorough hydrological survey using the most modern technology?

Ms. Karua: Mr. Deputy Speaker, Sir, while I agree with the hon. Member that we need to conduct a thorough geo-physical survey, I want to remind him that this Government has been in power for only three

months. The 40 years he is speaking about, the KANU regime was responsible. We will do everything in our power to alleviate the water shortage in Mandera.

Dr. Godana: Mr. Deputy Speaker, Sir, we can understand the hon. Minister wants to harp at the KANU administration, but all the indications are that we may be in one of the worst years in terms of poor rains for precipitation. Already, we are getting alarming reports about drying up of pans where no rain has fallen. What emergency plans, if at all, has the Minister already began to put in place? I ask this because, we are told that certain plans for boreholes have been suspended until the new Budget. I am afraid, if that happens to be the case, I think there will be major emergencies, particularly in the ASAL areas. What emergency plans, if at all, has the Minister began to address her mind to, to deal with the impending drought?

Ms. Karua: The emergency measures in all the ASAL areas and other places where dams and pans exist is rehabilitation of those facilities. But for Mandera West in particular, the ground water potential is so poor that we cannot talk of sinking more boreholes without the geo-physical survey the hon. Member for the area talked about. We are doing our best under the circumstances, and within the time that has been available to us, I can only assure the hon. Member that this Government is taking the issues of water very seriously, and very soon, you will see action on the ground.

Mr. Deputy Speaker: Hon. Members, we have lost a lot of time.

Mr. A.H.M. Mohammed: Mr. Deputy Speaker, Sir, is the Minister further aware that we have got a river flowing along the Kenya/Ethiopia boarder, at the extreme north of this constituency? Unfortunately, that river is inaccessible because it runs in a cliff. Could the Minister consider pumping water from that river to a point which is accessible to the people and livestock?

Ms. Karua: Mr. Deputy Speaker, Sir, that is not a supplementary question. It is a specific question about an unnamed river, which he had not mentioned in his original Question---

Hon. Members: It is Daua River!

Ms. Karua: Mr. Deputy Speaker, Sir, we will look into all possibilities, including pumping water from that river.

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

Question No.171

IMPLEMENTATION OF RURAL
ELECTRIFICATION PROGRAMME IN SAMBURU

Mr. Leshore's Question is deferred to Tuesday next week.

(Question deferred)

Next Question, Mr. Muiruri!

Question No.143

LIQUIDATION OF GATUKUYU CO-OPERATIVE SOCIETY

Mr. Muiruri asked the Minister for Co-operative Development:-

- (a) what the total fees paid to the liquidators of Gatukuyu Coffee Growers Co-operative Society were; and,
- (b) whether he could give the breakdown of all assets sold, their value and distribution.

The Assistant Minister for Co-operative Development (Mr. Kenneth): Mr. Deputy Speaker, Sir, I had answered the two questions that were asked, but two supplementary questions arose. One was: Who was the liquidator, and two, what circumstances led to the liquidation? For one, the liquidator was Mr. Kigo Njenga of Kigo Njenga and Company. Circumstances that led to the liquidation, first of all, are very well known to the Questioner, who was the Chairman of Gatukuyu Coffee Growers Co-operative Society for over 12 years. He is also aware that a delegation was led by one of the hon. Members of this House to the then President. An executive order was issued to allow liquidation to take place.

Mr. Muiruri: Mr. Deputy Speaker, Sir, I am sure we did not understand what the Assistant Minister has just said. He is talking about an executive order. Could he table it? I said that the society was very rich and

its turn-over per a year was over Kshs200 million. It was the darling and the best managed marketing co-operative society in the larger Kiambu. Why was it liquidated because, according to the rule of law, liquidation can only come when the society is already bankrupt, or it cannot perform?

The information I have is that the society had bank accounts in the Thika branch of Kenya Commercial Bank (KCB) and the Co-operative Bank in Nairobi. It operated on credit and it had coffee in the stores and in the KPCU and the Coffee Board of Kenya. Why was it liquidated? I admit I was the Chairman before it was liquidated---

Mr. Deputy Speaker: Could you let the Assistant Minister answer.

Mr. Muiruri: Mr. Deputy Speaker, Sir, could the Assistant Minister be candid enough---

Mr. Deputy Speaker: Order, Mr. Muiruri! You have asked a question, let the Assistant Minister answer it.

Mr. Kenneth: Mr. Deputy Speaker, Sir, I did say that a delegation from that particular co-operative society paid a courtesy call on the former President. It was led by an hon. Member sitting on that side. An executive order was issued to liquidate the society and the Chairman is aware. It was a verbal order.

Dr. Godana: On a point of order, Mr. Deputy Speaker, Sir. Can we talk of an executive order and a verbal order? What is an executive order? Could he lay it on the Table?

An hon. Member: But you know better!

Mr. Kenneth: Mr. Deputy Speaker, Sir, an executive order is an order given by the President. The former President told the delegation to liquidate the society.

Mr. Deputy Speaker: Order! Order, hon. Members! We are not getting anywhere. Could we hear from Mr. Muiruri?

Mr. Muiruri: Mr. Deputy Speaker, Sir, be that as it may, could the Assistant Minister admit that it was all wrong? To correct that error, could he be kind enough to institute an inquiry to investigate what happened to all the assets of those societies? What happened to the money in both the Co-operative Bank of Kenya and Kenya Commercial Bank, Thika branches? What happened to all the coffee sold and all the fertilizers in the 13 factories? Again, could he come up and tell us what are the qualifications of Kigo Njenga and Company?

Mr. Kenneth: Mr. Deputy Speaker, Sir, the hon. Member is asking me if I could order for an inquiry and at the same time, the qualifications of Kigo and Njenga Company. First of all, I cannot declare the order that led to the society's liquidation as invalid. The hon. Member was the Chairman of the society, and he knows very well, the circumstances that led to its liquidation. He knows who in this House led the delegation to the President for that order to be issued. He is well aware of the facts!

Mr. Deputy Speaker: Order! Could I try to assist? Mr. Assistant Minister, according to the law, where does the liquidation order originate from? Does it originate from the executive or is it a court order? We are talking about the property of members of the public. Why do you find it unreasonable to inquire into that matter?

Mr. Kenneth: Mr. Deputy Speaker, Sir, of course, the rule of law was ignored in those circumstances, when the executive order was issued.

An hon. Member: Who issued it?

Mr. Kenneth: The executive order was issued by the then President.

An hon. Member: Was it an oral order?

Mr. Kenneth: It was a verbal order, and the delegation was led by the current leader of Official Opposition!

Mr. Deputy Speaker: Order! Mr. Muiruri, I had given you the last chance, but I know Mr. Nyachae did a lot of work in this particular society when he was the Provincial Commissioner, Central Province. I will allow him to contribute to this matter.

Mr. Muiruri: On a point of order, Mr. Deputy Speaker, Sir. I asked the Assistant Minister whether he could institute an inquiry and he has not answered that very important question.

Mr. Deputy Speaker: Yes, but I have allowed Mr. Nyachae to ask a question.

Mr. Nyachae: Mr. Deputy Speaker, Sir, I think the House is being misled by both sides. The truth of the matter is that, we have had a lot of problems in coffee co-operative societies in all the areas, particularly Central Province. These matters used to go even to the previous Presidents, including the recently retired President. What the Presidents have always done and which is being misinterpreted here as "executive orders", is for the President to say: "If there is any misunderstanding, go and follow the procedures and correct what has gone wrong." That meant then, that the President advised them that: "Go back and follow the law, and if you want liquidation, there is a procedure to be followed." Therefore, the question of somebody having jumped up to say, the President said we liquidate, and then steal people's property, that is illegal. I think, what we want is for the Assistant Minister to

agree that, that was not done correctly; go back and trace the assets of farmers.

(Applause)

Mr. Kenneth: Mr. Deputy Speaker, Sir, the delegates for this society actually called on the President and requested that the society be split into four. He, therefore, acceded to a liquidation order of the original society. With regard to whether an inquiry can be instituted, yes it can. But the hon. Member is a past Chairman of the society and because he was voted out, it will require members of those societies to apply in writing for an inquiry order, which I will accede to.

Mr. Deputy Speaker: I think that is fair enough.
Next Question, Mr. Korir!

Question No.138

LAND ADJUDICATION IN MOGOTIO

Mr. Korir asked the Minister for Lands and Settlement:-

- (a) whether he is aware that Aram, Kabogor and Kipchobe areas have not been adjudicated; and,
- (b) what arrangements he has put in place to have the areas adjudicated.

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

- (a) Yes, I am aware that Aram and Kipchobe in Kabogor Sub-location are not yet adjudicated.
- (b) My Ministry has ordered the local

district lands office to have the areas adjudicated.

Mr. Korir: Mr. Deputy Speaker, Sir, I appreciate the answer given by the Assistant Minister. I would like to request him to be more specific and give a timeframe. This is because a title deed is a very vital document in national development. People of Kabogor, or these particular areas, need to have hope so that they can participate and be partners in national development. Could the Assistant Minister give us a timeframe as to when he can do that job?

Mr. Ojode: Mr. Deputy Speaker, Sir, I am waiting for the Budget to be approved by this House. Once the House approves the Budget, I will give a timeframe. But, let me say this; it is not only the areas where the Ministry has not adjudicated land. There are other areas in his constituency where land has not been adjudicated; areas like Waseges, Maji Moto and Kapteret. I am also happy to announce that a number of adjudicated sections in his constituency have already been issued with title deeds. Some of the areas include Kimuse, Koitein, Sigoro, Kamalangel, Olkokwer, Cheparang', Kimungurun, Maji Moto A, Radar, Kokwar Group Ranch, Olkokwebi and Kapkain A. So, they should go and collect their title deeds immediately.

Mr. Korir: Mr. Deputy Speaker, Sir, I want to thank the hon. Assistant Minister for a brilliant job well done. Although I pity him for the pronunciation, he has done a good job. I congratulate him.
I hope in the next reshuffle, he will be a full Minister.

QUESTIONS BY PRIVATE NOTICE

IMPLEMENTATION OF FREE EDUCATION PROGRAMME

Mr. J. Nyagah: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Education, Science and Technology the following Question by Private Notice.

- (a) Is the new free education compulsory?
- (b) What steps is the Government taking to ensure that all eligible students attend school?

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

- (a) In accordance to Section 7(ii) of the Children's Act, 2001, free primary education is compulsory.
- (b) The Government has taken the following steps to ensure that all eligible students attend school:-

1. The Government has issued appropriate guidelines to all public primary schools for the implementation of the free primary education.
2. All levies have been banned in primary schools.
3. The Ministry has set up an information desk on free primary education, and has sensitised Kenyans

through the media.

4. The Government has disbursed funds to all public primary schools to support free primary education.

Mr. J. Nyagah: Mr. Deputy Speaker, Sir, in my constituency, many children have not gone to school. When I asked the reason why they still refuse to go to school after they have been offered free education, I was told that nobody has the authority to force the children go to school. Even a DO, a chief and an assistant chief are not authorised to force the children to go to school or arrest the parents. Could the Assistant Minister give clear instructions this afternoon, so that I can follow it up when I go home that all children must go to school, and that the chiefs and assistant chiefs will be arrested and dismissed if they do not follow those instructions?

Mr. Gumo: Mr. Deputy Speaker, Sir, primary education is compulsory, and at the same time, parents are supposed to be informed that children must go to school. It is not only the responsibility of chiefs and DOs to tell parents that all children must go to school, but also hon. Members of Parliament. So, I would like to urge Mr. J. Nyagah to begin holding *barazas* and ask parents in his constituency to send children to school.

Mr. Sasura: Mr. Deputy Speaker, Sir, I heard the Assistant Minister for free education saying that the Government---

Mr. Deputy Speaker: Order, Mr. Sasura! He is the Minister for Education, Science and Technology.

Mr. Sasura: Mr. Deputy Speaker, Sir, I beg your pardon. It was a slip of the tongue. You heard the Assistant Minister say that the Ministry has disbursed funds to primary schools and over the week, we have been asking whether he has disbursed funds to boarding schools. Could the Assistant Minister tell us the latest disbursements to schools, and out of that money, how much had been set aside and disbursed to boarding schools in this country?

Mr. Gumo: Mr. Deputy Speaker, Sir, that is a different question. I have answered that question more than three times in this House.

Mr. Hassan: On a point of order, Mr. Deputy Speaker, Sir. I want to ask the Assistant Minister---

Mr. Deputy Speaker: No, you stood on a point of order.

Mr. Hassan: Mr. Deputy Speaker, Sir, now that he confirms that education is---

Mr. Deputy Speaker: Order! Is that Dr. Kuti?

Mr. Hassan: I am Mr. Hassan.

Mr. Deputy Speaker: Mr. Hassan, you stood on a point of order, so I want to hear your point of order.

Mr. Hassan: It is a point of order!

(Laughter)

Allow me to ask my question, Mr. Deputy Speaker, Sir. Now that the Assistant Minister---

Mr. Deputy Speaker: Order, Mr. Hassan! I will allow you to ask the question, but let it be understood by hon. Members that when you stand on a point of order, it means that there is something which you want to point out that has been done not in accordance with Standing Orders. But if you want to ask a question like you now want to, just stand up.

Mr. Hassan: Thank you, Mr. Deputy Speaker, Sir, for correcting me. My question is: Now that the Assistant Minister has confirmed that free primary education is compulsory, what arrangements has the Ministry put in place to offer free primary education to those who cannot access it through conventional means like the pastoralists who cannot even join formal schools?

Mr. Gumo: Mr. Deputy Speaker, Sir, we are organizing mobile primary schools, because people from his area move from one area to another, and it is very difficult to keep those children in one place unless it is a boarding school. As I had said before, we are subsidising boarding schools and giving them some inducement to make sure that children go to school.

An hon. Member: What inducement?

Mr. Gumo: Food!

Mr. Ndambuki: Mr. Deputy Speaker, Sir, for several weeks in the House, we have heard many hon. Members say that roofs of classrooms in some schools have been blown off by wind. The Assistant Minister has told us that they have disbursed money to go to the schools. Could he tell us whether it includes a provision for rehabilitating or building the blown off roofs of some of those schools?

Mr. Gumo: Mr. Deputy Speaker, Sir, most of the money we have disbursed is mainly for educational materials. The next amount of money that we are going to reimburse will include money for maintenance of schools.

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

Mr. Deputy Speaker: Mr. Sasura I gave you an opportunity to ask a question! What is it?

Mr. Sasura: On a point of order, Mr. Deputy Speaker, Sir. There is something really disturbing me, and I would like you to bear with me. I am sure you agree with me that Mr. Gumo evaded my question. He has said that there was some disbursement to schools. Could he tell the House how much was disbursed to boarding primary schools? He is talking so casually, saying that he has answered this question several times. First, he was talking about disbursement and now, he is talking about reimbursement.

Mr. Deputy Speaker: Mr. Gumo, do you have any comment on that?

Mr. Gumo: I do not have, Mr. Deputy Speaker, Sir, because I have answered this question very many times. I would like to invite the hon. Member to come to Jogoo House, so that we can discuss this matter and finalise it, instead of bringing the same question every time.

Mr. J. Nyagah: Mr. Deputy Speaker, Sir, I am still not satisfied with the Assistant Minister's answer to part "a" of the Question. Could he categorically and very clearly instruct the chiefs and the assistant chiefs--- Could he tell them: Thou shall arrest any parent and any child of school going age, unless he or she goes to school. As the Assistant Minister, he is representing the Government. Could he make it categorical so that when I go home tomorrow, I can have the chiefs arrested?

Mr. Gumo: Mr. Deputy Speaker, Sir, education is compulsory, but we have not reached that stage where we have to force children to go to school. After a while, if they do not go to school, they will be forced. We have to start from somewhere!

Mr. J. Nyagah: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to cheat us and tell us primary education is compulsory---

Mr. Deputy Speaker: Order, Mr. J. Nyagah! That is unparliamentary language.

Mr. J. Nyagah: Mr. Deputy Speaker, Sir, I apologise and withdraw. However, is the Assistant Minister in order to first of all tell us that primary education is compulsory and then proceed to prove that it is not compulsory?

Mr. Gumo: Mr. Deputy Speaker, Sir, education is compulsory and very soon, we are going to enforce that order. We just started it this year and it is only two months since we started compulsory primary education. You do not expect us to know how many children are still at home. If they do not go to school, we are going to make sure that they do so.

Mr. Nyachae: Mr. Deputy Speaker, Sir, could the Assistant Minister quote the section of the law in this country which has actually made education compulsory?

Mr. Gumo: Mr. Deputy Speaker, Sir, the Children Act says that children must have education. Free primary education is a new Government policy towards realisation of universal primary education. It was launched on 16th January, 2003.

Hon. Members: Which section of the law?

Mr. Gumo: Mr. Deputy Speaker, Sir, even if that law has not been enacted here, the Children Act is very clear. It is the policy of the Government that everybody must get education. Every child must go to school unless some of you do not want children to go to school. If you do not want them to go to school, then why do you ask questions here?

Mr. Deputy Speaker: Next Question!

MEASURES TO CURB HARASSMENT BY KWS PERSONNEL

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

(a) What action is the Minister taking to curb harassment by the Kenya Wildlife Services (KWS) personnel, of communities living near Kora National Park that has cost wananchi loss of livestock and has instilled fear among the area residents?

(b) What compensation will the Minister give for the six camels killed on Wednesday, 19th February 2003 and 40 others whose whereabouts remain unknown?

The Assistant Minister for Environment, Natural Resources and Wildlife (Prof. Maathai): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware of any harassment of communities living near Kora National Park by the KWS personnel. In fact, the KWS has a very good working relationship with communities living around Kora and Meru National Parks. I would also like to assure the hon. Member that the KWS has not received reports of any loss of livestock by the communities living in that area

(b) There are no plans for compensation because my Ministry has not received any report of the six camels killed, neither is it aware of the alleged 40 camels that were lost on 19th February, 2003.

Mr. Wario: Mr. Deputy Speaker, Sir, this is a dark day for the history of this country. A renowned honourable professor who stands for the rights of humanity, has today stood against humanity by misleading this House. I have enough evidence with me here to prove that people from that area were subjected to harassment by KWS officers. I have a letter written by elders from Mboka which was forwarded by the area chief to the DC on the harassment. I also have fine receipts of seven people who were flown by the a KWS plane from Kora to Tigania East for the simple reason of defeating justice. I wonder why the Minister is misleading the House.

(Mr. Wario walked towards the Table)

Mr. Deputy Speaker: Order, Mr. Wario! Where are you going?

Mr. Wario: I wish to table these documents.

Mr. Deputy Speaker: What are those documents, Mr. Wario?

Mr. Wario: These are the receipts of the fines paid by the people who were flown from Kora to Tigania East by the KWS personnel and yet, the Assistant Minister says she is unaware.

Mr. Deputy Speaker: Lay them on the Table. We will have a look at them.

(Mr. Wario laid the documents on the Table)

Mr. Assistant Minister could you respond to that?

Prof. Maathai: Mr. Deputy Speaker, Sir, during the dry season, the local people at Mboka Settlement Scheme take their cattle into the parks to graze. Many of the communities living in Mboka area now drive their livestock across the boundary and then leave them there to graze freely. While this is being done, losses through predation and possible stock theft by other communities can be expected. By law, Kora is a gazetted National Park and it is against the law to graze livestock in the protected area. In 1999, over 100,000 head of livestock were found within the boundaries of the park.

(Messrs. Khaniri and Mr. Ligale held loud consultations)

Mr. Deputy Speaker: Order, Mr. Khaniri and Mr. Ligale.

Prof. Maathai: For the last four years, there have been continuous operations to remove the livestock from the protected area. This has been done in parallel with KWS community officers talking to community members and explaining to them that it is a protected area, where the boundaries are and the penalties that can be levelled against those who trespass. When livestock and/or *manyattas* are found within the protected area, the KWS personnel arrest any adults, preferably male, livestock and if there are *manyattas*, they are also removed to the boundaries of the protected area. At no time have these operations been done without consultation with the local administration from the neighbouring districts of Tana River, Garissa and Mwingi.

Other law enforcement agencies like the police are kept informed of our operations and the Judiciary is briefed as appropriate. In order to alleviate any further confusion by the communities---

Mr. Deputy Speaker: Order, Assistant Minister! Just answer the question and let us receive the next question.

Mr. Poghisio!

Mr. Poghisio: Mr. Deputy Speaker, Sir, the Assistant Minister, like all before her and others yet to come, will only find answers written, prepared and have no intervention whatsoever. These people have been harassed as evidenced by the fact that they were picked from Tana River and flown to Tigania for court hearing. What more evidence does one expect to receive from those people to suggest there is harassment? Why can she not begin to answer the first question in the affirmative since there is real evidence of harassment?

Prof. Maathai: Mr. Deputy Speaker, Sir, what I was trying to explain here is that we are talking about protected areas and areas where people are not allowed to graze. If they do graze there, as they apparently do, then there are certain consequences, some of which could be construed to be harassment by the KWS, while it is doing exactly what it is supposed to do in protected areas.

Mr. Deputy Speaker: Mr. Mganga!

I hope it is not the case of a baboon now!

Mr. Mganga: Mr. Deputy Speaker, Sir, this has nothing to do with a baboon. The issue of harassment by KWS officials is not just unique to the Question that has been raised this afternoon. The Assistant Minister is just reading to us stories. We know that communities that live within the vicinity of national parks are suffering this problem across the board. Given this problem, could the Assistant Minister make urgent arrangements to ensure that not only the animals are contained within the confines of the parks, but also that KWS officials who are harassing wananchi outside the parks are also contained within the National Parks?

Prof. Maathai: Mr. Deputy Speaker, Sir, the KWS headquarters and the Ministry does not condone any incidents of harassment of wananchi by KWS personnel. Should there be such cases, I would like to suggest that the organisation would like to appeal to hon. Members to inform their constituents to report such cases of harassment immediately to the Senior Warden, Meru National Park in this case, and the police for immediate action.

Mr. Wario: Mr. Deputy Speaker, Sir, the Assistant Minister has misled the House again. We live in Tana River District. Do we go to Meru simply to make a report there? We have reported to the DC and the police about the harassment of wananchi by KWS personnel and yet, the Assistant Minister is saying we have done nothing. She also said that for the last four years, she has been conducting operations to kill animals and mistreat pastoralists for no apparent reason. Could she answer the Question positively?

Mr. Deputy Speaker: Mr. Wario, ask the Assistant Minister a Supplementary question. You cannot say "she must answer in a positive way". Could you ask the question so that we can hear the answer?

Mr. Wario: Mr. Deputy Speaker, Sir, now that the Assistant Minister is aware of the harassment, what plans does she have to compensate the owners of the six camels killed at Kora National Park?

Prof. Maathai: Mr. Deputy Speaker, Sir, I just said that we are not aware of the six camels that were killed. However, I can take up this matter with KWS and with our office so that they can conduct further investigations. As of now, we are not aware of the killing of the camels.

Mr. Deputy Speaker: Very well, next Question.

MEASURES TO CURB PERENNIAL FLOODING IN KANO PLAINS

Prof. Olweny: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Water Resources Management and Development the following Question by Private Notice.

(a) Is the Minister aware that Kano Plains experience flooding every time there are rains in Western Kenya?

(b) Could she release funds for immediate construction of dykes along the lower parts of River Nyando and removal of vegetation and silt in the smaller rivers?

The Minister for Water Resources Management and Development (Ms. Karua): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that severe floods occur annually in the Kano Plains due to overflow from River Nyando, resulting in inundation of land, large tracts of crop land, displacement of about 4,000 people and damage to infrastructure, including schools. Since 1984, my Ministry has been constructing the Nyando dykes to control the floods. To date, my Ministry has constructed a total of 7.9 kilometres of the proposed 15 kilometres of dykes.

(b) During the current financial year, the Ministry plans to extend the dykes at a cost of Kshs20 million. However, this has not been possible because there were no funds. Now that the Supplementary Estimates have been approved by the House, we expect to carry on with the construction of dykes. But I would also like to mention that completion of the dykes will take Kshs750 million, which we do not have right now.

Prof. Olweny: Mr. Deputy Speaker, Sir, the answer given by the Minister sounds good. The dykes she has talked about have been constructed from Ahero, on River Nyando. However, those dykes were constructed in 1950. They have not been repaired since then. The dykes are now dilapidated and broken. So, could she tell the House whether there are any plans to repair the dykes that were constructed in 1950 on River Nyando, upstream from Ahero?

Ms. Karua: Mr. Deputy Speaker, Sir, the priority of my Ministry is rehabilitation. So, before extending the dykes, we will rehabilitate the sections of the existing dykes that need rehabilitation. I am aware that this problem extends not only to Muhoroni, but also to Nyakach Constituency.

Mr. Ogur: Mr. Deputy Speaker, Sir, the Minister's reply is very good. She has very well addressed the issue of the dilapidated dykes along River Nyando, but what about sweeping wild waters through River Kuja, down to Lake Victoria? I am talking about the wild waters that run down to Kabuto in my area. These waters

actually behave as wildly as the *Nyando one*. Is the Minister aware of that?

Mr. Deputy Speaker: By the way, Mr. Ogur, what is "*Nyando one*"?

Mr. Ogur: Mr. Deputy Speaker, Sir, the word "*Nyando one*" refers to those rivers which flood Ahero. Those rivers are known to be naughty, particularly at times like now. As these rivers sweep through Nyatike at Kabuto, they become so wild that the Minister needs to control their waters.

Mr. Deputy Speaker: That is enough, Mr. Ogur. Now let the Minister reply to your question.

(Laughter)

Ms. Karua: Mr. Deputy Speaker, Sir, I am aware of the menace caused by floods. The duty of controlling floods countrywide falls under my docket. We are looking at measures that are necessary, including exchanging knowledge with other countries which have handled floods successfully.

Mr. Deputy Speaker: Could you ask your last question, Prof. Olweny?

Prof. Olweny: Mr. Deputy Speaker, Sir, upstream on Nyando from Ahero, just one kilometre from the offices of her Ministry, the river almost traverses the road. It beats me why the Minister is not aware of that fact.

Mr. Deputy Speaker: Prof. Olweny, please, ask your question.

Prof. Olweny: Mr. Deputy Speaker, Sir, when is the Ministry going to conduct a survey along River Nyando, upstream from Ahero?

Ms. Karua: Mr. Deputy Speaker, Sir, that will be done in the course of the year.

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

NON-PAYMENT OF SALARIES TO SISAL ESTATE WORKERS

Mr. Wamwere: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Labour and Human Resources Development the following Question by Private Notice.

(a) Is the Minister aware that workers of the Majani Mingi Group of companies (Makongeni Sisal Estates) have not been paid their salaries for the last six years amounting to more than Kshs110,000,000?

(b) Is he also aware that land belonging to the above company is being auctioned by the Kenya Commercial Bank after it failed to repay its loan to the bank?

(c) What action is he taking to ensure that the employees do not lose their unpaid salaries and allowances?

The Assistant Minister for Labour and Human Resource Development (Mr. Odoyo): Mr. Deputy Speaker, Sir, before I reply to the Question, I would like to explain that Majani Mingi is a farm in the Rift Valley. It is part of a farm owned by a Greek family called "Harry Horn Senior and Harry Horn Junior". It is very similar to a farm owned by a former Member of Parliament, Mr. Basil Criticos, at the Coast.

Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that Majani Mingi Group of companies have not paid salary arrears for the last six years, amounting to Kshs110 million.

(b) I am also aware that Majani Mingi Group of Companies has entered into negotiations with the KCB, so that part of the property can be sold to clear outstanding loans to the bank.

(c) I wish to confirm that I have already taken action by charging the management of Majani Mingi Group of Companies before the Chief Magistrate's Court in Nakuru, under Case No.736, which is scheduled for hearing on 23rd April, 2003. I have charged the management in respect of an amount totalling Kshs27.6 million, which is the value of unpaid arrears in respect of one unit called the "spinning factory".

Mr. Deputy Speaker, Sir, I am further aware that the workers have taken an independent civil action against the management of the farm in respect of arrears at Banita, Lomolo, Atranai and Majani Mingi Estates.

Mr. Wamwere: Mr. Deputy Speaker, Sir, could the Assistant Minister tell the House why the Ministry is suing Mr. Harry Horn for Kshs27.6 million only instead of suing him for Kshs110 million? Secondly, is he aware that the KCB---

Mr. Deputy Speaker: Order! Order, Mr. Wamwere! You should ask only one supplementary [Mr. Deputy Speaker] question at a time. I can remember having told you that before.

Mr. Wamwere: Mr. Deputy Speaker, Sir, my fear is that there may not be time for me to ask the other questions that I wish to put to the Assistant Minister.

Mr. Deputy Speaker: Yes, but the Standing Orders do not allow you to ask more than one supplementary question at once. So, ask only one question.

Mr. Wamwere: Mr. Deputy Speaker, Sir, I have asked one question. Can I now ask the other one?

Mr. Deputy Speaker: Mr. Wamwere, the Assistant Minister has replied to the main Question. You can now ask him a supplementary question.

Mr. Wamwere: Mr. Deputy Speaker, Sir, I have asked him why his Ministry has sued the said company for holding back Kshs27.6 million instead of suing it for Kshs110 million, which he has admitted is the amount owed to employees by Mr. Harry Horn's company.

Mr. Deputy Speaker: Very well. Could you reply, Mr. Assistant Minister?

Mr. Odoyo: Mr. Deputy Speaker, Sir, upon being alerted to the issue of salary arrears for the workers, my Ministry carried out investigations. When we established that the company owed the workers Kshs27.6 million, we decided to go to court as further investigations continued. This figure will be adjusted as we get more documentary evidence.

Dr. Galgalo: Mr. Deputy Speaker, Sir, you have heard that the KCB is auctioning land belonging to the said company so as to recover its loan. So, could the Assistant Minister seek an executive order, so that part of the proceeds from the sale of the said land can go towards the payment of the workers' salary arrears rather than going towards clearance of the loan owed to KCB, which is a very healthy organisation?

Mr. Odoyo: Mr. Deputy Speaker, Sir, I wish to alert the hon. Member on the procedures relating to bank auctioning of property. The current laws in the country are not in favour of the workers and, therefore, at this time, when the land is auctioned, the Kenya Commercial Bank (KCB) will take the first cut of the meat and the workers may just get the last bit of the tail! On the issue of getting executive orders, I have spoken to the Minister for Lands and Settlement about putting a caveat on the sale of the land. That is one option that we will pursue.

Dr. Shaban: Ahsante sana, Bw. Naibu Spika. Vile Waziri Msaidizi ametaja shamba la Bw. Basil Criticos lililoko Taveta, anajua kuwa wafanyakazi pia hawajalipwa. National Bank of Kenya ilikuwa inauza shamba hilo na habari hiyo ilikwama hivyo hivyo, na hatujui kama shamba hilo linauzwa au la!

Mr. Odoyo: Niko na furaha kusema kwamba ikiwa mhe. Mbunge anataka kuleta swali kuhusu shamba hilo katika Bunge, atapata jibu sawa.

Mr. Wamwere: Mr. Deputy Speaker, Sir, I am aware that Mr. Harry Horns sold the Ministry's land and got Kshs264 million, neither of which was given to either the KCB or the workers. I am also aware that a Member of this House, Mr. Gedion Moi, has also bought 2,500 acres from the same employer. Could the Assistant Minister undertake to coordinate with the hon. Member and ensure that the money that the hon. Member would have given to Harry Horns is, instead, given to the workers?

Mr. Odoyo: Mr. Deputy Speaker, Sir, we are aware that a Member of Parliament has been associated with that company for a long time. We are investigating the possibility of whether that association has been detrimental to the workers. We are aware that the said hon. Member bought some property from that Greek man and that money--- We are not sure whether he paid for the land! We are not sure whether it was just grabbed! But let me clarify that it is not possible, under the terms of reference of the Ministry of Labour and Human Resource Development, to coordinate all the activities that the Member has asked for. That appears to be under the jurisdiction of the courts.

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

Mr. Deputy Speaker: Order, Mr. Wamwere! I gave you an opportunity to ask your last question and you did exactly that! So, that marks the end of Question Time.

Mr. Nyachae: On a point of order, Mr. Deputy Speaker, Sir. Let us be sympathetic with those workers! Could it be possible for the Assistant Minister, on behalf of those workers who have not been paid, to place a caveat on all the land that is being sold, so that, by the time the land is sold, the money owed to the workers can be recovered before the land is sold?

Mr. Odoyo: Mr. Deputy Speaker, Sir, thank you for your indulgence to add that little time! I want to assure the House that the pain that those workers are undergoing is a painful subject for us. How that person escaped to pay wages for over ten years is a matter of great concern! The fact that, that company is associated with many political leaders, some of whom are in this House, is a matter of great concern to us. The advice I have received from a senior Member of Parliament will be implemented! I spoke to the Minister for Lands and Settlement and they are going to place a caveat on all the property of that company!

POINTS OF ORDER

MISREPORTING BY THE *PEOPLE DAILY*

Mr. Mwenje: Mr. Deputy Speaker, Sir, today, one newspaper by the name of *People Daily* printed on its front page in bold letters that yesterday, Members of Parliament--- They have said: "MPs Bid to Steal from Public is Thwarted".

Mr. Deputy Speaker, Sir, you know very well, as everybody does, that there was a typographical error in the Bill that was actually laid on the Table by the Minister for Finance. The Vice-President and Minister for National Reconstruction corrected that issue and we even had to revert back to the Committee Stage to rectify the anomaly.

Through you, Mr. Deputy Speaker, Sir, I want to demand that the said newspaper prints an apology on the front page tomorrow morning, and apologise to Members of Parliament because no Member of Parliament was trying to steal any money from the public. That is wrong information that was given to the public. They knew the truth, but they still went ahead and printed the story on the first page of their newspaper.

Mr. Deputy Speaker: Hon. Members, I would like to agree with what Mr. Mwenje has said. Indeed, it is a very serious matter. I read the story and it is a complete misrepresentation of facts and proceedings of the House as far as that matter is concerned. Indeed, the Chair has noted that there is a practice by some sections of the Press to bash Members of Parliament every now and then, unnecessarily.

Now, I want to order that the *People Daily* prints an apology to this House for the misleading report that Mr. Mwenje has referred to, and it is so ordered!

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

Mr. Deputy Speaker: Order, Mr. Wamwere! I am on the Chair and not you!

Proceed, Prof. Olweny!

STATEMENT ON ALLEGED ATTEMPT TO BRIBE
LOCAL GOVERNMENT MINISTER

Prof. Olweny: Thank you, Mr. Deputy Speaker, Sir. I rise to seek a Ministerial Statement from the Minister for Local Government about two incidences in the Ministry. There was an alleged theft by the employees of Nairobi City Council (NCC) who stashed millions of shillings in their jackets. They were arrested and released. Was the money given to the police? There was also an allegation that a bag full of money was given to the Minister for Local Government as a bribe! I want to seek a Ministerial Statement on those two incidents.

Mr. Deputy Speaker: Is anybody here from the Ministry of Local Government? The Leader of Government Business will take the brief and inform the Minister for Local Government.

Proceed, Mr. Wamwere!

Mr. Wamwere: Mr. Deputy Speaker, Sir, yesterday, you ordered the Minister for Labour and Human Resource Development to give a Ministerial Statement today, in regard to the situation of workers in flower farms. Could I now ask the Minister to deliver the said statement?

The Assistant Minister for Labour and Human Resource Development (Mr. Odoyo): Mr. Deputy Speaker, Sir, further to the request by the hon. Member, I wish to confirm that we have prepared a preliminary statement, but we have, in the very recent past, received additional information that we would like to include in our statement, so that we could give a comprehensive statement. May I request that we be allowed to issue the statement after one week?

Mr. Deputy Speaker: Mr. Wamwere, I think the Assistant Minister is very reasonable. Your interest is to get a comprehensive and accurate Ministerial Statement. Therefore, I will defer the matter to Tuesday, next week. Mr. Assistant Minister, please ensure that the Ministerial Statement is delivered to the House on Tuesday, next week.

Mr. Wamwere: Mr. Deputy Speaker, Sir, I know that I will not be in the House on Tuesday, next week. Could the Assistant Minister still go ahead and issue the Ministerial Statement even without my being here? I urge him to do so.

Mr. Deputy Speaker: Mr. Wamwere, definitely, the Ministerial Statement will be issued on Tuesday, next week, even if you will not be here.

BILL

*Second Reading*THE ANTI-CORRUPTION AND
ECONOMIC CRIMES BILL

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Deputy Speaker, Sir, I beg to move that the Anti-Corruption and Economic Crimes Bill, 2003 be now read the Second Time.

For the avoidance of any doubt, the Bill that I am moving today is dated 25th March, 2003. The Administration of Justice and Legal Affairs Committee of the House has had occasion to consider the Bill, and has submitted its report to the House. I will comment on the report later but, by and large, we accept most of the amendments that the Committee proposed to the Bill. According to the long title, this Bill is for an Act of Parliament to provide for the prevention, investigation and punishment of corruption, economic crimes and related offences, and for matters incidental thereto and connected therewith.

As stated in our manifesto and in various public policy statements, the National Rainbow Coalition (NARC) Government has declared a total war on corruption. This Bill is one of our instruments and weapons in that war. I do not need to emphasise that the fight against corruption in this country is absolutely necessary, and critical to the very existence, survival and the development of this country. The fight against corruption is one of the components of good governance, which is critical to our economic recovery and social development.

Mr. Deputy Speaker, Sir, we are, as a Government, determined to win this war, and it does not matter what it costs. The Americans have succeeded in their war against Saddam Hussein, and for Kenyans, corruption is Saddam Hussein, and we have to succeed in fighting it. We are very encouraged in what we have done so far. Within the first 100 days, the NARC Government has achieved what the former KANU Government could not achieve in a quarter of a century. The milestone that we could refer to is the action we have taken on the Judiciary. For the first time in Kenya's history, we have arrested a judge, appointed a tribunal to investigate the conduct of a Chief Justice and a Cabinet Committee on anti-corruption, which meets every Wednesday to review action on corruption.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, the Judiciary has for the first time appointed a specific committee headed by Justice Ringera to deal with corruption in the Judiciary. When that committee reports back, we are sure that many heads at the Judiciary will roll. We have appointed a commission to investigate the biggest financial scandal in Africa, the Goldenberg scandal. We are very happy with the ruling of the Court of Appeal, which cut through the legal cobwebs which were being placed on its path by some of the people who will be appearing before the Goldenberg Commission. When the Commission begins its sittings next week, we are sure it will get to the bottom of the Goldenberg scandal and, in this country, there will be no other financial scandals of the magnitude of the Goldenberg one. Cases of mega corruption will be a thing of the past.

All the newspapers, namely, the *Daily Nation*, the *East African Standard*, *The People Daily* and all television and radio stations have been carrying major news items on various corrupt parastatal chiefs who have been arrested and regularly charged before our courts. This was rare in the past. I am happy to report to this House that today all parastatal heads who sank public funds into the scandalous bank, namely, the Euro Bank, were arrested and taken to court this morning. This Bill is part of our legal strategy to put in place a comprehensive legal framework and institutions, which will provide a sound basis for the fight against corruption in this country. We are requesting both sides of the House, because this is a national problem, to support the Bill.

The Ministry recognises that mere top down legal reforms, like what we are doing here and changes in the law are not sufficient. They are necessary, but not sufficient to root out corruption in this country. Corruption has permeated the entire social fabric of this country. It has become endemic, and is everywhere. There is no corner where you go to in this country and do not find one form of corruption or another. We need to do much more. Corruption has become part of our culture, and we need to change that culture. We need to change our attitudes and behaviour.

So, in addition to the laws that we pass in this House, we have to involve ourselves in a massive public education exercise. That is why the Ministry of Justice and Constitutional Affairs is watching very carefully the lesson that we have learnt in the fight against HIV/AIDS. For our social development, corruption is even of a

bigger magnitude than HIV/AIDS. It causes deaths of many people. All the people in North Eastern Province, and in every other part of this country, who are dying from lack of proper medical care, because money meant to buy drugs ended up in the pockets of a few rich individuals, are more than the people who are dying from HIV/AIDS related illnesses. Their killer is corruption. So, we have to launch a national campaign against corruption just as we have launched a national campaign against HIV/AIDS. I am happy to report that later this year, we plan to hold a major national conference on anti-corruption, which will mobilise our entire society against corruption. We are planning a five-year national campaign against corruption, so that we can change our people's attitude and behaviour, and make Kenya one of the cleanest countries in the world. This is a major challenge, and we are inviting all hon. Members of Parliament to rise up and support us in the fight against corruption.

Mr. Temporary Deputy Speaker, Sir, let me also take this opportunity to inform the House that the Government has withdrawn the Constitutional (Amendment) Bill, 2003, which intended to entrench the Anti-Corruption Commission in the Constitution. We are taking any steps back not because we have reduced our commitment in the fight against corruption, but we have withdrawn that Bill because this Government is a Government of the people and it listens to the views of the people of Kenya. The hon. Members of Parliament in this House have been elected by the 30 million Kenyans to come and represent their views in this House. From what we have heard from hon. Members, it is the wish of Kenyans that we do not introduce any piecemeal amendments to the Constitution.

(Applause)

We have heard that it is the wish of Kenyans that this matter awaits the National Constitutional Conference and that the anti-corruption agency be entrenched in the new Constitution which we expect later this year. So, it is in that spirit that, as a Government which listens to the people, we have decided to withdraw the Constitutional (Amendment) Bill, 2003. The provisions relating to the Commission and the Advisory Board which were contained in the Constitutional (Amendment) Bill, 2003, which we have now withdrawn are now contained in this particular Bill. So, this Bill is complete and we do not need to make any reference at all in the Bill which we have withdrawn.

The other aspect I would like to draw the attention of the hon. Members to is the fact that this Bill makes a major departure from other similar Bills which we have introduced in this House since the year 2000, in that the new Anti-Corruption Authority, which we are creating under this Bill does not have any prosecution power. It is our attempt to introduce prosecution powers through an Anti-Corruption Authority that has caused all the legal mess that we have gone through since the year 2000. It was also the prosecution powers which landed us in court. We have discovered that the only reason why we wanted the Anti-Corruption Authority to have prosecution powers is that we were trying to legislate against an individual; the Attorney-General. We were doing that because over the last 24 years, the political climate was such that the Attorney-General was unable to prosecute any offences of corruption successfully in our courts. The courts, themselves posed a major problem. What we are saying now is that the political climate has changed. The political environment has changed and there is a commitment by this Government to prosecute corruption and economic crimes.

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

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

So, since the Attorney-General has been freed by the new political environment, there is no need for the Anti-Corruption Authority to have prosecution powers. We have made adequate provisions under this Bill to monitor investigation powers by the Anti-Corruption Authority and also to monitor prosecution powers by the Attorney-General. So, we believe that there is no need to create two Attorney-Generals; one for anti-corruption and another one for other economic crimes. One Attorney-General is sufficient.

Mr. Temporary Deputy Speaker, Sir, the Bill now requires that there will be a strict reporting system. Under the new system which is contained between Clause 32 and Clause 34, the Commission will make a quarterly report showing the cases it has investigated, and the ones which it has forwarded to the Attorney-General, who is required to report to Parliament the cases he has taken to court and which he has prosecuted over that year. If he has not prosecuted any case, he is supposed to give this Parliament the reason as to why he has not done that. I think these are sufficient safeguards and there is no need to have prosecution

powers under the Bill.

Let me touch very briefly on the history of this Bill because we have had some superficial analysis which says that the only reason why we are bringing anti-corruption Bills to this Parliament is because we are under pressure from the International Monetary Fund (IMF), the World Bank and other foreign masters. I would like to emphasise that the fight against corruption is primarily a war of Kenyans by Kenyans. It is we, as Kenyans who have been impoverished; it is we, as Kenyans, who have lost billions of our taxpayers' money through corruption and not the donors. It is our people who are suffering as a result of corruption. Therefore, the ownership of the anti-corruption legislation is a Kenyan one. If there is any activity at all or role by the international community or our development partners, it is a subsidiary one, just like they are supporting us in free primary school education. But the main decision is being made by us. This is not a new project.

The fight against corruption, and which forms the basis of this Bill originated in this very House. Some hon. Members will recall that on 8th July, 1998, this National Assembly appointed a Parliamentary Select Committee on Anti-Corruption under the chairmanship of no other than the guru of anti-corruption, Mr. Kombo, who is here with me. That Committee, now popularly known as the "Kombo Committee" worked in this country for 22 months. The Committee held 150 sittings, visited all the eight provinces of Kenya and listened to Kenyans from all walks of life, who gave their views, perspectives and experiences on corruption.

I was a Member of that Committee and I was very happy when we visited Botswana with some colleagues who were Members of the Committee from KANU. I remember the Vice-Chairman, Mr. Kamolleh and Mr. Maundu. When we visited Botswana and saw the Anti-Corruption Authority, at work they also said that things must change in Kenya. We worked as a team to the very end. I would like to thank the Members of that Committee very much for doing a thorough job in investigating corruption in this country. Mr. Temporary Deputy Speaker, Sir, the Anti-Corruption and Economic Crimes Bill, which we have was originally drafted by that Committee. I have the report of that Committee here dated May, 2000. The Bill before you is very much similar to the Bill which that Committee published way back in May, 2000. It had a "gestation period" of some time. I remember we started working on it in 1989. So, anybody saying that we have rushed this project in this House does not know the history of this Bill.

Mr. Temporary Deputy Speaker, Sir, the Motion which led to the formation of the Committee read as follows:—

"THAT, while appreciating that the Government's effort to stamp out corruption, both in the public and the private sector, and noting with concern that rampant corruption has become so pervasive, that it would threaten any further socio-economic development and the future of the country and, aware that corruption has become so entrenched that the existing legal framework and the prevention of the Corruption Act Cap 65 and, the Anti-Corruption Authority are not adequate to significantly reduce or eradicate corruption and, noting further that corruption has kept away potential investors and eroded the good image of Kenya, this House resolves to set up a Select Committee to study and investigate the causes, extent and impact of corruption in Kenya; identify the key perpetrators and the beneficiaries of corruption; recommend immediate and effective measures to be taken against such individuals involved in corruption and, recover public property corruptly appropriated by them and, enactment of a Bill to provide stiff penalties or no corruption related offences and, further that the following Members be members of the said Committee."

Mr. Temporary Deputy Speaker Sir, the Committee later reduced the terms of reference of the Committee into the following areas:

- (a) To study and investigate the causes, nature, extent, and impact of corruption in Kenya;
- (b) To identify key perpetrators and the beneficiaries of corruption;
- (c) To recommend effective and immediate measures to be taken against such individuals involved in corruption and to recover public property corruptly appropriated by them and,
- (d) To recommend the enactment of a Bill to provide for stiff penalties on all corruption related offences.

Mr. Temporary Deputy Speaker Sir, you can see that the Bill before us is really the implementation of the mandate of this Committee which was appointed by the House in July, 1998.

Mr. Temporary Deputy Speaker, Sir, after taking the evidence, the Committee made its recommendations, and among the recommendations which are contained in Chapter 3, the Committee notes that:-

"After dealing with the mandate given by Parliament for a period of 22 months, the Committee concluded that corruption in Kenya---

(Hon. Awori consulted loudly with hon. Members)

Mr. Temporary Deputy Speaker, Sir, could you please protect me from this *Mzee*?

(Laughter)

--has reached alarming proportions, and that if it is not contained, it will continue to cause disastrous consequences in all facets of the Kenyan society. Corruption has already retarded the general and economic growth, impoverished individuals and caused many enterprises to close down. The Government does not collect the requisite revenue, public services and infrastructure have deteriorated, and public funds are not properly utilised or accounted for. Donors have withdrawn their financial support in protest and in the final analysis, the country has become extremely poor."

Mr. Temporary Deputy Speaker, Sir, the Committee felt that there was an urgent need to put in place tight institutional and legal frameworks backed with political goodwill and the effective enforcement agencies to get Kenya out of these morass.

Mr. Temporary Deputy Speaker, Sir, I have made reference to this Report to show the origin of the Bill. It is one way of implementing the Report of the Parliamentary Select Committee on Anti-Corruption which was appointed by this House and I am urging Members from both sides of the House to support the implementation of the report of the Committee which was appointed by the House itself.

Mr. Temporary Deputy Speaker, Sir, the Bill which was originally published by this Committee, was later published by the Attorney-General as the Anti-Corruption and Economic Crimes Bill (2000). Between 2000 and 2002, various versions of that Bill were prepared by the KANU Government and many of them did not make it to this House and others which came to the House were rejected because they had been considerably watered down and that using those Bills, we felt that we could not provide any adequate framework to assist us in the fight against corruption.

Mr. Temporary Deputy Speaker, Sir, I am very happy that as a Member of the Committee, it is now my duty and responsibility to assist in the enforcement of the recommendations that we made for the enactment of a Bill which, as Members of Parliament, we participated in drafting. So the Bill is a "child and a creature" of this House and we should embrace it without any hesitation.

Mr. Temporary Deputy Speaker, Sir, after giving that background, I would now like to take Members through the salient features of this Bill. This is one of the best drafted Bills and I am happy to note that the Committee on Administration of Justice and Legal Affairs, which had the opportunity to study the Bill clause by clause, has made very few amendments which the Government is going to consider during the Committee Stage.

Mr. Temporary Deputy Speaker, Sir, the Bill is divided into eight parts, 72 sections, and it has three schedules. If you look at the arrangement of sections, Part I deals with the preliminary matters such as the short title and interpretations. Part II, sets out the Kenya Anti-Corruption Commission and the Kenya Anti-Corruption Advisory Board. Part III deals with investigations of corruption and economic crimes. Part IV prescribes offences and punishments. Part V deals with compensation and recovery of improper benefits. Part VI makes provisions regarding the evidence to be adduced in proving economic and corruption crimes and Part VII deals with miscellaneous matters.

Part VII deals with miscellaneous matters such as suspension of officers who have been charged with corruption or economic crimes. Part VIII deals with transitional provisions; what will happen to the Anti-Corruption Police Unit, their assets and all that. The First Schedule makes provision relating to the staff of the Commission. The Second Schedule makes provision relating to the members of the Advisory Board and how they are going to be appointed. The Third Schedule deals with the conduct of business and affairs of the advisory board; the procedure and views in their meetings. That is the general over-view of the Bill.

Mr. Temporary Deputy Speaker, Sir, let me now go to Part I which deals with the preliminary matters especially the question of definition. Every corrupt transaction involves the conferring of a benefit. The benefit is defined at page 312, Clause 2 of the Bill. It means any gifts, loan, fee, reward, appointment, service, favour, forbearance, promise or other consideration or advantage, which is received in exchange during the corrupt transaction.

Mr. Temporary Deputy Speaker, Sir, corruption is defined at the bottom of the same page. Corruption is defined to mean an offence under any of the provisions of sections 36 to 41, 43 and 44. Section 36 is an offence about bribing of agents, secret inducements for advice, conflict of interest, abuse of office and dealing with suspect property. It defines corruption to be very broad, to include bribery, fraud, embezzlement, misappropriation of public funds, abuse of office, breach of trust, offences involving dishonesty in connection with any tax evasion, or

dishonesty involving written laws relating to election of persons to public office. So, Cap.7, Election Offences Act are also covered. So, this is a radical departure from the narrow definition of corruption under the current Cap.65 of the Laws of Kenya, which defines corruption merely as giving and taking of bribes. So, it covers broader areas even where there is no actual giving or receiving of bribes like abuse of office and embezzlement.

Mr. Temporary Deputy Speaker, Sir, the term "economic crime" is also defined to mean an offence under Section 42, which deals with protection of public property or revenue, and covers land grabbing in all its forms and manifestations, or an offence involving dishonesty under any written law providing for maintenance or protection of public revenue. So, tax evasions will be caught up in the definition of economic crime.

Mr. Temporary Deputy Speaker, Sir, it is good to know that this Bill applies to both the public and the private sector. So, it will cover corruption even in private bodies. A private body is defined on top of page 314 to mean any person or organisation not being a public body and includes voluntary organizations, charitable organizations, companies, a partnership, a club or any other body or organization howsoever constituted. So the NGOs and private companies are now brought in under the purview of this act.

A Public body is also defined to mean government, National Assembly or Parliamentary Service, local authority, parastatals, or any organization which administers funds belonging to, or granted by the Government; or any organization, which the controlling majority of the shares are owned by a public body.

The public officer is also equally broadly defined. I think the most interesting definition and which is likely to cause some excitement in the House is that of an unexplained assets on page 315. An unexplained asset means an asset of a person that has been;

"(a) acquired at, or around the time a person was allegedly guilty of corruption, or economic crime and whose value is disproportionate to his known sources of income at, or around that time and for which there is no satisfactory explanation."

Mr. Speaker, Sir, I have heard some concerns from Members, which I think are arising as a result of not reading the two sub-sections together. The fact that a court clerk has built a bigger house which is not commensurate with his earnings does not make that house an unexplained asset. We have first to start with the presumption that, or with some allegation that, that particular person is guilty of corruption or economic crime. So, it is from there that we will know what he or she was doing within that period. If within that period, she brought up a supermarket, then that supermarket could be considered an unexplained asset, unless there is an innocent explanation as to how it was brought. So, all those people who are afraid that this gives an opportunity for the Government to start asking who owns what in town are wrong. First, there has to be some circumstance for which the person is alleged to be corrupt. It is only as a result of investigating that corruption, that we come to unexplained property. It has to be a second station in the process of these investigations. It cannot be a place to begin with.

Mr. Temporary Deputy Speaker, Sir, Part II of the Bill sets out the two critical organs in the Bill. These are the Anti-Corruption Commission and Advisory Board. The Anti-Corruption Commission and Advisory Board are established under Clause 3 as a body corporate with all the powers necessary or expedient for the performance of its functions. It states:-

"Without limiting the generality of subsection (2), the Commission shall have perpetual succession and a common seal and shall be capable of:-

- (a) suing and being sued in its corporate name; and,
- (b) holding and alienating moveable and immovable property."

Mr. Temporary Deputy Speaker, Sir, the functions of the Commission are in the areas of investigation, public education, prevention of corruption and recovery of corruptly received things. This is evident in Clause 4(a) which states:-

"It is the function of the Commission to investigate any matter that in the Commission's opinion, raises suspicion that any of the following have occurred or about to occur:-

- (i) conduct constituting corruption or economic crime;
- (ii) conduct liable to allow, encourage or cause conduct constituting corruption or economic crime;
- (b) to investigate the conduct of any person that, in the opinion of the Commission, is conducive to corruption or economic crime;
- (c) to assist any law enforcement agency of Kenya in the investigation of corruption or economic crime; and,
- (d) at the request of any person, to advise and assist the person on ways in which the person may eliminate corrupt practices".

So, the Commission has a role to advise on ways of preventing corruption, looking at the systems in

various organisations and advising how the loopholes could be closed. The focus is also much on investigation and arrest. It has broader functions of prevention of corruption and public education.

Section (g) states:-

"...to educate the public on the dangers of corruption and economic crimes and to enlist and foster public support in combating corruption and economic crime".

Also, it has a duty to investigate the extent of liability for the loss of damage to any public property and to institute civil proceedings against any person for recovery of such property or compensation. This is a major departure from the previous Kenya Anti-Corruption Authority, where the focus was to arrest and prosecute. The main focus of the current Commission will be to institute civil proceedings to recover any property which is corruptly received.

In fact, we have had some experience from South Africa, where a group called The Scorpion had succeeded in recovering public property misappropriated by individuals. It was more successful than the attempt to prosecute and lock up individuals. We think that, whereas it is necessary to prosecute individuals to offer deterrent to other people who could be potentially corrupt, we think that for us to leave the assets in the hands of those corrupt individuals is not punishment enough, and it does not help us in the manner that we would have liked because, if we could get all the looted property and return it to the Treasury, we can use it to educate our children, and buy medicines for Kenyans who are alive. It is a better use of the law than revenge and retribution.

Mr. Temporary Deputy Speaker, Sir, certain other matters may be investigated by the Kenya Anti-Corruption Commission at the request of the National Assembly. For instance, we heard in the National Assembly that they were renovating the Airport at a cost that could build another airport. The National Assembly should have powers to order immediate investigation into such a project, instead of waiting for the project to be completed, and then complain afterwards in the Public Accounts Committee or Public Investments Committee. So, the Act gives Parliament power to order investigations into on-going projects, so that we can prevent corruption which is likely to take place. The Commission can also act at the request of the Minister, the Attorney-General, or receive complaints from any person on his own initiative.

Mr. Temporary Deputy Speaker, Sir, the Commission is to be managed by a director; that is in Clause 5 of the Bill. The director should be a suitably qualified person in the areas of law, finance and public policy. The director will also have assistant directors, all of whom should be appointed by the Advisory Board on recommendation of Parliament. So, we are introducing a new culture in this country, where appointments to public office in this country should be vetted by Parliament, and we are starting with this Bill.

(Applause)

Mr. Temporary Deputy Speaker, Sir, the Bill provides for independence and autonomy of the Commission in the performance of its duties. This is because Clause 7 reads:

"In the performance of their functions, the Commission and the directors shall not be subject to the direction of any other person or authority, and that the State Corporations Act shall not apply to the Commission."

So, the executive shall not have power to appoint a director today, remove him tomorrow, and appoint another one. The director has some security of tenure, and during the five years, he or she can only be removed from office by a Tribunal appointed after a recommendation by the advisory board. So, the process of removing the chief officers of the Commission from office is a bit complicated.

Mr. Temporary Deputy Speaker, Sir, the financial arrangements for the Commission as indicated in Clause 10--- First, the financial year of the Commission is meant to coincide with the financial year of the Government; that is June to June. The budget of the Commission should be prepared and submitted to the Minister and Treasury and the funds to run the Commission should be obtained from the Consolidated Fund. The sources of funds for the Commission would be those funds got from the Consolidated Fund and any gifts, donations, grants or bequeaths made to the Commission, and which are accepted or approved by the advisory board. There is a rider to it that no gifts will be accepted by the Commission if they have strings attached. It states as follows:-

"No grants, gifts, donations or bequeaths shall be approved if it is made of any conditions that the Commission performs any function or discharge any other obligation other than a function, duty or obligation aimed at achieving its objects".

So, the only string which could be attached is the one which enables the Commission to perform its objects. It cannot be given on any other condition. The accounts of the Commission will be audited by the Controller and Auditor-General in accordance with the Exchequer and Audit Act.

Mr. Temporary Deputy Speaker, Sir, Clause 12 provides for annual reports to be prepared by the Director

in respect of each financial year. The report should contain the financial statement of the Commission and also a description of the activities of the Commission within the financial year. It should contain a summary of the steps taken during the year, the civil proceedings instituted by the Commission and take other statistical information as the Commission considers appropriate. The report is then submitted to the Minister who should submit it to the National Assembly within 30 days. So, the report will be brought to the National Assembly, so that the National Assembly is aware of the activities and the expenditure of the Commission as a way of monitoring both the performance and financial status of the Commission.

Mr. Temporary Deputy Speaker, Sir, Clause 13 establishes the Kenya Anti-Corruption Advisory Board. The Board is made up of nominees or various stakeholders who include the Law Society of Kenya, Institute of Certified Public Accountants, International Federation of Women Lawyers, Association of Manufacturers, the Joint Forum of Religious Organizations, the Federation of Kenya Employers, the Kenya Bankers Association, COTU, Association of Professional Societies in East Africa, Architectural Association of Kenya, the Institute of Engineers of Kenya and the Kenya Medical Association. The Director is also a member of the 13 members board. This Board is advisory because the Commission is independent and is not subject to control of any other person. The role of the Board is mainly in the appointment of the Director, directors and acting directors, and also to advise the Commission in the performance of its functions under the Act. Under Clause 18 the Director is the Secretary to the Advisory Board.

Mr. Temporary Deputy Speaker, Sir, Part 3 deals with investigation. This part gives the Commission power to investigate, to require any persons to furnish the Commission with information and documents, to search premises and to arrest persons suspected of corruption and economic crimes. This part also gives the Commission police power.

The Commission is supposed to issue notification to their investigators. Clause 23 states:

"The Commission may by notice in writing, require a person reasonably suspected of corruption and economic crime to furnish, within reasonable time specified in the notice, a written statement:

- (a) enumerating the suspected person's property, and the times at which it was acquired; and,
- (b) stating, in relation to any property that was acquired at or about the time of the suspected corruption or economic crime, whether the property was acquired by purchase, gift, inheritance or in some other manner, and what consideration, if any, was given for the property."

Failure to comply with this requirement is an offence punishable with conviction, a fine of Ksh.300,000, imprisonment of three years or both such fine and imprisonment. It is only the Director who can require that information, so this controls and prevents abuse of power by junior officers.

Mr. Deputy Speaker, Sir, I would like to draw the Members' attention to clause 24 which states that:

"The Commission may by notice in writing require an associate of a suspected person to provide within reasonable time specified in the notice, a written statement of the associate's property at the time specified in the notice".

Here the "associate" is defined very broadly, and it does not matter whether the associate is suspected of corruption or economic crime. But the investigator must reasonably believe that, that associate had dealings with the person suspected of corruption or economic crime. Who could that associate be? He could be your brother. Say that you are suspected of corruption and we cannot trace your money. This section gives the commission power. If the investigators reasonably believe that you are associated with the suspect, they can also ask you to declare your property and that declaration could be used as evidence.

Clause 24(5) provides that no requirement under this section requires anything to be disclosed that is protected by the privilege of advocates including anything protected by Sections 134 and 137 of the Evidence Act. This is supposed to protect the privileged communication between advocates and clients. I think we lawyers have been making too much out of this privilege. A close reading of Section 134 of the Evidence Act clearly shows that it does not protect any communication between an advocate and client, which is made in furtherance of illegal purposes or in furtherance of crime or fraud. Communication between an advocate and client involving a fraudulent transaction is not covered by clause 24(5). This is from plain reading of the Evidence Act.

That privilege which relates to comparability and privileges of advocates as witnesses will not apply in cases of fraud or of furtherance of crime. Clause 26 provides for search of premises by the commission. It says:

"The Commission may, with a warrant, enter upon and search any premises for any record, property or other thing reasonably suspected to be in or on the premises that has not been produced by a person pursuant to a requirement under the foregoing provisions of this Part".

So, if you do not furnish information, the commission has power to enter your premises, do a search and take away those documents. The documents so obtained are admissible as evidence.

Mr. Temporary Deputy Speaker, Sir, Clause 28 provides for surrender of travel documents. In order for

this to be done, the Bill seeks to require the commission to make an *ex parte* application to court for issue of an order requiring any person suspected of corruption or economic crimes to surrender travel documents. Clause 28(40) seeks to criminalise failure by any suspect to surrender travel documents.

Clause 29 seeks to give the commission police powers. It reads as follows:-

"Without prejudice to the generality of Clause 23, the Director and an investigator shall have the power to arrest any person for, and charge them with, an offence, and to detain them for the purpose of the investigations to the right extent of a police officer."

It will also be a criminal offence to disclose the details of an investigation, including the identity of any person being investigated. Part of the problem we are having now is that when instructions are given to police officers to investigate a certain person for corruption, they first telephone the person they are supposed to investigate and tell him that they are going to investigate him. We have had cases where, we understand, money changed hands, so that the police could not find the person they were supposed to investigate; the colleagues of the officers who were supposed to go and investigate the suspect notify the suspect in advance. So, this provision is intended to take care of that problem. Really, we cannot make progress in the war against corruption if the very agents we rely on in the fight get "infected" with the corruption.

Clause 32 seeks to provide for a reporting of investigations to the Attorney-General. It reads as follows:-

"Following an investigation, the commission shall report to the Attorney-General the result of the investigation."

The Commission will be required to include in the report to the Attorney-General any recommendation. It may, for instance, recommend that a person be prosecuted for corruption and economic crimes.

Clause 33 seeks to require the commission to prepare a quarterly report stating the number of reports it has forwarded to the Attorney-General under Clause 32. The commission's quarterly reports will indicate whether a recommendation it has made to the Attorney-General to prosecute a person for corruption or economic crimes was not accepted. This will be a way of monitoring the prosecution powers. All the cases that the commission will have investigated will have to be included in the report to the Attorney-General. The quarterly reports will also have to indicate which cases were recommended to the Attorney-General for prosecution.

Mr. Temporary Deputy Speaker, Sir, the Attorney-General will be required to lay before the National Assembly every quarterly report made to him by the commission. This provides a mechanism for further monitoring. The commission's quarterly reports will also be published in the Kenya Gazette.

Clause 34 seeks to require the Attorney-General to prepare an annual report with respect to prosecution of corruption and economic crimes. The report shall include a summary of the steps he will have taken during the year in respect of each prosecution, and the status of each prosecution at the end of the year of each prosecution. This is also a monitoring provision. Cases may be filed in court, but not proceeded with. So, Clause 34 seeks to enable Parliament to know whether cases are actually being prosecuted or not, and if they are what the outcome is.

Mr. Temporary Deputy Speaker, Sir, the Attorney-General will be required to lay each annual report before the National Assembly within the first ten days of the sitting of the National Assembly following the end of the year to which the report will have relate. So, you realise that there will be a very strict reporting requirement for enforcement of both investigation and prosecution powers.

Part (iv) of the Bill relates to offences. It creates wide offences in respect of both corruption and economic crimes. We have a summary on page 371 which says:-

"Part (iv) sets out a range of offences involving bribery, inducement for advice, improper benefits, abuse of office, deceptive conduct in relation to bids and tendering and other corrupt conducts. Such offences are punishable by fines of up to Kshs1 million---"

QUORUM

Mr. M. Kilonzo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Sincerely, I am enjoying my learned friend's description of these laws, but I do not think we have a quorum!

The Temporary Deputy Speaker (Mr. Poghismo): Yes, I do not think there is quorum. Ring the Division Bell.

(The Division Bell was rung)

The Temporary Deputy Speaker (Mr. Poghismo): Order, hon. Members! We have a quorum now and we have to resume.

Proceed, Mr. Murungi!

The Minister for Justice and Constitutional Affairs (Mr. Murungi): Mr. Temporary Deputy Speaker, Sir. I was talking about the wide range of offences which include cases of mega-corruption like bids rigging. Much of the corruption takes place during the tendering process. So, it is now made an offence for any person to receive a benefit that is an inducement or reward for refraining from submitting a tender, withdrawing or changing a tender or submitting a tender proposal, quotation or bid with any specified inclusions or exclusions.

Mr. Temporary Deputy Speaker, Sir, Section 42 punishes economic crimes. Such crimes include land grabbing, tax evasion, looting, plundering of public resources or what we call "selling the air"!

Mr. Temporary Deputy Speaker, Sir, acquiring a public property is an offence. It is also an offence for any person whose functions concern administration, custody, management or receipt, or use of any public revenue or property to fraudulently make or execute payments from public revenue for substandard or defective goods, goods which are not supplied or which are not supplied in full, or for services which are not rendered or not adequately rendered. So, all forms of cheating of Government of its revenue by contractors and suppliers will now be caught under Clause 42 of the Bill.

Clause 43 deals with the now famous offence of abuse of office. As you know, corruption is defined as using a public office for private gain. So, a person who uses his office to improperly confer benefits on himself, or anyone else, is guilty of an offence. Clause 45 prescribes the penalties for all the offences under this part. The penalties are that, if one is found to be guilty of an offence of corruption or an economic crime, the fine is Kshs1 million or imprisonment for a term not exceeding 10 years or both.

There is an additional mandatory fine if the corrupt transaction resulted in quantifiable benefits or loss. For instance, as a result of your corrupt transaction, the National Social Security Fund (NSSF) has lost Ksh2 million, you are subject to a further mandatory fine, which is two times the amount of benefit or loss. So, if you make Kshs2 million out of a corrupt transaction, then the fine will be Kshs4 million. If an institution has lost Kshs1 million because of a corrupt transaction effected by you, then the mandatory fine will be Kshs2 million. These penalties are intended to discourage corruption and make it unattractive and a loss. In the past, people have engaged in corruption because it was a very profitable business.

Clause 46 deals with defences, and states that no custom can be invoked as a defence against corruption. So, you cannot say that it is in your culture to receive certain things and, therefore, the bribe that you received was not corruption, but was a gift. Clause 46 makes that defence unavailable.

Mr. Temporary Deputy Speaker, Sir, Part V deals with compensation and recovery of improper benefits. The summary on page 371 of the Bill makes it quite clear that this deals with restitution of losses caused by corrupt conduct, and provision is made for civil liability for such losses at the suit of a person suffering the loss, and for restitution of benefits improperly received. It also empowers the court, which is convicting a person of corruption, or an economic crime, to make an order for restitution to the rightful owner. This means that if the court convicts you of corruption, it can also order you to return any property that you have received either from a public institution or a private individual through corruption. But there is an exception, that if such an order for restitution may not be made in favour of a person who was involved in corruption, and in the event that the rightful owner cannot be traced, then the property will be forfeited to the state. So, we expect the Government to make a lot of money out of this property which was given by corrupt individuals in corrupt transactions.

Mr. Temporary Deputy Speaker, Sir, Part VIII deals with transition. It repeals the Prevention of Corruption Act. It also provides that offences under the current Prevention of Corruption Act can be punished under the new Act.

Clause 68(1) says:-

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

All the on-going operations of the Anti-Corruption Police Unit (ACPU) and on-going investigations shall on commencement of the Act be transferred to the Commission. All the properties will also become the property of the Commission.

Clause 72 provides that there will be no limitation period to proceed and recover any amounts for which any person is liable to pay back or to compensate, under Section 49 of the Act under the Limitations of Actions Act. So, no one can now put in a defence of limitation to prevent recovery of corruption benefits by the Anti-Corruption Commission. So, that has taken a bit long, but I wanted to give a comprehensive overview of the Bill before us so that hon. Members are with us and understand it.

Let me emphasise that this Bill is critical.

It is our fundamental tool in the fight against corruption. We plead with hon. Members to give it total support. I am a trained legal draftsman within the Commonwealth standards and I do know that there is no law which can

be written and we cannot improve on. They say that even the best can be made better. We like the spirit with which the Eighth Parliament has taken legislation which we have introduced in this House. They have been very constructive. Any new ideas which hon. Members have to improve this law will be accepted by the Government.

Let me end my contribution by expressing my disappointment with the Judiciary, whose business will be to interpret this law. Our Judiciary appears as if it does not live in this country.

(Applause)

Our Judiciary has become a haven for thieves, tax evaders and the corrupt. We intended to take drastic action to get many judges arrested because we have evidence of corruption in the Court of Appeal, the High Court and the Magistrates' Courts, but we were persuaded to give them a chance because there is this concept that we should not interfere with the independence of the Judiciary. We are happy now that the Chief Justice has appointed a Committee under Justice Ringera to receive evidence on corruption in the Judiciary. That Committee will report its findings in a few months time. But I would like to say that we are just waiting to see what that Committee will come up with. If the Committee does not send away judges for whom we have evidence of engaging in corruption, we will get them arrested, like we have done in the past.

(Applause)

We will not rest until we have completely cleaned up the Judiciary.

Mr. Temporary Deputy Speaker, Sir, the Judiciary is part of the institutions of this state and it is the policy of our Government to root out corruption. So, the Judiciary cannot be walking backwards when the rest of the country is walking forward. So, we hope that this very good Bill which we are going to have properly investigated and prosecuted, is not going to be frustrated by the Judiciary.

With those few remarks, I beg to move and call upon my learned friend, hon. Jimmy Choge, to second.

(Applause)

Mr. Choge: Thank you very much, Mr. Temporary Deputy Speaker, Sir. While seconding this Bill, I have a few things to say. We all agree and know that corruption is not unique to Kenya. We know the problems and the cost of corruption are also not unique to Kenya and we know the fight to curb corruption is equally not unique to Kenya and we, like any other country would, therefore, want to put institutions in place that would assist us in the fight against corruption.

Mr. Temporary Deputy Speaker, Sir, there will be no shortcuts in the fight against corruption. We must face the fight squarely. The fight has been on for the last 55 years since 1953 or 1956 when the first Act to fight corruption was enacted. Corruption crimes are crimes of unjust enrichment. They are crimes which distort the economic liberalisation process of the country. They sour our relations with development partners and corruption in the electoral and political process lowers the confidence of wananchi in the elected leaders.

Mr. Temporary Deputy Speaker, Sir, we all agree and I must say that corruption "eats" into the moral fibre of every nation and Kenya is no exception. I will take, for example, the institution of Harambee which, from being a very noble institution, has been converted or turned into a very "big beast" in Kenya towards the same thing being used as a political tool.

Mr. Temporary Deputy Speaker, Sir, we all agree further that corruption does undermine the delivery of services and goods to the public. It does slow down economic growth and worst of all, it does cause suffering to the people of Kenya through increased costs of production. It lowers competitiveness, creates incentives and leads to the diversion of resources from the provision of goods and resources while encouraging expenditures that are non-productive.

Mr. Temporary Deputy Speaker, Sir, at the political level, corruption will divert resources from high productivity to high feasibility investments.

Mr. Temporary Deputy Speaker, Sir, the new Bill has avoided problems that were associated with the enactment of the previous Anti-Corruption Authority. It has also rationalised the powers of the Attorney-General *vis-a-vis* the Commission.

Mr. Temporary Deputy Speaker, Sir, there are certain strong points that I must highlight in the new Bill while seconding it. One, it avoids the Gachiengo debate. The Gachiengo debate has become a very big problem.

Two, it does conform to the standards of the establishment of statutory authorities. Three, it does require the Director of the Commission, for the first time, to account publicly just as much, as the Attorney-General will be

required to account publicly so that the buck stops at the door of the Attorney General's Office.

Mr. Temporary Deputy Speaker, Sir, it does also contain certain advantages in that it merges the criminal and the civil processes by providing for orders of compensation in criminal proceedings. Further, it does also provide a simple procedure where civil suits can be commenced. One does not have to go through and be tied with the Civil Procedure Act. Finally, it provides for suspension of public officers who have been convicted, or who have been suspected, or are under arraignment for corruption charges.

However, Mr. Temporary Deputy Speaker, Sir, there are certain weaknesses in the Bill. In respect of the appointment of the Advisory Board, I find the period taken in the process rather long. It could well be over 100 days or thereabout. We need a simpler method. But this should not be a hinderance to the application of the Act. There is also a problem when we say that the Director has to sit in the Board. I believe a more rational arrangement would be required in treating the secretary as a member of the Advisory Board.

Mr. Temporary Deputy Speaker, Sir, there are other fundamental weaknesses, which are not many, and which I hope to go through while contributing to the Bill. The Bill is absolutely effective in the long term. It is an improvement from the previous legislations. It is concise and definite.

The Departmental Committee on Administration of Justice and Legal Affairs, while considering this Bill, did come up with several proposed amendments. On the interpretation clause, a proposal was made to introduce an interpretation of the term "corrupt conduct". This was in view of the provisions of Clauses 43(3), 52(1) and 53(7). We do not want to pass a law whereby we will be tied down in the Judiciary again and go back to the Gachiengo bug, whereby we will be told that these legislations are unconstitutional and we should come back to Parliament. So, the Department Committee on Administration of Justice and Legal Affairs did suggest that instead of waiting for the Judiciary to take us on another merry go round, we might as well avoid going in direct confrontation with Section 77(4) of the Constitution.

Mr. Temporary Deputy Speaker, Sir, on page 315, we also did make suggestions on the unexplained assets description. We said that instead of allowing the Judiciary to take us round on the issue of shifting the burden of proof, there is an element of retroactivity. Though these are borderline cases, we know the Judiciary has the capacity through very able lawyers to take us round and bring whatever we have done to naught. We had in mind, the provisions of clauses 23 to 25 and 52, where we suggested that the description of the unexplained asset must not be seen to be shifting the burden of proving from the Commission to the accused person.

Mr. Temporary Deputy Speaker, Sir, the provisions under Part II were also a departure from the previous positions adapted in respect of the anti-corruption legislation. So here, for the first time, at least, the Kenya Anti-Corruption Commission is established as a body corporate, with all the powers that are necessary to exist. The functions of the Commission are also very definite and precise. One may want to see that when the Commission's functions are read with advisory functions, there may be some form of an inclusion of institutions that I would beg to defer. I think the functions are very precise.

Under Clause 4(1), Subclause(h)(ii), there is an element of extra-territoriality introduced, as read with Clause 9(3) of the Bill. Here again, we see that the Commission, besides being enabled to investigate the offences here, can actually seek help from any foreign body, regional or Government.

Mr. Temporary Deputy Speaker, Sir, at Clause 5, we did propose an amendment. This amendment was to do with the security of tenure for the director and the Commission members. We did not see any reason why the very important position of entrenching the office of the director and the Commission should have been relegated to subsidiary rules within the Act. As a result, we did recommend that this be lifted of and be made Clause 5(A), so that it is protected within the substantive provisions of the Act.

The Temporary Deputy Speaker (Mr. Poghiso): Mr. Choge, are you speaking for the Commission or your are the spokesperson for the Committee?

Mr. Choge: Yes, Mr. Temporary Deputy Speaker, Sir. I am taking both sides. I am seconding.

Mr. Temporary Deputy Speaker, Sir, at Clause 10, we find that there is a definite move to secure the financial arrangements of the proposed Commission. There is a definite move to make them independent of any interference.

The Minister for Roads, Public Works and Housing (Mr. Raila): On a point of order, Mr. Temporary Deputy Speaker, Sir. Without intending to interrupt the learned friend, who is contributing; he is merely talking about the proposed amendments which we will deal with when we go to the Committee Stage. Is he really in order?

The Temporary Deputy Speaker (Mr. Poghiso): I think I have asked Mr. Choge about his position, as he speaks; whether he is speaking as the official spokesman for the Committee, or he is just seconding. If he is talking about opinions already raised in the Committee, it is okay, but I am told that there is someone else who is actually going to respond officially for the Committee.

Mr. Chogo: Mr. Temporary Deputy Speaker, Sir, to begin with, hon. Raila is not my learned friend, but he is my friend.

Secondly, I am seconding as well as---

The Minister for Roads, Public Works and Housing (Mr. Raila): On a point of order, Mr. Temporary Deputy Speaker, Sir. Although, I am not a lawyer, I am definitely more learned than the hon. Member. The issue is that, the normal practice is that we deal with these amendments when we come to the Committee of the Whole House, and the hon. Member seconding should be talking substantively about the Bill rather than the proposed amendments.

Mr. Chogo: Mr. Temporary Deputy Speaker, Sir, I think the amendment has not been proposed and the hon. Member is within his rights to get a proper view of what I am saying while seconding.

The Temporary Deputy Speaker (Mr. Poghiso): Well, fortunately or unfortunately you are privy to some of the information from the relevant Departmental Committee and you are free to use it, but precisely, you should be seconding substantially.

Mr. Chogo: Mr. Deputy Speaker, Sir, I will go by your ruling, but I will be entitled to refer to that information.

Mr. Deputy Speaker, Sir, Section 12 of the Bill requires the Director to prepare a report annually. Here the Commission is being made accountable in terms of Sections 32 and 33 of the Bill. We will no longer have a situation whereby somebody investigates a crime, puts it in the shelf and he is paid his salary and goes home.

Mr. Temporary Deputy Speaker, Sir, Section 13 deals with the establishment of the Advisory Board. The duties are very clear, though the Board is incorporated at a weaker level. I believe the provisions under Schedule One are sufficient to make it functional.

Mr. Temporary Deputy Speaker, Sir, the mere fact that the principle function of the Advisory Board is to advise the Commission will not in any way bring any form of interference upon the Commission so that the independence of the Commission is threatened in any way. Section 18 makes the Director of the Commission to be the Secretary of the Advisory Board. This is a very important provision because it provides the necessary functional nexus between the Advisory Board and the Commission.

Mr. Temporary Deputy Speaker, Sir, Section 20 under Part 3, which deals with investigations--- Clause 22 deals with complaints being investigated. You will observe that under that Clause the Commission may decline to investigate or discontinue an investigation, and simply give reasons to the complainant of the decision thereof. Here, the provisions, as they stand, will give room for the Commission and, indeed, ultimately the Attorney-General to fail in their functions of investigating and prosecuting the crime. As a result - if you allow me to refer to the report on the amendment - the Departmental Committee has recommended that the Attorney-General must be given the reasons as to why a certain case was not investigated or if it was investigated, why it was stopped, so that he can bring that report to this House. We would like to know who stopped the case and why.

At Clauses 23, 24 and 25, suitable provisions have been made to enable the investigators to deal with the complex issues of corruption and fraud. However, the only danger that I see here is inept investigations which would lead to people being made to make self-incriminating statements and land us again into other situations like the Gachiengo case. Here again, the situation is well under control because Parliament will have to approve every appointee of the Commission.

Mr. Temporary Deputy Speaker, Sir, Clause 26 contains a provision that never existed in the previous legislation. At least today one must have a warrant before he can visit your premises or house and do searches thereof. At Clause 28, there is a very suitable provision on the surrender of travel documents. This provision is necessary to ensure that the Attorney-General or the commission does not go to sleep after obtaining the *ex-parte* order. A proviso must be made that within a certain amount of time, they should go back to court to report on the progress.

At Clause 34, the Attorney-General is on the spot. He has to account for all the reports that have been given to him by the Commission and the buck will stop at his office. At Clause 34(4), every step towards the commission of corruption is covered. No ignorance will be permitted. No instructions from above will be entertained. Even those who will come and say: "Tumekuwa na Mzee and he has said this" are well covered under Clause 38. So, it will now be a corruptible offence if you deceive the Head of State as your principal. At Clause 42, the provision therein will streamline particularly revenue collection. It will also assist in making sure MPs do not sell their rights when they are given duty free facilities. That will be another way of avoiding to pay duty and assisting one to do the same.

At Clause 46, customs will not be a defence. Equally, a tip whether small or big will not be a recognised

custom. When you go to the offices of some of these people, they will tell you: "I am going home this weekend. Could I have some tip?" No matter how innocently that tip is demanded, it still ought to constitute an offence. Whether it is demanded menacingly, through extortion, so long as it is an inducement that is being sought for something to be done, it is an offence.

At Clause 47, impossibility or non-intention is not a defence. Here the element of strict liability is envisaged. At times you have to account for some of the corrupt allegations or transactions that are seen by third parties. At part 5--

The Temporary Deputy Speaker (Mr. Poghiso): Order! Hon. Members, usually we would be having Zero Hour. I have not received any request for it. Therefore, I need to alert Mr. Choge who is seconding that he will have five minutes to go next time around.

ADJOURNMENT

Hon. Members, it is time to interrupt the business of the House. The House is, therefore, adjourned until Tuesday, 15th of April at 2.30 p.m.

The House rose at 6.30 p.m.