

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 4th November, 1997

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No. 706

CONFISCATION OF MR. KIRIGA'S PASSPORT

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

(a) if he is aware that Mr. Anthony Njau Kiriga, who is a member of Uvumbuzi Club, had his passport confiscated by the Immigration Department on the eve of his departure to Switzerland to participate in a cycling competition; and,

(b) if the answer to "a" is in affirmative, what were the reasons that led to the decision to confiscate the passport and when will it be released to him to proceed to Switzerland.

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

(a) None of the records in my office has any reports on the confiscation of Mr. Anthony Njau Kiriga's passport as alleged by the hon. Member.

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

Mr. Gatabaki: Mr. Speaker, Sir, I am embarrassed by the answer given by the Assistant Minister. I would not have asked this Question, if what I am talking about was not true. We raised funds in a Harambee for this young man to proceed to Switzerland to participate in a cycling competition for six months. His passport was confiscated by the Government of the Republic of Kenya. Could the Assistant Minister now investigate out because I am telling him that the passport of this gentleman was confiscated by the Immigration Department? Now that he knows that it was confiscated, could he investigate and tell this House why the Government is preventing this young man from exercising his rights as a cyclist?

Mr. Sunkuli: Mr. Speaker, Sir, the hon. Member is getting me wrong. I have not said that what he is saying is not true. What I am saying is that the Government has not confiscated this particular passport. If the hon. Member is alleging that this passport was confiscated, I am prepared to investigate. However, he must give me the facts because I have perused the records and there is no indication anywhere that the Government has decided to confiscate the passport of this young person.

Mr. Mwaura: Mr. Speaker, Sir, if indeed, the Assistant Minister has carried out that investigation, could he tell the House the number of the passport that the hon. Member is complaining about and who is in possession of it?

Mr. Sunkuli: Mr. Speaker, Sir, indeed, I do not know the number of the passport that is being referred to. What I know is that, the name of the person who alleges that his passport has been confiscated is Mr. Anthony Njau Kiriga. I have perused the records pertaining to the passports that are held for any purpose, but the name of this particular person does not appear. Let the hon. Member give me more facts about this passport and I am prepared to investigate.

Mr. Gatabaki: Mr. Speaker, Sir, I accept the answer given by the Assistant Minister. I shall table in this Parliament documents and details about the passports and persons whose passports were confiscated by the Immigration Department. If I do that, will the Chair give me guidance as to what we can do with an Assistant Minister who deliberately refuses to accept facts?

Mr. Speaker: The guidance I will give you is as follows: Give him the number of the passport and the date when it was confiscated. Give him more details.

Mr. Sunkuli: Mr. Speaker, Sir, the hon. Member has asked you for guidance on certain matters.

Maybe, the best guidance you will give him is that he should be more polite because I am trying to answer his Question.

Mr. Speaker: Very well. Can you get in touch? Next Question, Mr. Moiben.

Question No.707

ALLOCATION OF ADC FARMS IN TRANS NZOIA

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

(a) if he could cancel the lease agreement between the Agricultural Development Corporation (ADC) and the Kenya Seed Company concerning farms in Trans Nzoia District and authorise that the same ADC farms be leased to the several Trans Nzoia District farmers co-operative societies;

(b) if he could cancel the Kenya Seed Company dual purpose licence of producing and processing seed and issue the company with the processing licence only; and,

(c) if the answer to "a" is in the affirmative, if he could consider allocating the same ten ADC farms in Trans Nzoia District to deserving landless squatters in this district as a matter of priority.

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

(a) It is not possible to cancel the lease agreement between the ADC and the Kenya Seed Company as the corporation has allowed this company to get this year's seeds produced on time because of the ADC's cash flow problems. However, this arrangement is temporary until the ADC's cash flow problems are overcome.

(b) Although the Kenya Seed Company has both licences for producing and processing seed, the seeds are produced on hired farms from individual farmers. This practice has been going on for a long time and the local farmers in Trans Nzoia District are benefiting from this arrangement whereas the Kenya Seed Company monitors closely to safeguard the seed quality.

(c) The Government is not considering allocating the ten ADC farms to the landless because these farms are strategic for seed production and the art of growing seed is left to the institutions like the ADC and Kenya Seed Company as they have the expertise and resources to grow the seed.

Mr. Moiben: Mr. Speaker, Sir, while thanking the Minister for that answer, it is unfortunate that I have not got a copy of it. Since maize is grown on a large scale in Trans Nzoia District, as a way of motivating the farmers, could the Kenya Seed Company contract more farmers to grow seed maize? This could be one way through which both the company and the farmers could get resources.

Mr. Koech: Mr. Speaker, Sir, if the Kenya Seed Company finds it necessary, it can do that.

Dr. Kituyi: Mr. Speaker, Sir, arising from the Minister's reply, if, indeed, as he said in part "c", the Government considers it important to keep the ADC farms as a source of seed maize because of strategic importance, could he explain to the House why the Government has parcelled out five of the ADC farms in Trans Nzoia District, and given them to individuals who are not producing seed maize? Could he also explain why the Government has, at times, entered into lease arrangements with individual farmers, even without utilising the existing capacity of the ADC farms to produce seed maize?

Mr. Koech: Mr. Speaker, Sir, the ADC has sufficient land to be utilised for the production of seed. But the situation may warrant the ADC to lease out their farms to some farmers because of some local conditions.

Mr. Sambu: Mr. Speaker, Sir, the Minister has just said that the ADC is in cash flow problems. When will it recover, when we know that the assets of the ADC are being sold out?

Secondly, why is it that they do not put the leasing of the farms on tender so that the highest bidders can lease them?

Finally, at what rates did the Kenya Seed Company lease the farms, and who are the shareholders of the company now? It no longer belongs to the Government!

Mr. Speaker: Those are too many questions!

Mr. Sambu: But they are very crucial!

Mr. Koech: Mr. Speaker, Sir, the Government is doing everything possible to make sure that the cash-flow problems facing the ADC are solved. I do not have the rates for leasing with me here, but if the hon. Member is interested, I can provide them to him.

Mr. Speaker: Next Question!

*Question No. 701*PAYMENT OF TERMINAL BENEFITS
TO MR. TEYA'S WIDOW

Mr. Speaker: Is hon. Obwocha not here? We will leave his Question until the end. Let us move on to the next Question.

Question No. 658

FINANCING OF PROJECTS BY LBDA

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

- (a) what projects the Lake Basin Development Authority (LBDA) has initiated and completed in Nyatike Constituency; and,
- (b) how much money the Authority budgeted for, and actually spent in the said projects during 1994/95 and 1995/96 financial years.

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

(a) The LBDA has initiated and is implementing three projects in Nyatike Constituency as follows:

(i) Rainfed Rice Production Project:

Under this project, the Authority has been promoting production of rainfed rice in the constituency by providing capital for land preparation, purchase of seeds, giving of soft loans to farmers and construction of access roads.

(ii) Rural Domestic Water Supply and Sanitation Programme:

The Authority has constructed 42 water points and has handed over the same to the beneficiaries for operation and maintenance.

(iii) Kuja River Multi-Purpose Dam Project:

With financial support from the friendly Government of Italy, the Authority has carried out a feasibility study for construction of this dam, which is intended to put over 15,000 hectares of land under irrigation, and increase hydro-electric power generation from Gogo Falls to 18 megawatts.

(b) During the 1994/95 and 1995/96 financial years, the LBDA budgeted for, and actually spent a total of Kshs16,339,498 on the first two projects. The third project is being floated to the donors for adequate financing as it requires approximately Kshs2.5 billion for its implementation.

Mr. Onyango: Mr. Speaker, Sir, I do not understand how the Kuja River Multi-Purpose Dam falls under part "a" of the Question. This is because the Assistant Minister has said that the Ministry is intending to put up that project. But the Question sought to know the projects that were initiated and implemented.

But all the same, this project has been a continuous story in our place. Even before the late Okwanyo died, we were told that they had already got the money, and I wonder where the money went. Could the Assistant Minister tell us whether there was money for this project before?

Mr. Ligale: Mr. Speaker, Sir, Kuja River Multi-Purpose Project is a very large project. It required Kshs2.5 billion which is a large sum by any standards. To be able to package and put such funds together takes time.

Prof. Mzee: Mr. Speaker, Sir, could the Assistant Minister inform this House how much money has been spent on the feasibility study for the irrigation project in Nyatike?

Mr. Ligale: Mr. Speaker, Sir, we have spent approximately Kshs8.4 million on the feasibility study alone.

Mr. Onyango: Mr. Speaker, Sir, is the Assistant Minister aware that the so-called "projects" he is referring to in numbers (i) and (ii) of his reply are not operational?

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. There is no doubt that you noticed the Deputy Whip of the Government on the Opposition side of the House. As he linked hands with the Leader of the Government Business, he crossed the Floor without bowing to the Chair. Could you oblige him to walk back to the Bar and cross formerly?

Mr. Speaker: Hon. Falana, did you do that?

*(Mr. Falana walked back to the Bar
and bowed to the Chair)*

Mr. Speaker: Very well, hon. Falana! Who was asking the supplementary question?

Mr. Onyango: Mr. Speaker, Sir, I would like to inform the Assistant Minister that projects (i) and (ii) are not operational. What is he doing to make sure that these projects are operational? As far as I am concerned, there is nothing going on in Nyatike Constituency.

Mr. Ligale: Mr. Speaker, Sir, the first project relates to assistance to farmers. There is no way the project could be operational if we did not assist. We assisted in the preparation of 247 acres of land for growing rice. Approximately 787 acres---

Mr. Onyango: On a point of order, Mr. Speaker, Sir. Could the Minister tell us which part of Nyatike was supplied with seeds? As far as I am concerned, we are not growing rice.

Mr. Ligale: Mr. Speaker, Sir, if the hon. Member listens carefully for a moment, I will explain to him. I have said that in the 1994/95 and 1995/96 financial years, 247 acres of land was prepared for rainfed rice. Also, 787 bags of seed were given to farmers in that area, to enable them to grow rice. The seed cost KShs1.3 million. Credit, to the tune of KShs595,000, was availed to the farmers. An access road of 5.4 kilometres was prepared, and it cost KShs1.4 million. These were funds that were spent in Nyatike Constituency. I cannot tell you the exact plots where the money was spent, but it was spent in the Constituency.

Prof. Ouma: Mr. Speaker, Sir, the Assistant Minister did speak of increased hydro-electric power production from Gogo Dam. That is an area where rural electrification is minimal. Could he tell us whether priority will be given to rural electrification as a means of rural industrialisation in Nyatike and the surrounding areas?

Mr. Ligale: Mr. Speaker, Sir, while I appreciate that, that question is important, the priority to be given to it will have to be determined by the Ministry of Energy.

Mr. Speaker: Next Question!

Mr. Anyona: Mr. Speaker, Sir, I have not received a written reply to this Question.

Question No.705

ACQUISITION OF PRIVATE LAND BY CHIEF

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

(a) whether he is aware that the Chief of East Kitutu Location in Kitutu Masaba has purported to acquire the following parcels of land (referred to as East Kitutu/Mwamang'era), contrary to the provisions of Section 75 of the Constitution of Kenya: Messrs Mosioma Mandere, No.472; Nyangoka Ongeri, No.509; Ongeri Mokua, No.512; Ontita Masioge, No.513; Ngoge Ontita, No.515; Jackson A. Nyakundi, No.518; Matura Nyakundi, No.518; Nyamwaya Anching'a No.1115; David No. Ongubo, No.1126; Samuel M. Ongubo, No.1127; Nyabuti Nyakundi, No.1685 and Zablon O. Mosaremo, No.2070; and,

(b) if the answer to "a" is in the affirmative, whether he could cancel and stop this illegal acquisition of private land and take necessary measures against any official(s) of the Ministry involved in this allocation.

The Assistant Minister for Lands and Settlement (Mr. Sumbeiywo): Mr. Speaker, Sir, this Question was transferred to the Office of the President when we discovered that records in our office did not include the parcels mentioned by the hon. Member.

Mr. Speaker: Order! In fact, I had forgotten. Hon. Sumbeiywo is right, this Question was re-located yesterday to the Office of the President. So, can I defer it to Thursday? Mr. Anyona, you are happy now are you not?

Mr. Anyona: Mr. Speaker, Sir, it is alright.

(Question deferred)

Mr. Speaker: Mr. Obwocha's Question for the second round!

Mr. Obwocha: Mr. Speaker, Sir, I beg to apologise for coming late.

*Question No.699*PAYMENT OF TERMINAL BENEFITS
TO MR. TEYA'S WIDOW

Mr. Obwocha asked the Minister of State, Office of the President when the Ministry will pay the widow of the late Mr. Omao Nyabuga Teya (Personal No. 202395/7414283) his terminal benefits as outlined in a letter from the District Commissioner, Nyamira, under Ref.BDM/18/2/Vol.V/292 of 21st June, 1995.

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

The documents to process the terminal benefits of Nyabuga Omao Teya are ready and will be referred to the Treasury Pensions Department for payment this week.

Mr. Obwocha: Mr. Speaker, Sir, this is very sad because I raised this Question in 1994. It was one of my first Questions so that the widow of the deceased is paid. The District Commissioner (DC), Nyamira, wrote to the lady on 21st June, 1995 under reference number BDM/18/2/Vol.V/292 and requested for the following documents:- The original death certificate; the birth certificates in respect of the children; certificate of marriage or a sworn affidavit; the latest payslip, the widow's contact address and a certified copy of the widow's national identity card. All these documents were submitted. What has happened from 1995 up to now? We are soon going to 1988, which is three years later!

Mr. Sunkuli: Mr. Speaker, Sir, I have given an undertaking to the hon. Member that this matter will be sorted out this week. In fact, I wish to thank the hon. Member for raising this particular matter on behalf of these poor people. It was our Department's mistake. It was one of the instances of the case not being handled efficiently. But I have now taken it over. The hon. Member may advise these people to go to the Treasury. In fact, I ensured that the documents went to the Treasury this morning.

Mr. Obwocha: Mr. Speaker, Sir, the Assistant Minister is saying the documents have gone to the Treasury. Is he talking of the main Treasury or about the Pensions Department itself? The people who should now be handling this case are in the Pensions Department. Where do I go from here?

Mr. Sunkuli: Mr. Speaker, Sir, I am referring to the Pensions Department of the Treasury.

Mr. Speaker: Order! Next Question.

QUESTION BY PRIVATE NOTICE
LOSSES INCURRED BY SOMALI COMMUNITY
THROUGH FIZZA ENTERPRISES

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

(a) Is the Minister aware that between July, 1997 and 12th October, 1997, a section of Somali business community lost a sum of Kshs6.5 billion in a dubious finance scheme initiated by Mr Sajjad Jirraj Hussein Kassamali and through a company M/s Fizza Enterprises (K) Limited of P.O. Box 21952, Nairobi?

(b) If the answer to "a" is in the affirmative, what urgent steps is the Minister taking to apprehend the culprits and recover the lost money from the said company?

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

(a) I am not aware that a section of the Somali business community has lost money in a transaction involving a Mr. Sajjad Jirraj Hussein Kassamali of Ms/ Fizza Enterprises (K) Limited. However, I am aware that Sajjad Jirraj Hussein Kassamali was arrested and charged after a Ugandan national complained to Interpol, Kampala, that he had stolen from him Ushs300 million. The matter is pending before court.

(b) Arising from my reply to (a), part (b) does not arise.

Mr. Shidie: Mr. Speaker, Sir, I think this is one of the most misleading answers given by the Assistant Minister. It is well known that the Somali community has lost this money and the documentary evidence is available. The money was lost through a sweet-talking young conman by the name of Sajjad. This money was lost through manipulation. Mr. Sajjad was supposed to pay ten per cent to any amount of money deposited. Over and above, the money was also lost through manipulation of foreign exchange. Therefore, the Assistant Minister is misleading us and he should give us the correct answer. He knows very well that the man has already been arrested and very many people have lost their money through him and many of them have reported the

matter to the police stations and Criminal Investigation Department offices all over this country. Some of these people have sold their animals, plots and buildings, while others have been liquidated and some have taken overdrafts. This money has been lost, it is another Goldenberg, and it should not be taken lightly. The Assistant Minister should give us the right answer.

Mr. Sunkuli: Mr. Speaker, Sir, I am not taking this matter lightly. All I am saying is that the alleged loss of the money has not been reported to the police. This man has been arrested for different reasons and we are planning to ensure that as soon as the court case is ready, we repatriate this person back to Uganda.

Prof. Mzee: Mr. Speaker, Sir, I hope the Assistant Minister realises that Kshs6.5 billion is a lot of money. I recall that at one time, we were told that Kshs6.5 billion was enough to build a dual carriageway between Mombasa and Nairobi. This is just to emphasise how much money this is. This is only from a section of a single community. Will the Assistant Minister look into this matter and ensure that these people get their money back?

Mr. Sunkuli: Mr. Speaker, Sir, I am quite prepared to look into this matter so long as a formal complaint is made to me. Let the people concerned report to the police and I shall investigate this matter.

Mr. Arte: On a point of order, Mr. Speaker, Sir. I do not know whether the Police Department does not come under the Office of the President. The Assistant Minister is saying that the matter has not been reported to the police while over 20 people have already gone to the police and made statements. Now who do we direct our Questions to? Does the Assistant Minister not know what the police is supposed to do? Could he give us a proper answer next week?

Mr. Sunkuli: Mr. Speaker, Sir, I do not know everything that the police do, but I know what they are supposed to do. But the information I have is that this matter has not been reported to the police. I do not have information to the contrary.

Mr. Leshore: Mr. Speaker, Sir, now that the Assistant Minister is aware that a section of the Kenyan community has lost that huge amount of money, could he instruct his CID team to carry out further investigations? He should not allow the Interpol to repatriate that conman to Uganda until investigations are over.

Mr. Sunkuli: Yes, Mr. Speaker, Sir.

Mr. Gatabaki: On a point of order, Mr. Speaker, Sir. I would like to know what is going on because the Vice-President and Minister for Planning and National Development seems to be moving from one side of the House to other, confusing the Members.

Mr. Speaker: Order! Order! Hon. Gatabaki, with all due respect, you must have heard of the freedom of movement within and outside the Chamber. You will not be allowed to infringe upon other Members' freedom to move freely, in accordance with the Standing Orders, within the precincts of Parliament.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, the fact that the Assistant Minister has realised that Ksh6 billion has been stolen and that over 20 people have reported the matter to the police, means that such a crook is unlikely to be sleeping. He is likely to bribe the police so that they do not take up the case. Could the Assistant Minister, therefore, investigate whether these reports have been made and whether some policemen are involved in covering it up?

Mr. Sunkuli: No.

Mr. Speaker: Hon. Shidie, are you still interested?

Mr. Shidie: Yes. Mr. Speaker, Sir, the Assistant Minister is not taking this matter very seriously. I am saying that over 100 Somalis have lost this money. These are Livestock traders, businessmen, professionals and civil servants. If we are going to take the Assistant Minister seriously, could he go back and do some homework and at least come back with a satisfactory answer? I can prove to him that this money has been lost through this conman, who is a sweet talking young man. Could the Assistant Minister go and investigate and bring the answer tomorrow because I know this House is going on recess by Thursday? Could he also make sure that this man is not extradited from this country before this issue is solved because this is a very serious matter which touches the heart of every Somali in this country?

Mr. Sunkuli: Mr. Speaker, Sir, if the hon. Member could assist me to have the complainants record a statement with the police, then I am prepared to investigate the matter, even now. But my contention---

Mr. Shidie: Mr. Speaker, Sir, more than 100 people have recorded statements and they are all over, even in these galleries. They were expecting that the Assistant Minister would bring a better answer than this. We cannot take this Assistant Minister seriously. Could he go back and bring an answer that will satisfy us? This is a very serious matter. It is not a joke!

Mr. Sunkuli: Mr. Speaker, Sir, if the hon. Member comes to my office, then we shall both ensure that these statements are properly recorded because up to today, I have no statements recorded by complainants on this

matter.

Mr. Farah: Mr. Speaker, Sir, this man, who is responsible for this fraud, has been in police custody now for three weeks and there is no way the Assistant Minister can tell us that over Kshs5 billion, it is actually between Kshs5 billion and Kshs 6 billion, could be taken by one Asian, who has been operating in this place for all this long when we have a Central Bank Anti-Fraud Squad and the Government would not be aware of it. Could the Assistant Minister confirm or deny that there are some very powerful people in the system who are involved in this scam?

Mr. Sunkuli: Mr. Speaker, Sir, I wish to say that the hon. Farah should not hijack hon. Shidie's Question to use it for other political reasons. This is a matter that requires to be investigated. The hon. Shidie feels very strongly about it, I am prepared to have him come over and at least clarify one matter because I do not think hon. Shidiye knows that these complainants have actually not reported the matter to the police.

Mr. Leshore: On a point of order, Mr. Speaker, Sir. I think the hon. Assistant Minister is taking us for a ride. Could he now undertake to come back to this House and give a Ministerial Statement on that issue? It is a very hot issue and many Kenyans have lost money through similar frauds. Could he undertake to bring a Ministerial Statement?

An hon. Member: Tomorrow!

Mr. Sunkuli: Mr. Speaker, Sir, what these people require is to get their money back and I am prepared to begin the journey towards recovering the money. I do not think they require a Ministerial Statement.

Mr. Mulusya: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister not misleading this country and the House by saying that all these people want is the recovery of their money, yet he is not telling the House or the Questioner how he is going to ensure that this money is recovered? How is he going to recover the money yet he is not accepting that there has been a fraud?

Mr. Sunkuli: Mr. Speaker, Sir, the first step towards the recovery of this money is for the complainants to report to the police.

Mr. Farah: Mr. Speaker, Sir, there is no way you can have somebody in custody if nobody reported him. From the outset we told the Assistant Minister that this man has been in custody. This man has been promising people interest to the tune of 365 per cent. The information we have now is that there is a high level move to try to have this man extradited to Uganda for a petty offence on the other side with the objective of making him run away from the country. Consequently, some people have already filed a case in the court today. Could the Assistant Minister tell us what urgent steps he is going to take to make sure that this man is kept here until the money is repatriated back to the country?

Mr. Sunkuli: Mr. Speaker, Sir, one matter that I would like to clarify to the hon. Farah is that this man is in custody for a different purpose. He is in custody for having committed an offence in Uganda. If a complaint of another offence committed in Kenya is made to me, I will ensure that this man deals with the problems in Kenya first before he is extradited to Uganda.

Mr. Shidie: On a point of order, Mr. Speaker, Sir. I think the Assistant Minister is not taking us seriously. We are talking about Kshs6.5 billion and the Assistant Minister is telling us that this matter has not been reported to him. The matter has been reported to the police and in the name of justice, could the Assistant Minister come with a better answer tomorrow?

Mr. Speaker: Would you like to go and have a re-look into the matter and come back to the House hon. Sunkuli?

Mr. Sunkuli: Mr. Speaker, Sir, purely on the grounds that the hon. Shidie is a very close friend of mine and a respectable Member of this House, I will go and re-investigate and try and give him an answer that will satisfy him.

(Question deferred)

POINTS OF ORDER

SWINDLING OF SOMALIS BY PAKISTANI NATIONAL

Mr. Farah: Mr. Speaker, I am rising on a point of order to say that this is a very sad day for members of the Somali community in Kenya. This is because there is another man who is from another organisation called Bismillahi Impex and his name is Mohammed Talib Udin, who is a Pakistani and who has been running a forex bureau here. That man has also taken from the community in excess of Kshs1 billion. The said man has run away from the country now. He is a Pakistani national, who had a residence permit in the country and was allowed to

run business here. I am rising on this point of order to ask the Minister to immediately seek the assistance of the Pakistani Government and have the Government of Kenya involved in the extradition of this man. We have a Banking Act in this country and all these people were doing was a clear fraud, in contravention of the Banking Act and we have a Cental Bank Anti-Fraud Squad that is supposed to make sure that this does not happen. I have here one deposit from one person, of Kshs7 million, for the same guy. This thing went through a bank which is in Nairobi. Could all this be investigated so that all those accomplices, who I believe are in the banking industry and are all of Asian origin including a bank called Paramount Bank where all these deposits were made into--- Could the Minister investigate this as a matter of urgency and see how Kenyans' money can be recovered and the culprits taken to prison? Could we have a Ministerial Statement on the same?

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Speaker, Sir, I have heard the matter, and I am sure that the hon. Minister for Foreign Affairs and International Co-operation has also heard the matter and it shall be given due concern.

RAIN DISASTER AT THE COAST PROVINCE

Prof. Mzee: On a point of order, Mr. Speaker, Sir. On several occasions we have asked the Minister of State, Office of the President, to issue a Ministerial Statement concerning the rain disaster in Mombasa. It is sad to note that the Provincial Administration has asked the people to move to other places without providing an alternative site for them to settle or offer them any other assistance. Could the Minister give us the Ministerial Statement he had promised this House, and also give another Ministerial Statement on the security situation in Likoni?

The Minister of State, Office of the President (Mr. Koech): Mr. Speaker, Sir, a Ministerial Statement on the rain disaster at the Coast Province will be issued tomorrow afternoon.

THE STATE OF AFFAIRS AT LIKONI

Mr. Mwavumo: Jambo la nidhamu, Bw. Spika. Ningependa kumwuliza Waziri katika Ofisi ya Rais ambaye aliahidi Bunge hili kwamba atatoa taarifa kuhusu hali ya wasiwasi huko Likoni ni kwa nini hajafanya hivyo na hali watu wanazidi kupigwa? Tunafahamu kwamba uchaguzi mkuu umekaribia lakini hivi sasa watu wanahama makwao. Pia, watu wameanza kuvuliwa nguo na askari kule Pwani. Ningependa Waziri apige marufuku jambo hili watu wasitoroke makwao ili waweze kushiriki katika uchaguzi mkuu ujao. Nina furaha kwamba leo Waziri yuko hapa ingawa amekuwa akihepa swali hili mara kadha. Tungependa alieleze Bunge hili ni kwa nini watu wanapigwa hadi wakati huu. Watu wetu wa kijiji cha Shikaadabu wanashikwa na kuwekwa rumande bila kufikishwa kortini au kuachiliwa huru na wale ambao wako hospitali wanaumia. Tungependa Serikali ikomeshe maovu haya ili wananchi wapige kura kwa amani.

The Assistant Minister, Office of the President (Mr. Sunkuli): Mr. Speaker, Sir, there were so many Ministerial Statements which were requested by hon. Members in the last two weeks. The Chair will recall that last week it could not allocate time because of the voting and I thought that was the case today. But I wish to assure this House that the Ministerial Statements which were requested from our office last week, will be delivered from tomorrow.

MONEY OWED TO GARISSA LIVESTOCK FARMERS BY ADC

Mr. Farah: Mr. Speaker, Sir, I am rising to seek a Ministerial Statement from the Minister of State, Office of the President, in charge of State corporations. I did rise on a point of order two weeks ago here to seek a Ministerial Statement on the Government's position on the undertaking that was made on 27th August, 1997, that Kshs90 million which is owed by the ADC to livestock farmers in Garissa District would be paid before the end of September. Todate, that money has not been paid. The Minister gave an undertaking that he was going to report back to the House exactly what the Government had done so far and what he intends to do to resolve the issue. Could the Minister tell us what the position on the outstanding money for livestock farmers in Garissa District in excess of Kshs90 million is?

The Minister of State, Office of the President (Mr. Koech): Mr. Speaker, Sir, it is true that I gave an undertaking that the money was going to be paid before the end of September, but there were some few technicalities that came up. I want to assure the hon. Member that we are doing everything possible to ensure

that the farmers are paid their money within the shortest time possible. I will ensure that this money is paid.

DISBURSEMENT OF NYDF FOR SAMBURU DISTRICT

Mr. Leshore: On a point of order, Mr. Speaker, Sir. The same Minister also undertook to give a Ministerial Statement on the disbursement of the National Youth Development Fund for Samburu District. Could he now give us that Ministerial Statement?

The Minister of State, Office of the President (Mr. Koech): Mr. Speaker, Sir, I cannot comment on that issue because I have not been given the information.

Mr. Speaker: Very well, next Order.

An hon. Member: When will he give the Ministerial Statement?

Mr. Speaker: Order! Order! I heard him say "as soon as he can".

Mr. Farah: When is that?

Mr. Speaker: Order, Mr. Farah! Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

[Mr. Chairman took the Chair]

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

(Clauses 2, 3, 4, 5, 6, 7, 8, 9 and 10 agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Attorney-General (Mr. Wako): Mr. Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Constitution of Kenya (Amendment) Bill and its approval thereof without amendment.

(Question put and agreed to)

(The House resumed)

[Mr. Speaker in the Chair]

REPORT AND THIRD READING

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

Dr. Godana: Mr. Speaker, Sir, I beg to report that a Committee of the whole House has considered The Constitution of Kenya (Amendment) Bill and approved the same without amendment.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to move that the House doth agree with the Committee in the said report.

The Minister for Labour and Manpower Development (Mr. Masinde) seconded.

(Question proposed)

(Question put and agreed to)

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to move that The Constitution of Kenya (Amendment) Bill be now read the Third Time.

The Minister for Labour and Manpower Development (Mr. Masinde) seconded.

(Question proposed)

Mr. Shikuku: Asante sana, Bw. Spika, kwa kunipatia nafasi hii ili niseme machache kuhusu Mswada huu. Historia imefanyika na wale ambao walikuwa hawaamini mazungumzo kati ya Upinzani na KANU, sasa wanaweza kuona. Kama hawana macho, wanaweza kusikia kwamba hatukuwa tukicheza. Tumefanya kazi na kazi imetimilika.

Bw. Spika, pia nataka kusema kwamba kilichobaki katika Mswada huu ni sahihi ya Rais ili uwe sheria. Wale ambao walikuwa wakichezacheza wakifikiri kwamba tunacheza pia, sasa inawabidi wajue kwamba hii itakuwa sheria. Tumeahidiwa na Mkuu wa Sheria kwamba yeye hatatumia fedha za nchi hii kuwatetea wale ambao wataivunja sheria hii mpya.

Aidha, Bw. Spika, kuna Mswada mwingine ambao tulipitisha: The Statute Law (Repeals and Miscellaneous Amendments) Bill, ambao unahusu machifu, DC na DO. Kutoka sasa, Rais atakapoutia Mswada huo sahihi, itakuwa ni hatia kwa hao watu wakicheza kwa sababu tutawaonyesha cha mtema kuni.

Bw. Spika, baada ya hii Miswada miwili, ambayo ilitokana na mazungumzo baina ya Upinzani na watu wa KANU-- Ikitiwa sahihi, nitawaalika Wabunge wote wa IPPG, wale ambao wanaunga mkono NCEC; na FORD(A) kukutana kule Kamukunji. Tumewashinda kwa kupiga kura hapa na wakitaka twende kwa raia, waje ili tukutane Kamukunji halafu wanaumme waonane. Wasiseme kwamba tuliwashinda hapa Bunge peke yake. Huko katika uwanja wa Kamukunji, tutakuwa na vikundi viwili; kile kikundi kinachopendelea matata na kile kinachotaka amani.

Vile vile, Bw. Spika, ningependa kusema kwamba baada ya huu Mswada kuwa sheria, itatubidi tukumbushane mambo fulani. Tulipokuwa pamoja, sisi Wabunge wa Upinzani na wa KANU, tulikubaliana kwamba kutakuwa na muda wa---

Mr. Gatabaki: On a point of order, Mr. Speaker, Sir. I must oppose what hon. Shikuku is talking about. This is not a conference between different parties. What difference has hon. Shikuku with the NCEC? That is his own personal problem.

Mr. Speaker: Hon. Gatabaki, what is your point of order?

Mr. Gatabaki: Mr. Speaker, Sir, I heard---

(Loud consultations)

Mr. Speaker: Order! Order! Mr. Gatabaki, when a Member is on the Floor, the only time you are allowed to intervene is when you have a genuine point order. Honestly, I cannot follow what your point of order is. It does look like you do not have a point of order! So, if you have a point of order, it has to be a genuine point of order and not a point of argument.

Mr. Gatabaki: Thank you, Mr. Speaker, Sir. I want to be given the same type of silence hon. Shikuku is getting from this House.

(Laughter)

The Chair must protect me from this hostility.

An hon. Member: I am here to protect you physically.

Mr. Gatabaki: Mr. Speaker, Sir, is it in order for hon. Shikuku to talk about parties which are not in this House? Is it in order for him to keep making reference to the NCEC people who are not here to defend themselves?

Mr. Speaker: Order! Order! Hon. Members of this House, so long as they are relevant, can talk about a party in this House or a party outside, or any issue for that matter, under the sun, unless they have restrained themselves from doing so. So, he is perfectly in order. The only other thing I want to respond to is when you ask of me that you deserve silence like Mr. Shikuku. The only thing I can say about that, is that you earn the respect of this House; I cannot force it upon the House

(Applause)

Mr. Shikuku: Asante sana, Bw. Spika. Ni furaha na ushindi kwa pande zote mbili. Nilikuwa ninasema kwamba, Utawala wa Mikoa yafaa upewe muda wa kuweza kufahamu sheria mpya ili iweze kuwaingia, na hiyo itahitaji muda.

Kwa mfano, kuna wale machifu na manaibu wao ambao bado hawajayafahamu mambo vizuri. Katika Kata Ndogo ya Manyara kuna moja anayehusika na wizi wa ng'ombe na angali mtumishi wa Serikali.

Bw. Spika, mwavuli umekunjwa na yafaa tuangalie tusije tukajidanganye kwamba matata au hatari imekwisha. Hatari ingaliko na ni wajibu wa Bunge hili kukaa na kutembea pamoja hata kufanya mikutano pamoja kama IPPG ili tuweze kuondoa hatari inayoikumba nchi hii. Kwa niaba ya wananchi, tunataka amani kwa watoto wetu. Wale ambao hawataki amani watajikuta wakiwa wachache sana.

Kwa hayo machache, ninaunga mkono Mswada huu na nasema Mungu asifiwe.

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Speaker, Sir, I will not take much time of this House. First of all, I would like to thank our voters who, at least, listened when we appealed to them to stop demonstrating on the streets. I thank them for having given us time to work out this package and reached the stage where we are now. I still appeal to wananchi to give this package an opportunity to take ground.

Secondly, Mr. Speaker, Sir, I would like to express my feelings that it is not the victory of the IPPG alone, but the victory of all Kenyans. It is victory for Kenyans who want peace and not bloodshed. The NCEC should also be proud of it, since it is also their victory.

Mr. Ogeka: On a point of order, Mr. Speaker, Sir. Is it in order for hon. Osogo to allege before this august House, that it is victory for all, while in the same House, an hon. Member of the IPPG stated that, you can never harvest where you never sowed? In any case, it is typically a hand-out and reward to the IPPG Members and not to the entire nation.

Dr. Kituyi: On a point of information, Mr. Speaker, Sir. I wish to inform hon. Osogo that the reference to reaping where you did not sow was directed to hon. Raila, who never played any role in the NCEC.

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Speaker, Sir, what hon. Kituyi has informed me is the truth of the matter. We are appealing to all Kenyans not to scare other Kenyans about---

*(Loud consultations between
hon. Ndicho and Dr. Kituyi)*

The Assistant Minister for Energy (Mr. Nang'ole): On a point of order, Mr. Speaker, Sir. Have you heard what hon. Ndicho has told Dr. Kituyi?

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. Is Dr. Kituyi in order to mislead this House that hon. Raila never participated in the NCEC activities? Limuru is not NCEC and I, as well, was not at Limuru. Hon. Raila participated fully in the NCEC activities.

Mr. Speaker: Order! Order, Members! Mr. Ndicho, I do not think Dr. Kituyi, in informing hon. Osogo, ever made any reference to the NCEC.

Mr. Ndicho: He did!

Mr. Speaker: Order! Hon. Ndicho, if you keep on behaving the way you are, you may not participate in this debate. So, can you keep order? I think to the best of my recollection, Dr. Kituyi referred to hon. Raila's non-participation in the IPPG. I may be wrong! What did you say, Dr. Kituyi?

Dr. Kituyi: Mr. Speaker, Sir, I wish to set the record straight. At the Limuru Conference, I was recording the deliberations that we had for the NCEC. To the best of my recollection, the most important function of the NCEC was the drafting of the Limuru agenda. The occasion coincided with the tour of Nyanza and Western Provinces by hon. Raila and hon. Matiba. I helped to organise mass action for the NCEC after the Limuru conference and, to the best of my knowledge, hon. Raila never participated in any of them. We acknowledge the contribution of the NCEC, but it is different from acknowledging the contribution from hon. Raila. This is because, he was not party to the NCEC in its activities.

Mr. Speaker: I think we now understand correctly!

Proceed Mr. Osogo!

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Speaker, Sir, I would like to appeal to hon. Members of this House, particularly those on the opposite side of the

House, who did not give support to the IPPG, to support the IPPG just as we are thanking the NCEC, for having initiated whatever they initiated, which we are happy with. There is nobody in Kenya who would like to see bloodshed, like what is happening in other countries. If there is any Member in this House who would like to see that happening, then he should stand up and tell us.

Mr. Speaker, Sir, those of us who initiated this Bill are scared by the talk of civil war by anybody in Kenya. This is practically frightening every Kenyan. I would like to warn those with the ambition of starting a civil war, that they have not seen any civil war yet. The last time we witnessed a civil war was during the Mau Mau time. Some of us were grown ups. I was trained at Kagumo Teachers College and I know---

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. Is hon. Osogo in order to mislead the House by alleging that the only time Kenya experienced civil war was during the Mau Mau? We know very well that the Mau Mau conflict was not a civil war. The Mau Mau were fighting the colonialists who were not part of us.

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Speaker, Sir, in reply to that point of order---

Mr. Ndicho: Do not mislead the House!

Mr. Speaker: Order! Order! What is becoming of you today, Mr. Ndicho? You cannot keep on talking across the aisle to your colleagues on the opposite side of the House. I gave you the Floor, and you made your point! You must, therefore, sit there in an orderly fashion. Proceed, Mr. Osogo!

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Speaker, Sir, I am sure I have more knowledge about the Mau Mau conflict than hon. Ndicho. I assisted the freedom fighters by giving them uniforms for use from the stores of the college, when I was a storekeeper. By that time, hon. Ndicho was not yet born.

(Loud consultations)

Mr. Busolo: On a point of information, Mr. Speaker, Sir. I am a trained historian and the historiography of Kenya has been changing with the times. Earlier on, we were told that the Mau Mau were fighting against the colonialists. But very recently, rigorous and thorough research has shown that Mau Mau was a civil war within the Kikuyu community.

Mr. Speaker: Order! Order! As I have warned in the past, tribalisation of debate only brings a lot of tribal warfare in the House. So, can I warn all those concerned not to tribalise debate any further beyond this. So, can we now say that issue rests buried. Proceed!

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

Mr. Speaker: Order! If it does appear that Members are no longer interested in this debate and if there is another diversion, I will be inclined to put the matter to rest. Can we then hear hon. Osogo.

Mr. Mak'Onyango: On a point of order, Mr. Speaker, Sir. If it is important that the records of this House are straight, is it in order for hon. Busolo to wilfully distort the history of this country and make that part of this House?

Mr. Speaker: Order! Order, all of you! As I have already said, I do not want leave the tribal debate to continue. The hon. Members should realise that the Chair is not a historian by training and, I am, therefore, incapable to arbitrate between the matters of hon. Mak'Onyango and hon. Busolo. But the two of you may over a cup of coffee, tea or whatever it is, discuss that issue, but for now I do not have the time for that.

Mr. Gitonga: On a point of order, Mr. Speaker, Sir. Could hon. Busolo be asked to remove his point of information which is a distortion of facts from the records of this Parliament?

Hon. Members: Why?

Mr. Busolo: On a point of order, Mr. Speaker, Sir. I have been a former lecturer of history; I am a trained candidate for a doctorate in philosophy (Phd) in history. People are living on old history which shows that it is only the Kikuyus who fought for Independence. I am demonstrating that in fact, the first people to ask the *Mzungu* to go were the *Dini ya Msambwa* from Western Province. Secondly, new research shows because people have to follow up their literature - that there are new writings on the Mau Mau which demonstrate---

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

Mr. Speaker: Order! Order! Mr. Busolo, you are now agitating Mr. John Sambu over there. Now, if we continue with this debate of what tribe had done what, I can assure you several things. First of all, it is absolutely irrelevant to the Bill. Secondly, we are not likely to come to a consensus if we go tribal. Thirdly, it is likely to lead to very bitter disagreements. Fourthly, the Chair will not allow it to go any further. That concludes it.

Hon. Members: On a point of order, Mr. Speaker, Sir! What about it?

Mr. Speaker: Order! Order, hon. Members! I think to cut all this tribal---

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

Mr. Speaker: Order, Prof. Mzee! When we come out of the Committee Stage when the Bill is about to be read a Third Time, it is normally the time that the Chair can put the Question straightaway.

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

Mr. Speaker: Order, Prof. Mzee! I may throw you out now. I may have been inclined to allow debate for a little while, but since all of you became tribal--- I want to hear somebody from the Opposition side just to judge whether the debate is going to be national or tribal.

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

Mr. Speaker: Order, Prof. Mzee! Professor, you have no business to interfere with a Member who I have given the Floor.

Proceed, Mr. Kibaki.

(Prof. Mzee and Mr. Farah stood up in their places)

Mr. Speaker: Order! Prof. Mzee and hon. Farah, I am sorry. You should not think that you are much more important than any other Member of this House that you can have priority over any other Member. Proceed, Mr. Kibaki.

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

Mr. Speaker: Order, Prof. Mzee! I have on several occasions as the Chair reminded you and I will continue to do so, I think it does pay to have patience and it does pay to have a little respect for the Chair if for nothing else. You must have at least a little respect for the Chair. Once I have given another Member the Floor, even if you are "burning", give him at least a chance to speak and then you can stand. You do not expect to be discourteous to the Chair and expect to meet the responses of the Chair.

Proceed, Mr. Kibaki.

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): On a point of order, Mr. Speaker, Sir!

Mr. Speaker: Order! Until I have a word from Mr. Kibaki, I will not hear you.

Proceed!

Mr. Kibaki: Mr. Speaker, Sir, I rise to support the Third Reading of this Bill. It is very important---

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): On a point of order, Mr. Speaker, Sir. Unless there are Standing Orders that allow the Speaker to cut somebody out when he is contributing---

Hon. Members: Yes, he is right!

Mr. Speaker: Order! Order, all of you! I saw hon. Osogo sit down and I saw other Members standing. I assumed that you had finished. If you had not finished, I had not ruled you irrelevant neither have I ruled you repetitious. I do not think I have the right to cut you short, but I was under the complete impression that you had finished. If you do, I will revisit Mr. Kibaki.

The Minister for Regional, Land Reclamation and Water Development (Mr. Nyachae): On a point of order, Mr. Speaker, Sir. There is something which is worrying me a lot because the House is being misled over issues pertaining to history. We are serving this country as Members of this House. We are trying to attempt to change the history by accepting a misleading statement from hon. Busolo. We are going to affect the feelings of Kenyans.

Mr. Speaker: Order! Order, Mr. Nyachae! Mr. Nyachae, like every other Member, may have a point and the feeling I have about the mood prevailing in the House is that the House is not in a mood to go further into that history.

An. hon. Member: Put the Question, Mr. Speaker, Sir!

Mr. Speaker: Order! I have already ruled that I am not going to allow further tribalisation of debate because it is dangerous not only to this House---

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

Mr. Speaker: Order, Mr. Busolo! It is dangerous to continue with that debate. I will have nothing further to do with history. I am not a teacher of history. I actually do not know how history is made. So, those who want to have a little history, can go to the university. I have no doubt with the candidates. Can we hear hon. Osogo. Mr. Nyachae will have nothing to do with this debate anymore.

(Laughter)

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Speaker, Sir, I beg my friends on the opposite side of the House to allow me to make my contribution. Let me inform those hon. Members who were born after the struggle for Independence that, my argument is not based on written history but what I saw.

Prof. Mzee: On a point of order, Mr. Speaker, Sir. Hon. Osogo should conclude his contribution!

Mr. Speaker: Order, Prof. Mzee! May I just remind the House that debate on the Third Reading of a Bill is done with Mr. Speaker's consent. We have debated that Bill and we are actually revisiting what we have done. If the House proves to be impatient about it, then we may have to go to the conclusion of this Bill. I had given Mr. Kibaki a chance and hoped that the House would give him a chance. So, let Mr. Osogo conclude his contribution.

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Speaker, Sir, nobody will dictate to me to conclude my contribution.

Mr. Farah: On a point of order, Mr. Speaker, Sir. We clearly understand and appreciate that some of us are in a minority in the debate today. But, we would want to be heard. Could we tell the majority of this House to allow the debate to continue in a manner we can all hear one another? We from the NCEC would like to get an opportunity to contribute!

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. Being one of those people who are interested in the orderliness of this House, I have realised two things now. I wish to draw the attention of the Chair that there is likelihood of having disorder in this House. Standing Order No.83 demands that whenever Mr. Speaker Stands, all Members must resume their seats and the House must be silent. When the Chair called for order, some hon. Members here could go on interjecting! We must uphold the Standing Orders of this House. When Mr. Speaker is on his feet, the House must be silent! We have been here for almost five years now and we should understand that. The Chair should be strict on that.

*(Messrs. Falana and Gitau
consulted while standing)*

Mr. Speaker: Order, hon. Falana and hon. Gitau! I would like to respond---

Mr. Kairu: Send them out!

Mr. Speaker: Mr. Kairu, you are likely to find yourself outside this House!

First of all, I would like to respond to what Mr. Farah said. Mr. Farah, you will be given attention by this House, if you give other hon. Members the same attention. You will get respect from your colleagues if you respect them. If you have no respect for them, I have no doubt that they will have no respect for you and I cannot impose respect upon you from your colleagues. So, it is upto you to earn that respect from the House.

I wish to bring to the attention of the House the provisions of Standing Order No.112 which states as follows:

"On the adoption of a report on a Bill the Third Reading may, with the leave of Mr. Speaker be taken forthwith and, if not so taken forthwith, shall be ordered to be taken on a day named by the Member in charge of the Bill."

So, you must understand that the Chair can order forthwith, this very minute, that the Third Reading of the Bill be taken. So, can we, with that understanding, listen to Mr. Osogo?

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Speaker, Sir, I was winding up by informing the House and emphasizing on the possibility of a civil war in this country. I was informing the House that what I am saying is not contained in written history but what I practically saw. The last public meeting which I ever saw before the State of Emergency was in Kiambu. By then, I was working in Maragua, Murang'a, as Assistant Station Master. I was given a list by the late--

Mr. Speaker: Mr. Osogo, you are revisiting an issue that I have ruled on. I can assure you that you are now irrelevant to the Bill. So, can you try to be relevant?

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Speaker, Sir, I am trying to emphasize on the possibility of a civil war. When we had that meeting in Kiambu, the next day a state of emergency was declared and nobody can tell me not even any of them, that it was not a civil war when I know what happened in Lari to Chief Luther---

Mr. Speaker: Mr. Osogo, the state of emergency and civil war have nothing to do with this Bill. You

are irrelevant and, therefore, I have to cut you short.

Mr. Kibaki: Mr. Speaker, Sir, during the Third Reading of this Bill, I want to emphasize a point which I made earlier in the debate on this Bill. What is very important is the spirit in which these laws---

Mr. Mak'Onyango: On a point of order, Mr. Speaker, Sir. You will appreciate that the Bill before the House is a very important one. There are those hon. Members who are a party to this Bill because they drafted it. There are also those of us who are not a party to it. Will it be in order, if I ask the Chair to let those who are for this Bill to be on one side and those who are against it to be on one side?

Mr. Speaker: Order, Mr. Mak'Onyango! That is an absolutely frivolous point of order. You cannot by sheer wish change the Standing Orders of this House. The sitting arrangements of this House is controlled by the Standing Orders which state that those in Government will sit to the right of Mr. Speaker and those in the Opposition shall sit to the left of Mr. Speaker. It is not how you would wish it to be. So, can we hear Mr. Kibaki?

Mr. Kibaki: Mr. Speaker, Sir, in this particular Bill there is a provision that the functions of the Electoral Commission will be added so that they can give civic education to the citizens of this nation and also promote free and fair elections.

Mr. Speaker, Sir, one of the recommendations of the IPPG resolutions was that the media in Kenya, particularly the electronic media, should be utilised on a fair and equitable manner. As it is now, the Government is using the media to discredit the Opposition. They are using the radio and television to promote mischief and tell lies to the public of Kenya by trying to discredit the Opposition.

That does not reflect the spirit in which the IPPG was agreed upon. May I, therefore, appeal that after this Bill is passed, at least to show our people we are serious, the Kenya Broadcasting Corporation be instructed to follow what has been passed into law now, because as it is now, they are continuing with same old way of discrediting the Opposition and giving the impression that only the Government is doing anything. In fact, they do not even report what the Opposition is saying or doing. That shows that the goodwill we are seeking is not yet there and probably will never be.

Mr. Speaker, Sir, I know that the KBC television and radio can, in fact, promote goodwill in this nation. Those individuals who have talked about civil war do not know a thing about civil war and are not in a position, in my estimation, to organise any effective civil war.

(Applause)

I think we are wrong, to go on giving too much credibility to what they are saying and I believe personally that if what has been agreed upon, is applied in a very effective manner, we shall arrive at a society which is peaceful and ready for proper elections. I also want to say that it is important for---

Mr. Mulusya: On a point of order, Mr. Speaker, Sir. I have been listening very carefully to my Chairman, hon. Kibaki. He has said that those people who are saying that there is going to be a civil war, do not have capacity to conduct any civil war and that they should be disregarded. Is it in order for him to really underestimate an utterance from a Member whose ability has not been investigated and known to what extent he is able to disorganise and disorientate this country? Is it not in order for him to call upon the Government to investigate those people who are saying there is going to be a civil war, because there is nothing more in civil war because civil war is civil war?

Mr. Kibaki: Mr. Speaker, Sir, the point I am making is not like as I have been misrepresented by---

Mr. Icharia: On a point of information, Mr. Speaker, Sir. Do you realise that there is a stranger in this House in the name of Mr. Kamuyu? He should either be sitting on the opposite side or outside of the Chamber.

Mr. Kamuyu: Mr. Speaker, Sir, you realise that I am not a stranger in this House. I will continue sitting here until this House comes to an end. I only gave an intention that I will look for entrance into this House next time on a KANU ticket. Meanwhile, I will be on this side of the House.

(Loud consultations)

Mr. Speaker: Order! Order, all of you. Order, Mr. Icharia! You have nothing to be excited about all this. There is only one way known to Mr. Speaker, upon which a Member, other than death, declaration of bankruptcy, or through an application, or dissolution of the House, can lose a seat, and that is by resignation duly delivered to Mr. Speaker. In the event of Mr. Speaker having not received any resignation letter from any Member, we can treat every thing else as rumours. **Mr. Kibaki:** Mr. Speaker, Sir, I am going to repeat the point I was making so

that the hon. Members can get it quite clearly. What I am saying is that what we need in this nation is for the Government to implement the IPPG resolutions and the law which we are passing in this Parliament. By doing so, we shall create a climate for the co-operation we are seeking in the Bill. I have said that we should not get diverted by people who are talking of civil war. Kenyans do not want civil war, and there are no Kenyans who are prepared at all to take up arms and go to civil war. So, they want a peaceful change and we are showing the direction for that peaceful transition. In order for that transition to be effective and to be proper, the Government must implement what it promised to do.

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

Mr. Speaker: I have not given you the Floor!

Mr. Obure: Why?

(Laughter)

Mr. Speaker: Order, hon. Obure! Proceed, Mr. Kibaki!

Mr. Kibaki: Mr. Speaker Sir, I will be very grateful if the hon Members---

Mr. Obure: On a point of order, Mr. Speaker, Sir. You realise that I have not had a chance to speak on these reforms, although I am a Member of the IPPG. But I think I have a right to be given an opportunity to speak because I represent my constituency. In that respect, I have very high respect for our Chairman, hon. Kibaki, but is he in order to imply that there would be no civil war in this country when at the moment we have civil war brewing? In fact, five of my people were butchered in my constituency and we do not know who killed them to date. Nobody has been arrested in that connection.

Mr. Kibaki: Mr. Speaker Sir, I am saying that the Government should take action, of course, to stop the fighting at the border of the two districts. This is normal action by Government which should be taken, just as the Government should stop what is happening in Likoni, instead of promoting it. If they have failed, they should resign. A government which cannot keep law and order it is no longer a government. That is by normal definition of what a government should be. But I want to warn those who want to organise civil war, that Kenyans do not want civil war, and they will not be drawn into fighting any civil war. What we need is implementation of these resolutions, starting with what we have passed into law. In this case, the KBC must begin to educate Kenyans on what we have passed and what their rights are. The Government must allow that freedom to the KBC. It is the only way we are going to succeed, and to show that we mean business.

Equally, Mr. Speaker, one of the agreements in the IPPG package was that all political parties should be registered. So, the Government must register the SAFINA Party. They have given no reason for not registering SAFINA. Equally, they have give no reason for not registering IPK also. The Government must come out and give that reason. Mr. Speaker, Sir, we cannot afford to have a Government that accepts the IPPG package and then refuses to implement the package, because the credibility of the whole package is being destroyed in the eyes of the people, That does not help anyone. So, all those who are supporters of IPPG must continue to insist that these resolutions and these laws be implemented in a conscientious manner, expeditiously and effectively.

Mr. Anyona: On a point of information, Mr. Speaker, Sir. It is very important that we get facts right. As Secretary of IPPG talks, the recommendation on the registration of political parties was that the parties should be registered forthwith, if the applications comply with the provisions of the Societies Act. If they do not comply, then those parties should be informed in writing immediately, so that they can either appeal to the Minister or go to the High Court to seek redress. In the Sessional Paper that has been prepared by the government which will come before the House, that statement has been included and the Registrar has made a statement to that effect. I think it was important we get these facts correct. Thank you.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): On a point of order, Mr. Speaker, Sir. Normally, at the Third Reading, we are only required as hon. Members to make very few remarks. As it is now, some speakers have actually taken this as if it were the Second Reading, and to that extent, other speakers who would have wanted to make their remarks have been denied the opportunity. For that reason, I wish to seek your request, so that the Government too will have an opportunity to make a few remarks on what may very well have been made from the other side.

Mr. Speaker: Order! Order. My direction is this: The Motion is undergoing its Third Reading and under the Law, I could have straight away, ordered for its Third Reading to be voted for. But, I had given time for few Members from both sides of the House to contribute before the voting. I would urge Mr. Kibaki to conclude his remarks, and then I willforth with comply with Standing Order No. 112.

Proceed, Mr. Kibaki.

Mr. Kibaki: Mr. Speaker, Sir, I am---

Prof. Mzee: On a point of order, Mr. Speaker, Sir. It is apparent that some people would not be allowed to give their views on this Bill today. It has been pointed out to you that there are people with divergent thoughts from those you have given the opportunity to contribute to this Bill. Therefore, we beg you, that, before you close the Third Reading of this Bill, you allow others with different opinions to speak, so that all Kenyans can know what they think about this Bill---

(Laughter)

Prof. Mzee: Mr. Speaker, Sir, we should not fear to hear the views of such people. You should allow some of us to contribute to this Bill as well.

Mr. Speaker: Order! Order, Prof. Mzee. I have read the Law and passed it to you. It is the duty of the Chair, not yours, to follow and comply with the dictates of Standing Order No. 112, which I intend to do immediately after Mr. Kibaki finishes contributing. Proceed, Mr. Kibaki.

Mr. Kibaki: Mr. Speaker, Sir, I conclude my remarks by emphasising that, if we are to be taken seriously, the whole of IPPG package should be implemented, starting with the issue of publicity on the KBC radio and registering all political parties. There should be no delay by directing applicants to go through, with their appeals, to the Attorney-General or the High Court; all these are purely signs of sabotage. This ought to be a straight-forward case. If President Moi does not intend to authorise the registration of the yet-to-be registered parties, he should just say so publicly.

Mr. Speaker, Sir, with those few remarks, I beg to support.

Mr. Speaker: Order! Order. Hon. Members, I am satisfied that, in accordance with Standing Order No. 61, there is a quorum necessary to dispose of this Bill. Therefore, in accordance with Standing Order No. 122, I do now direct that the Division bell be rang for five minutes, and after that, I will put the Question and request the Members to proceed to Division. Can, now the Division bell be rang?

(The Division Bell was rung)

Mr. Speaker: Order! Order, hon. Members! The five minutes are over. Now, I will order that all the doors be closed and we shall proceed to Division, but before we do so, I wish to announce the Tellers. The Tellers for the Ayes will be hon. Henry Obwocha and hon. Mohammed Shidie. The Ayes will proceed to vote in the booth on my right. The Tellers for the Noes will be hon. J.J. Falana and hon. Norman Nyagah. They will proceed to vote in the booth on my left. The abstentions will record their names with the Clerk. You are not obligated to vote either way. Proceed.

DIVISION

(Question put and the House divided)

(Question carried by 141 votes to 23)

AYES: Messrs. Abdi, Achieng-Onoko, Achuka, Ali, Aluoch, Angatia, Angwenyi, Anyona, Arte, Mrs. Asiyo, Messrs. Awori, Ayah, Badawy, Barmasai, Boy, Busolo, Chebelyon, Criticos, Ekidor, Falana, Galgalo, Dr. Godana, Messrs. Gumo, Imana, Kagwima, Kaino, Kairu, Kamotho, Kalweo, Kamuren, Kamuyu, Kapten, Ms. Karua, Messrs. Kavisi, Khalif, Kibaki, Kiliku, Col. Kiluta, Bishop Kimani, Messrs. Kinyua, Kirima, Kirior, Kirwa, Kisiero, Dr. Kituyi, Messrs. Kochalle, Koech, Kofa, Komora, Kones, Kosgey, Khaniri, Leshore, Ligale, Lotodo F.P.L., Dr. Lwali-Oyondi, Messrs M'Mukindia, Magwaga, Dr. Manduku, Messrs. Manga, Manoti, Masinde, Mathenge, Maundu, Mbela D.M, Mcharo, Dr. Misoi, Messrs. Mohamed A. Mohamed H.M, Moiben, Mokku, Dr. Momanyi, Messrs Morogo, Muchilwa, Mudavadi, Mukora, Gen. Mulinge, Messrs. Mulusya, Mumba, Mungai J.N., Mungai R.K., Munyasia, Muoki, Murungi, Musyoka, Musyoki, Mutahi, Mutani, Mutinda, Mutiso, Mwamzandi, Mwaura, Mwavumo, Mrs. Mwendwa, Messrs. Mwiraria, Nang'ole, Nassir, Mrs Ndetei, Messrs. Ndilinge, Ndotto, Ndwiga P.N., Ndzai, Prof. Ng'eno, Messrs. Ngala, Bishop Njeru Noor, Nthenge, Ntimama, Nyachae, Nyagah, Mrs Nyamatto, Messrs Obure, Obwocha, Oduya, Dr. Ombaka, Messrs. Osogo, Otieno, Prof. Ouma, Messrs. Oyondi R.O., Rai, Prof. Saitoti, Messrs. Sajjad Sambu, Sankori, Shabaan, Shamalla, Shidie, Shikuku, Sifuna, Sing'aru, Sumbeiywo, Sunkuli, Bishop Tanui, Mr. Titi, Dr. Toweett, Messrs. Tuya, Wamae, Wamalwa, Dr. Wameyo, Messrs Wawire and Wetangula.

Tellers of the Ayes: Messrs. Obwocha and Shidie.

NOES: Messrs. Akumu, Farah, Gatabaki, Gitau, Gitonga, Icharia, Karenga, Dr. Otieno-Kopiyo, Messrs. Mak'Onyango, Maore, Mbeo, Michuki, Prof. Mzee, Messrs. Ndicho, Ndubai, Nyanja, Prof. Anyang'-Nyong'o, Dr. Odinga, Messrs. Ogeka, Ojode, Onyango, Orengo and Ruhiu.

Tellers of the Noes: Messrs. Falana and Nyagah.

ABSTENTION: Ms. Wanjiru.

BILL

Second Reading

THE CONSTITUTION OF KENYA REVIEW COMMISSION BILL

(The Attorney-General on 14.10.1997)

(Resumption of Debate interrupted on 30.10.1997)

Mr. Speaker: Prof. Anyang'-Nyong'o, you were on the Floor.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, as soon as the House is in order, I will continue speaking. Last week, when we rose, I was speaking on the Constitution of Kenya Review Commission Bill, 1997. I had just commended the Attorney-General for having stated that the reason for bringing these amendments is to bring about a Constitution that can stand the test of time. It is precisely because we want the Constitution that can stand the test of time, that I myself voted against the Constitution of Kenya Amendment Bill, 1997 because one of the clauses cannot stand such a test.

(Loud consultations)

Mr. Kamuyu: On a point of order, Mr. Speaker, Sir. I hope you do realise that many hon. Members are standing all over the place consulting each other---

Mr. Speaker: I am sorry, I cannot even hear you!

Mr. Kamuyu: Mr. Speaker, Sir, you cannot hear me because there is a lot of loud consultations going on. Hon. Prof. Anyang'-Nyong'o is making an important contribution---

Mr. Speaker: Order! Proceed, Prof. Anyang'-Nyong'o.

Prof. Anyang'-Nyong'o: Thank you, Mr. Speaker, Sir. I was saying that in establishing the Constitution of Kenya Review Commission Bill, 1997, and in charging it with the duties of trying to give to the people of Kenya a chance to establish a Constitution that will stand the test of time, that is one of the most important reasons of revisiting our Constitution and re-writing it a new.

Mr. Speaker, Sir, last time I was referring to one of the functions, powers and privileges of the Commission and Commissioners. The functions of the Commission shall be, among other things, without prejudice to the generality of paragraphs "a", "b" and "c", to facilitate constitutional governance and a respect for human rights in Kenya as an indispensable and integral part of the enabling environment for economic, social, political and cultural development.

Mr. Speaker, Sir, I want to talk about this enabling environment. During the IPPG discussions, we talked about ethics, the responsibilities of political parties, hon. Members of this House and the political parties we represent in this House, establishing an enabling environment to ensure that Kenyans can have free and fair elections. But as I speak here today, the ruling party, KANU, is determined not to have an enabling environment in this country for free and fair elections. I will give you a recent example. Over the weekend, I was in my constituency. On Saturday 1st November, 1997, at 11 o'clock, in Holo Market, two thieves were arrested by the people. These thieves had already been freed by the police and they were apprehended by the people. They confessed to the people of Holo Market, which is a very important market in my constituency that they had a contract in the constituency with a person who was responsible for organising their stealing sprees in Holo Market and the environs.

They were frogmarched to this contact's home and in that home on Saturday at 2.30 p.m., they were set on fire and burnt to death. I learnt about this at about 5.00 p.m. on Sunday. I could not go to that home until 8.30.

p.m. I went and did witness that, two thieves had been burnt to death. At that point in time, neither the chief, the assistant chief nor the police had reported to the scene. I was told that over the weekend, the chiefs were busy distributing money in markets, in funerals and so on, given to them by KANU operatives. Among those KANU operatives is a nominated member of this House. This cannot augur well for an enabling environment for free and fair elections. If money is already being distributed to the people and the chiefs and their assistants are not observing their responsibility which the IPPG said should be maintaining security, law and order and here were two thieves burnt to death--- Even up to yesterday, I went to Kisumu to collect a journalist to go and report from the scene. By 2.00 p.m., when were we leaving the scene, the police had not been there, the chief had not been there nor the assistant chief because they are pre-occupied with distributing money in my constituency, so that KANU can win elections. This is not democracy. This is the plutocracy I was talking about. We must ask ourselves where this money is coming from. If this money is being given freely to people, it must come from somewhere. When I said some time ago that money was being printed in State House, people did not take me seriously. But this money is being printed somewhere and being distributed to the people to mess up this economy. If this economy is messed up, we are not going to have an enabling environment for any democracy at all.

Mr. Speaker, sir, I reported to this House last week that ADC farms in Muhoroni had been parcelled out, so that people sell them and have money for elections. We cannot have our cake and eat it at the same time. Either we want democracy, good governance, an enabling environment for democracy or we do not. For all I can see in my constituency in particular, if it is a good representational constituency in this country, KANU is not interested in that and they should be told, clear and simple, that what they are doing is to mess up this country so that even if we have this review commission thing, it is not going to help us, because the country is being messed up. The shilling is going down. It is now exchanging at the rate of Kshs70 to the US Dollar and the Minister for Finance cannot do anything about it. This is because the Treasury is not controlling the economy. The economy is being controlled by plutocrats who will import sugar without duty, who will begin selling property at inflated prices and this is what is messing up the economy. Therefore, when we are talking about this thing, we should be very serious and understand that good governance begins with the people in power doing the right things but at the moment, the right things are not being done.

Mr. Speaker, Sir, we also did speak of the fact that part of the new political culture we should have in this country is the culture of transparency. But surely, economic power should not be mixed with political power. His Excellency the President said over the weekend, and it was reported in Sunday papers--- It is very important that this story appeared on a Sunday because Sunday is a holy day for Christians and I suppose the President is a Christian, because he goes to church every Sunday. It was reported in the Sunday newspapers that the President has got only two plots in Nairobi. This is a misrepresentation of the truth. The truth is that the properties are more than two and it is sad that this story appeared on Sunday, a holy day for Christians.

Mr. Ogeka: On a point of order, Mr. Speaker, Sir. You have heard it directly from the hon. Peter Anyang'-Nyong'o, that the President has more than two plots in Nairobi. Could he substantiate to confirm that what he is saying is correct and not a mere allegation?

Mr. Speaker: What has this got to do with debate in the first place? Is it wrong anyway, even if he had more than two plots? Prof. Anyang'-Nyong'o, you have actually become very irrelevant because you are talking about the Treasury, the President and you are no longer talking about the Constitution of Kenya Review Commission Bill. So, you are being warned to be relevant.

Prof. Anyang'-Nyong'o: Mr. Speaker, Sir, I will now move to page 537 of the Bill which talks about the functions, powers and privileges of the Commission and commissioners. Section (d) (ii) reads as follows:-

"To examine and recommend improvements to the existing constitutional commissions, institutions and offices and the establishment of additional ones to facilitate constitutional governance and the respect of human rights in Kenya as an indispensable and integral part of the enabling environment for economic, social, political and cultural development."

Part of the enabling environment to implement this function of the Commission is that those who lead the country must lead by example. You cannot run away from that. Those who lead the country must lead by example and that example must begin by His Excellency the President, the Member for Baringo Central. I am not irrelevant at all!

Mr. Speaker: Prof. Anyang'-Nyong'o, do not argue with the Chair. Continue now, I have made my ruling.

Prof. Anyang'-Nyong'o: Now, the point is that I made it very clear last time that one of the most important enabling environment for any form of constitutional governance is that, the principle of citizenship must be established in the new constitution. That principle of citizenship begins with the fact that every Kenyan

citizen must have something in common with other citizens. If, indeed, there are such gross disparities in the society, either in terms of economic power or political power, then some Kenyans are rendered non-citizens by that very fact. So, part of the enabling environment that will make us have a democratic and constitutional governance in this country is the fight against poverty. At the moment, 13 million Kenyans live below the poverty line while a few Kenyans in political power possess so much wealth and property, evade taxation, subvert the laws of the land in the name of political power, to the extent that this so-called enabling environment we are talking about here cannot be established while they are in power. It is like a tenant fighting against the landlord over rent. The landlord will go to court and say the rent be increased, the tenant will insist he is staying in the house whatever you say, until there is arbitration. Now, obviously this Government is a tenant and you can have all these reforms and so on, and they will insist on staying in the house and that is what is happening.

I am saying that when we come to reviewing the Constitution, one of the things that should be enshrined in that constitution is: To what extent are we going to have constitutional governance with gross disparities in terms of economic positions in society, to what extent can we have a constitution which says that Kenyan citizens will enjoy a certain minimum standard of living so that they, as citizens, can have a certain common denominator among themselves? In other words, it is impossible to have proper constitutional democratic governance without some amount of social welfare state; a state that will ensure that public resources and wealth are used to bring all citizens to a certain minimum standard of civilised living. That kind of state will never be established through Harambee system. We have tried it for 30 years but it has not worked. It has become a source of corruption, it has become a source of depletion of people's power for domestic savings, it has become a sort of uneven development in our nation.

In the new constitutional dispensation, one of the things which we must establish is a principle which will ensure that a democratic constitutional Government goes hand in hand with a certain amount of a social-welfare State funded from our resources and from the work of our people. I think this is very important because a Constitution is not just about political affairs. But as this paragraph says and I commend the Attorney-General for it, an enabling environment for economic, social, political and cultural development is necessary to be enshrined in our Constitution. That is why I am making those points.

Mr. Speaker, Sir, in part III, again Clause 10 (d)(iii) of the proposed Bill says:

"Without prejudice to the generality of paragraphs (a), (b) and (c), the functions of this Commission shall be: To examine and make recommendations on the Judiciary generally and in particular the establishment and jurisdiction of the courts, aiming at measures necessary to ensure that the competence, accountability, efficiency, discipline and independence of the Judiciary."

Mr. Speaker, Sir, recently, Justice Richard Kwach made a very important comment. He said that certain members of the Judiciary have been so compromised by this plutocratic political system that they can no longer dispense justice, and that something should be done to ensure that in future, the Judiciary is, indeed, independent of the Executive, and that men and women are appointed to the Judiciary who can, indeed, dispense justice freely and fairly. Why is it that our Judiciary has been so compromised? Our Judiciary has been compromised because of one thing and this is something that must be faced squarely in the review of our Constitution. That thing is the establishment of a presidential authoritarian system in this country since Independence. It was started by Mzee Jomo Kenyatta and it was perfected by President Daniel arap Moi.

Mr. Speaker, Sir, we must, in the new Constitution, ensure that we are not any more enslaved by this presidential authoritarian system. From the moment the new Constitution comes into being, no President in the Republic of Kenya should be a demi-god. No President should have the power of taking a green pen and signing a piece of paper and bequeathing to an individual thousands and thousands of acres of land of Kenyans. No President should have the power of taking a pen and signing the wealth of a country to the head of a parastatal. No President should have the power of using the patriarch of this nation as if it is his backyard. This is what has happened over the past 30 years and it has messed up planning in our cities, Ministries and the Judiciary. It has messed up the Presidency because the President no longer has the respect of Kenyans. Kenyans fear the President. So, one of the things that must happen in a new Constitution is that the Presidency must become an institution for democratic Government and not an institution for personal wealth and power.

Mr. Speaker, Sir, no President should in the future have the freedom to appoint Justices of the High Court by himself and to call them to be dismissed at his will. I understand that when you are appointed the managing director of a parastatal or a Minister, you are required to sign a letter of resignation which is released any day the President wants to fire you. This is not democratic governance at all. This is governance by intimidation. This is one of the reasons why the Judiciary cannot exercise independence because they are appendages of the President. I am not saying that we have a weak Presidency, but we should have a Presidency that is subject to the

laws of the land; a Presidency that is an institution of democracy, not a passage way for the exercise of personal power.

Mr. Speaker, Sir, one of the ways in which the Judiciary can exercise its powers with competence, accountability, efficiency, discipline and independence is, by having a Judiciary which is properly controlled by the Judicial Service Commission, properly remunerated by the Judicial Service Commission and properly given their own terms of service plus benefits by the Judicial Service Commission so that no judge kneels before any politician for material gain. Somebody who is exercising justice should free himself or herself from the day to day tragedies of life so that they are there to exercise their minds on issues of law and justice, not on issues so mundane that a High Court judge has to go to City Hall to find out why his water was disconnected and has to be subjected to the indignity of having to bribe a clerk because these institutions are not working. This is one of things why our society is so poorly run. People, who are exercising important responsibility to the society, beginning with the clerk in the post office to the President himself, are so much subjected to rent paying everywhere they go to get services from Government offices, that in the final analysis, no proper institution work.

So, I am saying that in the new Constitution, we should have a Judicial Service Commission for those officers who work in the Judiciary just like a Parliamentary Service Commission for those who work in Parliament. This Parliament is one of those areas where employees are intimidated to no end. We cannot have a Parliament that is passing good laws if the people who work in Parliament itself do not feel that there are laws here which govern this institution properly. If we are going to have a Judicial Service Commission to regulate the affairs of the Judiciary, we should also have a Parliamentary Service Commission that will ensure that this Parliament functions autonomously of the Executive. Parliament as an institution cannot be confined to the National Assembly in Nairobi. It should spread its activities to Kenya's major towns and cities where Parliament can go, hold commission hearings and have its own institutions. It would not be necessary to appeal to another department of Government to help the Public Investments Committee (PIC) when it holds a meeting, for example, in Mombasa. If we had a Parliamentary Service Commission which was properly established, it would know that the Public Investments Committee and Public Accounts Committee occasionally have to move to other parts of Kenya to have hearings. Therefore, Parliament will have those institutional arrangements to ensure that these Committees work properly, but at the moment, this Parliament functions as if it is somebody's kiosk.

[Mr. Speaker left the Chair]

*[The Temporary Deputy Speaker
(Mr. Kariuki)]*

We have in the PIC, for example, recommended during our meetings that these employees should get some allowances, but the matter has been vetoed by the Clerk as if he is an emperor in these Buildings. If we had a proper institutional mechanism of running this Parliament, the Clerk himself would not behave like his boss; the President, in the same imperial way. Things are done by the Committees and yet they are dismissed. This is the kind of governance that we do not want. I hope that when this Commission has completed its work, we will realise that a democracy works through institutional arrangements not through personal privileges as we have been doing since Independence.

Mr. Temporary Deputy Speaker, Sir, the fourth function which is equally important is to examine and review the place of Local Government in the constitutional organisation of the Republic of Kenya.

In 1993, we held "the Nairobi we want Convention" and "the Kisumu we want Convention" and recommendations were extensively made on how the Local Government can be strengthened. These documents were eventually picked up by the Omamo Commission. The Omamo Commission made extensive recommendations on the strengthening the Local Government, on the decentralisation of the authority; the devolution of power; away from the present autocracy of the Ministry of the Local Government, to real grassroot democracy, as envisaged in the two documents: "The Kisumu and Nairobi we want Conventions" which, thankfully, were picked up by the Omamo Commission.

Mr. Temporary Speaker, Sir, I do not understand why we are so fond of appointing commissions and yet we never act on their recommendations. When was the Omamo Commission appointed? It must be over two years ago. The Seventh Parliament is now coming to an end and the Omamo Commission recommendations have not been brought here. This is really the art height inefficiency by this Government. When it was appointed, somebody must have had the good sense that we are appointing this Commission, it will work for so many months, it will present its report to Parliament to be discussed. They must have known that the Seventh Parliament will be coming to an end in 1997. The other day, I was talking about it with somebody in the Government, who

said; "Well, you know it was taken to the Cabinet, a Cabinet Committee was established and it has been studying it and a document has been sent to the Attorney-General and we are studying it." That is absolute balderdash. We know that those processes take place, but those are the processes which should have been factored in, when the Commission was being appointed. The only saving grace, I would like say is that, the Attorney-General will now stand and say "well thank goodness, they never put the report before Parliament, because we can now incorporate it in the review of the Constitution." Good, but it does not excuse you from the poor governance you have been undertaking for the last two years since you appointed the Commission. It means that the KANU Government has no sense of planning because to plan is to choose. When you are choosing, you never choose to go backwards, you choose to go forward. I have always said that this Government governs by retrospective considerations. You realise that we should have done that in 1992, and suddenly you say that, "things are catching up with us and let us do it now." It was shown by how grateful the IPPG was when they started saying, "oh this thing has been long overdue; Oh, we would have done it. Oh, what not---" But why did you not do it earlier? It is precisely because of this poor planning in terms of governance. But why did they plan poorly? This is because each one of them is involved in very painful calculation on how he is going to make the next shilling the next day. Not in good governance! Forget it! If Kenyans think that by some kind of calculation, KANU will come back to power again with some coalition and with some people and so on, then you are in for a lot of trouble. This is because if you have this Government again in another coalition, this country will never see industrialisation by the year 2020, as they are saying. We shall continue being in a process of decay and that decay will go on for decades and decades. So, the challenge is really on us, the Opposition. We should get our political act together and do Kenyans one favour in 1997; get rid of the Government of Daniel Toroitich arap Moi, once and for all.

Mr. Temporary Deputy Speaker, Sir, the fifth function says:-

"To examine and review the place of property rights and land, including private, Government and trust land, in the Constitutional framework and law of Kenya and to recommend improvements that will secure fullest enjoyment of land and other property rights."

This is one of the functions of that Commission that I love most because land is one of the most useful and important heritage that every Kenyan values. This heritage was given to us by God. Indeed, in the book of Genesis, God did command our forefathers; Adam and Eve to take care of God's creation until they will be called to Heaven to account for their deeds. I do not know what the KANU Government will do, when God finally calls them to Heaven to account for their actions of the use and misuse of this heritage, in all its aspects. That is why I was referring to the President's remarks that he has only two pieces of plots in Nairobi, which is a misrepresentation of the truth.

Mr. Temporary Deputy Speaker, Sir, The Government Lands Act, is one of the most awful Acts in our Law Books. It is very awful and terrible, because it gives two people the power to dispose of land in this Republic. Those two people are His Excellency the President and the Commissioner of Lands. For the last 20 or so years, His Excellency the President has been, Daniel Toroitich arap Moi and the Commissioner of Lands has been for most of the time, Mr. Gachanja. God will one day call these people to account for the use of this heritage in the Republic of Kenya because they have not looked after this heritage in the way that God commanded Adam and Eve. He told them, "do it so that all my creation can enjoy what I have created and given to them freely."

The Constitution of Kenya should have commanded these two people, since they are given the powers to dispense land, to administer in such a way, because it is free, that all Kenyans can enjoy it by the fact that they are citizen of Kenya. If, indeed, the acquisition of land requires that its value be determined by the amount of labour the individual has put into it, which is true, then indeed, its value should be determined by the amount of labour that the individual has put into it.

Mr. Temporary Deputy Speaker, Sir, when I was the Chairman of the Public Investment Committee, we did discover that the National Social Security Fund (NSSF) bought land in Upperhill for Kshs30 million; land whose market value was Kshs7 million. The owner of that land was given that land through Presidential consent.

All that individual did was to pay the rates that were outstanding which did not amount to more than Kshs200,000. This means that from the NSSF, the Kenyan worker whose money is in the NSSF, lost Kshs23 million given to this individual who is politically correct. That was not all. The total pieces of land which were bought by the NSSF, where Government land was given to individuals, who then sold this land to the NSSF, were 48 pieces of land, in Nairobi alone. The amount of money that the NSSF lost by paying for this land way above the market value, was Kshs1.8 billion. Who is responsible? Those two people are responsible.

Mr. Temporary Deputy Speaker, Sir, when we come to write the Constitution afresh, I would like this paragraph to be taken very seriously because using land as a political weapon to buy support so as to solidify this plutocratic political system--- We do not want such a thing to happen in the Republic of Kenya again.

Mr. Temporary Deputy Speaker, Sir, let it end with this regime, because Kenyans cannot afford to see the

National Social Security Fund (NSSF), that looks after a lot of workers' money, to be used in building them houses, provide a health insurance scheme and an education insurance fund - because that is what happens in other countries - being used to fortify deep plutocracy by NSSF, by buying land at bad market prices, so that these people can have money to "buy" people during elections, so as to stay in power. Then they say that they want free and fair elections. It cannot happen. It is just a dream because the habits they have learnt are just too bad.

Mr. Temporary Deputy Speaker, Sir, I am really pained that about 2 months ago, I wrote an article in the *Sunday Nation* newspaper which pointed out that the privatization system in this country is being used to take public assets and put them in private hands at throw-away prices. Mr. George Mitine who is the Investments Secretary bought advertisement space in the newspapers refuting what I had said. Then on 17th October, 1997, the Minister for Home Affairs and National put a gazette notice, gazetting 40 houses in Nairobi and Mombasa as national monuments so that they cannot be bought by anybody. Later on, he realised that all those houses had been sold cheaply to individuals, and arrangements had been made between Prof. Musuva, the then Managing Director of Kenya Railways Corporation, and His Excellency the President. The Minister for Home Affairs and National Heritage, under whose Ministry these houses fall, did not know. What appeared was only the gazette notice and the houses were gone. This is the danger of having this plutocratic system. I hope that, when this particular function of the Commission is put into effect, we shall see the last of such things.

Mr. Temporary Deputy Speaker, Sir, although this Parliament is ending, I would like to urge the next Parliament to pass a privatization and economic reform Bill, bringing the privatization process within the legal order. In Uganda, they did it. But here, we are doing privatisation without any legal framework whatsoever. That is why any Managing Director can sell houses, land and so on without referring to this Parliament and, yet, these things belong to the public domain. These parastatals were established by Acts of Parliament. You cannot privatise the property they own without changing the law. Yet, this has been happening. We have said it in the Public Investments Committee. Some of us have even written it in the newspapers and talked about it in this Parliament. But those characters on the other side of the House take wool and put it in their ears and just sit tight.

Mr. Temporary Deputy Speaker, Sir, people of this Republic are so ashamed of us because they can see their national heritage being acquired by a few individuals in the Government. They have a Parliament which should speak about it. That Parliament speaks in the voice of a few individuals, but nobody listens. This is a very sad thing.

Mr. Temporary Deputy Speaker, Sir, I know that currently, all kinds of KANU Members of Parliament are being given plots of land all over the place to sell and put money in their pockets for the campaigns. One of these days, when a proper Government will be in place, and since these issues are never forgotten, we shall have a truth and reconciliation commission to look into these matters, so that fairness is seen to be done. They may think that they are going to get away with it, but I think one of these days, we shall have this commission, like it happened in South Africa, to look into these issues so that the national heritage of Kenyans is fairly shared.

Mr. Temporary Deputy Speaker, Sir, in Clause 6, one of the functions of this Commission is to examine and review succession to power and recommend a suitable system for the smooth and dignified transfer of power after an election, which results in a change of government. In the present Constitution, this is not catered for. I do not know whether Kenyans are confident, that should an election be held, whether in a hurry, and President Moi is defeated and - KANU thinks otherwise, but I know he will be defeated - a new President, hon. Charity Ngilu, comes to power, whether they like it or not; wapende wasipende atakuwa katika Ikulu; is that tenant going to leave State House? Kenyans fear that plans are afoot-- The other day, from nowhere, Kihika Kimani started talking about succession. I have not heard of Kihika Kimani for the last four years. How come, all of a sudden, he is talking about succession? Is he alone? The hon. Anyona comes with a Bill for a coalition government. I do not know whether that coalition government is going to come into being when the life of Parliament is extended. All kinds of arithmetic are being worked on, on the other side, because they are running scared of hon. Charity Ngilu. That is why so many proposals are coming from all over the place.

Mr. Temporary Deputy Speaker, Sir, this part of the functions of the Commission is very important. I was in Zambia when Kaunda was defeated. He did not know he was going to be defeated. We were there as election observers at Pamoothi Hotel. I was in the Carter team and we knew Kaunda was going to be defeated. So at midnight, the former US President, Jimmy Carter went to see the Chief Justice to establish what should be done. At 3.00 a.m., they went to see Kaunda and persuaded him that he should make a statement conceding defeat. I must say Kaunda is a gentleman unlike some of the characters we are seeing around here. He saw the figures and accepted that he was being defeated. At 3.00 a.m., almost Sunday morning, he broadcasted a message on TV and radio conceding defeat. At 9.00 a.m., on the steps of the High Court, President Chiluba was sworn in. I think it is within the precincts of the High Court; the quadrangle, where somebody should take power because that is the feet of justice; the fountain of justice is over there. Although in Kenya, it is not the fountain of justice. It is more or less

a quadron of repression and manipulation. But we are going to clean it up. It will be a fountain of power when we come to power.

Mr. Temporary Deputy Speaker, Sir, when hon. Daniel Torotich arap Moi is defeated, the new President should be sworn in, in front of the High Court. There is enough space and the Statue of Mzee Kenyatta is overlooking it. I would like Mzee Kenyatta's Statue -may God rest his wonderful soul wherever it is - to watch a new era. We do not want to turn our backs to Parliament and the High Court like we do at Uhuru Park. We would like to go and sit between the High Court, Parliament and the Attorney-General's Chambers, so that these nyayo errors go and a new beginning sets in. That is what I am deeming for. We shall give all these people their pensions. But those who have committed errors, their faults will be found by the truth and justice commission so that Kenyans will know who grabbed what land and who bought shares in companies they never invested in, which they do. They have shares in all kinds of companies and they never put a cent in them. They have clearing and forwarding firms and yet they know nothing about clearing and forwarding. They are just clearing our wealth without knowing where it comes from. They have all kinds of freight companies whose offices are non-existent and yet, they enjoy the wealth. This is the bad thing about a plutocracy.

Mr. Temporary Deputy Speaker, Sir, this is the beginning of plutocracy. We want that Truth and Justice Commission to establish the fountain of justice once and for all. So, it is very important that when the new Constitution comes into being, this handing over is done smoothly. This is because the American system is very good. When the late Kennedy was shot, Lyndon Johnson was sworn in when he was in the Air Force one. There was no space whatsoever left for uncertainty. This is what we want; efficiency, smoothness with some certain amount of certainty.

Mr. Temporary Deputy Speaker, Sir, the seventh function is:

"To examine and recommend on the treaty making and treaty implementation powers of the Republic and any other relevant matter to strengthen good constitutional Government and the observance of Kenya's obligations under international law".

Now, in our law books, we have something called the Foreign Loans Guarantees Act which expects this Government--- I do not know why this microphone has not been properly adjusted. I think somebody is trying to play havoc with my voice because he wants to sabotage what I am saying. That Foreign Loan Guarantees Act ensures that before the Kenyan Government contracts any loan, it should be approved by Parliament and the size of the loan should be stated. When we were in the Public Investments Committee, we discovered several instances when this was never done. The other thing is to do with local credit. Before there is a certain amount of domestic borrowing, that should be approved by Parliament. The other day this same Government wanted to get Kshs4.5 billion to write off the liabilities of Kenya Airways, without bringing that matter to this Parliament. In the end they did it without bringing it to Parliament. It was the first Sessional Paper which was brought here and we rejected it, but in the end they went ahead and did it. This happened to other foreign loans too. It also happens to a lot of treaties which are signed by this Government without the approval of this House.

Mr. Temporary Deputy Speaker, Sir, I remember at one time when the ECOWAS Treaty was being signed and the Senegalese Government was there negotiating, they told the people: "No, we must go back to the Senegalese Parliament and let the Parliament approve it before we sign this thing". The President of Senegal refused to make any step until he went back to his own Parliament. It is very, very important that in matters of foreign treaties and foreign contracts, since this Assembly is sovereign, the Government should not do anything without exercising the sovereignty given to it by this Assembly. This is one of the things that has made this Government perform so poorly in international relations. Another thing is that we do not have a Foreign Relations Committee of Parliament which is very important and we have been independent for 30 years conducting all kinds of foreign contacts. Without superintendency by this Assembly in matters of foreign affairs, the Kenyan Government performs very poorly. For example, Kenya prides itself as being a very important country in Africa, but go to these international organisations and try to count the number of Kenyans who are holding key positions in these international organisations. You will find that they are very few. Why? This is because our weight is not felt internationally in spite of the fact that we always say that we are so important. But one of the reasons why Kenyans are not found in international organisations is due to tribalism. You get somebody who is very competent and who can be appointed to Director-General of UNCTAD, but he will not be appointed because somebody in the Government says that he is a Kikuyu, Mkamba and so on. He is going to look for somebody from his ethnic group and that will take donkey years because there is nobody ready. So, we lose chances in UNCTAD, WHO, FAO and in all UN agencies whereas we know that there are many, many Kenyans who are qualified to hold such top important positions in this country.

Mr. Temporary Deputy Speaker, Sir, when hon. Odero-Ojowi was our ambassador in the UN, he became a very influential ambassador. That is how we got UNEP here. This was very important and so we must realise

that when we post our ambassadors to important positions like the UN and we have our people in the international organisations, in the end they will bring benefits to our country. Let us not be small-minded by looking for somebody from a politically correct party or from a given ethnic group. Let us look for Kenyans with competence to go to these stations. So, I hope that when we begin to examine these foreign treaties and so on, we shall make sure that a Parliamentary Foreign Relations Committee or Committee on Foreign Affairs - will be established to help this Government conduct our foreign affairs competently and well.

Mr. Temporary Deputy Speaker, Sir, finally one of the functions is:

"To examine and recommend on any other matter which is connected with or incidental to the foregoing and achieve the overall objective of the Commission outlined in Section 3 (1)."

That is why a discussion of this Review Commission allows a Member of Parliament to discuss anything on the face of the earth. This is because the last function is to examine and recommend on any other matter which is connected with or incidental to the foregoing and achieves the overall objective of the Commission outlined in Section 3 (1).

Now, one of the other matters that I want to discuss is on the question of ethics. You have a Government which prides itself as having jumped on the bandwagon of reforms and averted a crisis. I agree. One of the reasons why I supported the IPPG was because we had reached a point in history where we had an authoritarian regime so reluctant to change and too rigid to change on the one side and an Opposition too weak to take over political power. Now, when you reach that conjecture and you have a crisis and you do not do anything to diffuse it, the crisis can easily precipitate into a military coup. That is how coups happen. If that crisis had continued and the Opposition had continued to agitate for changes without the capacity to take over Government and the Government continued its rigidity not to accept changes, we would have had a military coup in this country and there are so many historical examples of where that has happened.

Mr. Temporary Deputy Speaker, Sir, so there had to be a political space where the two could meet and discuss *a possibo* or *reprosh mo*. That is what we have done. So, people should not go over the mountain and commending this IPPG package as if it is the best thing on earth. No! It was something which was done to avert an impending crisis because two sides could not meet. The Government was too rigid to change. The Opposition, although proposing reforms was too weak to take over political power and I hope that stands as the truth. Now, that we have had that rectified and now that we have that reprosh mo and at least we have changed a few things, where should we go from here?

Mr. Temporary Deputy Speaker, Sir, first of all, this Government should behave in an ethical manner. At the moment, *Kenya Times* which is the mouthpiece of KANU specialises in telling absolute lies. It specialises in maligning the Opposition. They publish completely cooked up stories. Now, really you cannot say that you are committed to democracy when the ruling party is supporting a paper that lies as a matter of habit. It means that the ruling party, its president, its chairman, its secretary-general and the whole lot are part of that poor habit of lack of ethics and perpetration of lies in this country. You cannot have a democracy where the ruling party is a liar. You cannot! So, if we are going to travel on the road towards democracy, we must begin by having some ethics in Government.

One of the first ethics to do is for KANU to stop *Kenya Times* spreading blatant lies about everybody. I read stories in *Kenya Times* when I have a function in my constituency. The *Daily Nation* and the *East African Standard* covers, but what is reported in *Kenya Times* has no relevance and resemblance of a grain of truth and yet I come to this Parliament and people are sitting on the other side saying that we are in the spirit of reforms. How can you reform democratically when your own paper is telling blatant lies? That is not democracy. Democracy cannot be built on a pack of lies. Then we tune on to KBC and KTN which are owned by members from the other side and the news reported is all about the other side. Surely, if we are going to travel towards the part of reforms, we must begin by practising reforms today. KBC must begin from today showing Kenyans that there are two sides to a coin. There is the Government and there is the Opposition and a coin cannot be a coin unless those two sides are there. If you are going to show one side then it is not a coin. So, we are not having reforms in so far as the other side insists on this.

Secondly, this culture of using money to buy people like it happened over the weekend in my constituency must stop. If it does not stop, we will not travel along this road for the Constitution Review to be done. As we move towards the elections and the reform process, a lot is expected from the KANU side. They must show positive signs of being serious. At the moment, they are not! There is a lot of wishful thinking.

Clause 11 states as follows:

"For the purposes of carrying out its functions under this Act, the Commission shall have all such powers that are necessary for those functions and without prejudice to such generality, the Commission shall, without lead or hindrance receive memoranda, hold public or private

hearings throughout Kenya and in any other matter collect and collate the views and opinions of Kenyans, whether resident in or outside Kenya, and for that purpose, the Commission may summon public meetings of the inhabitants of any area for the discussion of any matter relevant to the functions of the Commission."

The hon. Attorney-General is saying that he will collate views from Kenyans resident in and outside Kenya. During the registration of voters exercise, I rose on a point of order demanding that arrangements be made for Kenyans resident abroad to register as voters. Those arrangements were never made. Kenyans resident abroad were, therefore, disenfranchised. I did bring to your attention that while I was in Sweden, I met Kenyans resident in that country who demanded that they should be given the opportunity to register as voters. As far as I know, the Kenyan Government never made any arrangements to register Kenyans living abroad as voters and now you want to go and seek their opinions regarding the new Constitution. Is that fair? The forthcoming General Elections are very important. They will bring in hon. Members who will be here when this Commission will be sitting. Those Kenyans living abroad were disenfranchised and yet, you are saying that the Commission is going to seek their opinions. This is why I am saying that when we have a plutocratic Government, they never think of people's interest. Now it is in their interest to appeal to everybody so that they are seen to be good. But when these people needed help--- In the Bible, Jesus said: "When I was hungry, you gave me food. When I was naked, you gave me clothes." Those people needed to vote. I went there, talked to them and brought the matter here, but the Attorney-General did not listen to me. Now you want to go and collect their views, do you think they will listen to you? How can that happen? You ignored them when they wanted to register as voters so that they can come and vote for the Members who will come and deal with this thing.

For 30 years, Kenyans resident abroad have not been able to vote. Little countries such as Cameroon have been able to do this. It is not the number that matters! It is the fact that every Kenyan counts as a Kenyan and that vote is important. It can make or unmake your President. We have to think philosophically and not quantitatively. The Government never made arrangements for them to vote. Their number does not matter because they have a right to vote. That is what justice is all about. It is very painful that you have finally recognised that these people matter and so you are going to seek their opinions. I hope you will include them. You should bring their representatives into the Commission because they are a constituency in themselves. They are not there because they want. Some of them are there because they are sons, daughters, wives, cooks and drivers of ambassadors. Some of them are there because they are studying. They will come back here and be Attorney-Generals while others will work in our industries. They will be much more useful than some of you sitting on the other side of the House who have never produced any productive work in this nation. You have just looted this nation's patriarchy. So, you cannot sit there and ask how many are they. How many are you on that side of the House are looting this country and ruining it? Just a handful of people! You will all be voted out during the coming General Elections so that we can get a fresh Government which can help us.

The Assistant Minister for Local Government (Dr. Wameyo): Who will be voted out?

Prof. Anyang'Nyong'o: All of you, including Dr. Wameyo who is shouting over there and not knowing what he is talking about.

Clause 11(b) states as follows:

"The Commission shall in such manner as it deems fit stimulate public discussions and awareness in constitutional issues."

Mr. Temporary Deputy Speaker Sir, recently, when the NCEC started the constitutional reform debate, rather than commend them and accept that this stimulated public discussion, they were maligned and called all sorts of names. Presently, there is an idea going on behind this Government that some people would like to cause civil war in this country. Please, do not cry wolf. Kenyans are peaceful people. I do not trade political discourse in rallies as a representation of the truth. You are in the Government and you claim to have a very good security system. I am sure that Brig. Boinet is much more intelligent than the whole lot of you. He will not speak like that. In fact, I would like him to go to Kisumu Rural Constituency and carry out an investigation as to why so much money is circulating there. Where has the Minister for Transport and Communications got so much money to be dishing out at funerals and everywhere? I would like Brig. Boinet to investigate that. What business does he own? In fact, he has a debt of Kshs7 million. I am not a businessman, but an intellectual. I do not have money to be dishing out during funerals and to the youths to spoil them. Today, the youth in my constituency are drinking chang'aa like gays and that is not good manners.

I understand that this Government is giving every KANU aspirant Kshs1 million every week to go and dish out in the rural areas, to make youths drunk with chang'aa. Where is that Kshs1 million coming from? It is being printed somewhere near State House. I raised it here and you have never denied. They can say I am talking a lot of nonsense, but to me it is sense because we cannot have free governance when KANU is corrupting

people with money. This is what spoiled Ethiopia and Liberia and brought in military dictatorships. This is also what happened in Zaire and you people insist on bringing it here. We refuse and we shall fight this "money culture" to the end. We shall also fight the grabbing and selling of plots to the end. We shall also expose you to the very last moment. You should not buy votes from Kenyans again. We will refuse and talk to Kenyans by hook and crook and inform them that their rights should not be bought with Kshs50 or whatever. We shall shout about it from tree tops. We want good governance in this country and a Constitution that works. We do not want plutocracy in this country any more. So, we want a free discussion of this Constitution. We do not want any discussion anywhere to be criminalised. We would like this Government to stop maligning the NCEC because they are there constitutionally and they have a right to express their opinions about constitutional reforms in this country. We would also like to see the church continue with civic education openly and to tell people about their rights so that Kenyans can exercise that right as citizens.

Mr. Temporary Deputy Speaker, Sir, when this Commission begins to summon people to give evidence, we would like this to be done conveniently in every village, so that all Kenyans can finally have a say in the way they are governed.

Mr. Temporary Deputy Speaker, Sir, I would like to end by saying that any Constitution can be very good, but if the citizens do not have the freedom to elect to power men and women who can govern with free conscience and who cannot mix personal gains with public duty, that Constitution is as good as dead. The problem we have in Kenya today is that we have men and women who have confused personal gains so much with public duty; that were they to remain in public power, even the best Constitution, this country will never have good governance nor will it develop. They have become arrogant, self-seekers and conceited. Such men cannot give good examples to the youth. They cannot!

The Assistant Minister, Office of the President (Mr. Sunkuli): On a point of order, Mr. Temporary Deputy Speaker, Sir. I have been listening to the hon. Anyang-Nyong'o even just out here. He is giving examples of money being taken from the youths and given to the others and so on. But is he in order to make such outrageous claims when it is very obvious that all the lot that he belongs to, collects money perpetually from foreigners to do exactly the same things? Is it then in order for a person who is guilty of that particular offence to come before this House and pretend to be "holier than thou"?

Mr. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I would have wanted to respond to hon. Sunkuli, but I have always told him that he is a young man who could perform much better, were he to have a clear mind and work in a Government that could use talent. He claims that I said that money was being taken from the youth; I never said a thing like that. When you have a vile mind you cannot present your case very well; that is the problem. Further, it is no secret that this same Government depends on foreign money to run itself. They make so much noise about aid because they cannot stimulate domestic economic growth. Consequently, they are perpetually enslaved to aid. When they stand up, any time they want to tell anything to the Opposition, they talk of foreign masters. This is because they are so enslaved by their own foreign masters and they think everybody else is enslaved to that. This is the problem. Were they to sit down and know that in order for the 13 million Kenyans below the poverty line to rise above that poverty, domestic savings in this country should be increased, they will do a better job---

An. hon Member: On a point of order---

Mr. Anyang'-Nyong'o: What order when you are terribly disorderly?

The Temporary Deputy Speaker (Mr. Wetangula): Prof. Anyang'-Nyong'o, there is nothing personal here!

The Assistant Minister, Office of the President (Mr. Sunkuli): On a point of order, Mr. Temporary Deputy Speaker, Sir. It is very good to see the professor getting agitated, but is he in order to make such claims against the Government when, in fact, I know that Professor Anyang'-Nyong'o and myself attended a conference in Sweden, where the Presidential candidate for the Social Democratic Party (SDP), hon. Charity Ngilu, made an open appeal to be given 10 dollars by the plenary committee that was there? By receiving 10 dollars from each Member, she ended up raising 200 dollars. That shows how much money has been raised through the plenaries or seminars that they have attended. Is he in order?

Prof. Anyang'-Nyong'o: You see, he just makes my case better, because we do that in the open. We do not go to the NSSF and sell public land to people and then put it in KANU coffers. We do not do that. We appeal openly and get money openly and we account for it, but you people do not do that.

Could you tell the person operating this thing not to sabotage what I am saying because I know how they manipulate this microphone? Now, I know that people you know you have been misusing the properties of this nation.

Mr. Temporary Deputy Speaker (Mr. Wetangula): You address the Speaker.

Prof. Anyang'-Nyong'o: I am addressing them through you. I want to address them because they are guilty. These are the characters sitting opposite me.

The Temporary Deputy Speaker (Mr. Wetangula): Including hon. Muite?

(Laughter)

Prof. Anyang'-Nyong'o: No, hon. Muite is there as a visitor. He is trying to give them good advice on how to respond to me, but they cannot even listen. As far as hon. Sunkuli is concerned, I could say so much about him but I will not because I know much more than he thinks. I will not; I will protect him. His misdeeds are so terrible that I would not want to mention them. I know you are all itching because you are so fearful of what I am going to say, but I will not say anything. I will save them the embarrassment.

Mr. Temporary Deputy Speaker, Sir, this is my last word on this Bill. When we finally have a Constitution that will ensure democratic governance, I hope they will also do two things. They should ensure that the person who will become the President of this country will put all his business and properties in trust so that when he is exercising the powers of the presidency, he does not mix personal business with public affairs, because unless a President has his business in trust, he will be subject to pressures for personal gain as has happened in this regime. That is very important. Secondly, when we finally have this Constitution, we will require the President and those people who hold high offices like the Vice-President and so on, to have passed by this Parliament, a pension scheme that will ensure that they are looked after when they cease to hold office. One of the temptations of African leaders is that when they are in power, they want to acquire as much wealth as possible, so that when they get out of power, they can live in comfort. That happened to hon. Mobutu.

I have seen reports in *Time Magazine* which show how many villas in overseas the people on the other side have in Spain, Scotland, Australia, New Zealand, and Namibia. I know of a house and an estate in Namibia owned by you-know-who. So, I hope that a pensions scheme will be passed by this House, because it will assure those people who hold public offices that when they retire from those offices---

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Member for Kisumu Rural to state categorically that we know who owns property in Namibia when some of us do not know? Should he not state who that person is instead of saying, "you-know-who"?

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I can see the other side looking at me as if I have committed a sacrilege, but it is true that our President owns an estate in Namibia.

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Member for Kisumu Rural says that the President of the Republic of Kenya, Daniel arap Moi, owns an estate in Namibia, but the President stated the other day that he owns only two plots here in Nairobi. He said that among the rich people he is, in fact, the last one. Should the Member for Kisumu Rural not be called upon to substantiate? He is contradicting the President.

The Temporary Deputy Speaker (Mr. Wentagula): Order! Both of you are flouting Standing Order No.73(1) and we will have no more of that. Prof. Anyang'-Nyong'o, you know the rules, do you not?

Prof. Anyang'Nyong'o: Mr. Temporary Deputy Speaker, Sir, yes. When I was at Alliance High School, hon. Ligale was our prefect at one point and he used to say at the end of the day, you know the rules, keep them. So, I hope the House is reminded of that.

Finally, apart from a pensions scheme that will ensure that those who hold high offices do not have to acquire wealth, the other thing that will be important is that those who hold high offices would have to declare their wealth transparently before a commission established by this House, so that when their properties are being kept in trust, there is a record in the public domain of what they are.

With those final remarks, I beg to ask the Attorney-General to ensure that the work of this Commission is done properly and that some---

Mr. Kamuyu: On a point of order, Mr. Temporary Deputy Speaker, Sir. I think the rather scanty attendance in this House this afternoon clearly shows a lack of interest. May I call upon the Mover to reply? Put the question.

The Temporary Deputy Speaker (Mr. Wetangula): Order! The Chair needs no assistance. I will let you finish, Professor!

(Loud consultations)

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I have not concluded my contribution to the Bill. Can you guide the House? Is hon. Chris Kamuyu the Speaker? Can you ask him what role he is playing?

The Temporary Deputy Speaker (Mr. Wetangula): I will let you finish.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I said that in the final---

Mr. Kamuyu: On a point of order, Mr. Temporary Deputy Speaker, Sir. I hope hon. Anyang'-Nyong'o is not fighting Members by asking what role Mr. Kamuyu is playing. I commented on this issue as an honourable Member of this House---

The Temporary Deputy Speaker (Mr. Wetangula): Mr. Kamuyu, you are perfectly within your right to call for the closure of the debate---

Mr. Kamuyu: Mr. Temporary Deputy Speaker, Sir, I am also an honourable Member of this House.

The Temporary Deputy Speaker (Mr. Wetangula): That is also perfectly true. Yes, are you now fully contented? You should not be intimidated.

Mr. Kamuyu: Mr. Temporary Deputy Speaker, Sir, I will not allow anybody to intimidate me.

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. Hon. Kamuyu's defection to KANU is not a secret. He defected in the presence of the highest constitutional office holder in this land. So, it is not a rumour. In the first place, hon. Kamuyu is not supposed to be in this House. Is he in order to raise points of order as he is doing?

The Temporary Deputy Speaker (Mr. Wetangula): Order! Order, hon. Munyasia. The only time you stand on a point of order is when a Member has breached the rules of the House. I do not see any Standing Order that Mr. Kamuyu or Prof. Anyang'-Nyong'o who was on his feet had breached.

Mr. Kamuyu: Mr. Temporary Deputy Speaker, Sir, now that my name has been mentioned, let it be known very clearly by those Members who have been in this House for only five years and do not know the procedures of this House, that I can express my intention to join another party, just the same way as hon. Muite intends to join the yet-to-be registered SAFINA party. However, I have not totally defected KANU to the extent that I cannot come to this House. I am an honourable Member of this House until it is dissolved. I would request those Members who are not familiar with the Standing Orders to continue learning them.

Mr. Busolo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for me to request your intervention in this matter of the closure of this debate? I suggest that you exercise your ruling judiciously so that many of us who have an interest in this Bill can use the available time to air our views. Please, I beg you not to close this debate.

The Temporary Deputy Speaker (Mr. Wetangula): Mr. Busolo, under what Standing Order do you want me to exercise this discretion? Prof. Anyang'-Nyong'o, proceed.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, thank you very much. I want to talk about the expenses of the Constitution of Kenya Review Commission. This is an important issue---

(Quorum)

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, are you satisfied that the House has a quorum at this time when we are debating such a very important Bill.

The Temporary Deputy Speaker (Mr. Wetangula): We have a short-fall of one Member. Can the division bell be rung?

(The Division Bell was rung)

The Temporary Deputy Speaker (Mr. Wetangula): Order! Order! We have a Quorum now, and Prof. Nge'no is out of order to cross the Floor and fail to bow to the Chair. Proceed, Prof. Anyang'-Nyong'o.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, the English language is my second language, and when I am using it, I am at liberty to use it the best way I want. I am under no obligation whatsoever to obey the dictates---

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, I rose on a point of order and called upon the Member for Kisumu Rural, Prof. Anyang'-Nyong'o, to substantiate the allegation he made that the President---

The Temporary Deputy Speaker (Mr. Wetangula): Mr. Muite, I made a ruling on that matter.

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

The Temporary Deputy Speaker (Mr. Wetangula): I made a ruling that both you and the Member for

Kisumu Rural, Prof. Anyang'-Nyong'o, were out of order.

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, there is nothing adverse about owning a property in Namibia. Standing Order No. 73---

The Temporary Deputy Speaker (Mr. Wetangula): Absolutely, there is nothing illegal and scandalous about owning a property in Namibia or anywhere else. But the Standing Orders demand that if one wants to discuss the personal conduct of the President, including the issue of him owning a property, one should bring a Motion.

Mr. Muite: Adverse!

The Temporary Deputy Speaker (Mr. Wetangula): Order, Mr. Muite. Nobody had said it is illegal to own a property outside the country.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy speaker, Sir---

The Assistant Minister, Office of the President (Mr. Sunkuli): On a point of order, Mr. Temporary Deputy Speaker, Sir. I am not going against your ruling, but I would like to refer to this allegation that hon. Muite is trying to pursue. Is he in order to even allege that a Kenyan wants to own anything in Namibia?

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I thought you had made a ruling that the issue should not be pursued. Hon. Sunkuli, of course, has to protect his masters.

The Commission's expenses---

The Temporary Deputy Speaker (Mr. Wetangula): Prof. Anyang'-Nyong'o, you have said three times that you are concluding your contribution. You have been saying "in conclusion" now and then, but you do not conclude!

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, when you are writing a book, you can start the conclusion on page 13 and end on page 49. The number of pages you devote to the conclusion is not prescribed by any law. So, I have the right to make my conclusion as long as I wish. Conclusions do not have any precise number of pages. Indeed, I am concluding because I am coming towards the end of the Bill. What is wrong with that? Unless there is a new Standing Order in this House which restricts an hon. Member from taking more than two minutes after saying that he or she is concluding, then I have the right to conclude at my own pleasure. Fortunately, there is no such Standing Order in this House. Further more, we are talking about law and order in this House.

Mr. Temporary Deputy Speaker, Sir, I was going to conclude by making comments---

The Temporary Deputy Speaker (Mr. Wetangula): You are in a state of fury today, are you not?

Prof. Anyang'-Nyong'o: Yes! I am furious about how this Republic is being run by a plutocratic Government. I am furious about this plutocratic Government, because Kenyans are suffering. Again, I am furious because we will have a Constitution which will put these things right. Furthermore, this is my last chance to talk about this Constitution. Therefore, I must express my fury about the bad governance in this country.

An hon. Member: Continue!

Since we are going to take over the Government next year, I want to bury this terrible Government with these words. You know that people who know what they are doing will take over the Government from the current regime.

The expenses incurred by the Commission under this Act, including reasonable remuneration, emoluments and allowances to the commissioners, secretaries, deputy secretaries, staff, consultants and experts to the Commission shall be charged on and issued out of the Consolidated Fund without further appropriation than this Act.

Mr. Temporary Deputy Speaker, Sir, I want to talk about this phrase which says; "without further appropriation", because this Government is fond of having supplementary budgets after the main Budget has been read in this House. I am questioning this phrase because the same Bill, on page 542, Clause (16), sub-clause (7), says:

"The Government shall, within sixty days of the resolution under subsection (5) present to the National Assembly the relevant legislative programme including, as necessary, a Bill to alter the Constitution."

You will understand that in this proposal, specific time periods are given for certain action to be taken by the Commission. I do hope, and the Attorney-General should make this very clear when he replies, that the time period given to this Commission will not be altered.

If the time period within which this Commission will act is altered, it will affect appropriation of money for this Commission. We want to pass this Bill knowing that Clause 17(1) will be observed to the letter. Quite often, we pass Bills in this House with such clauses, which are very important because they touch on public

money, and subsequently, a Government Minister comes back to ask for money and for amendment to such clauses.

Mr. Temporary Deputy Speaker, Sir, clauses to do with money are very important because they touch on public trust. I would like to go on record that when the Commission is established, one of the things that will bind it to observing the time period of its functions, is the fact that money was appropriated and an undertaking given by the Attorney-General that once the money comes from the Consolidate Fund, there will be no further appropriation from those funds to finance the Commission. That is an understanding and an undertaking written in gold.

Secondly, and this is a very important section, the funds of the Commission shall be administered by the Permanent Secretary (PS) to the Treasury. We have an Act of Parliament called the Permanent Secretary to the Treasury Act. The Permanent Secretary to the Treasury is the only PS whose position is established by an Act of Parliament, yet we know that in practice, the PS to the Treasury has quite often been subjected to decisions reached outside the Treasury. Quite recently, it was reported in one of the international newspapers that the Minister for Finance had been stabbed in the back by his colleagues. It could not have been so if, indeed, his PS was autonomous as per the Act of Parliament that established that position.

So, Mr. Temporary Deputy Speaker, Sir, I hope that once Parliament votes these funds, the sole person who will determine how they will be used, as per the Act of Parliament, will be the PS in the Treasury and that he will not, in any way, be subjected to any other Executive organ of the Government. We know that this Bill will come into law before the Constitution is changed. The current Constitution gives a lot of powers to the President, and that is one of the reasons why this particular section is so important. Despite the fact that the President enjoys a lot of powers, as per the present Constitution, we hope that those powers will not interfere with the PS in the Treasury in funding the Commission.

Thirdly, the third condition as expressed in Clause 17(3) states:

"The Commissioners, the secretary and the deputy secretaries and the staff of the Commission and the experts and consultants to the Commission, shall receive such remuneration, emoluments or allowances as the Attorney-General, in consultation with the PS to the Treasury and the Director of Personnel, shall determine."

I have a very important point to make here. At one point, the Attorney-General hired lawyers from India and Pakistan who were paid well above our local people.

The Attorney-General (Mr. Wako): On a point of information Mr. Temporary Deputy Speaker, Sir. It is not true that the lawyers who were hired from India and Sri Lanka were paid way above---

The Temporary Deputy Speaker (Mr. Wetangula): He said India and Pakistan.

The Attorney-General (Mr. Wako): First of all, there were no lawyers hired from Pakistan. But there were lawyers hired from India and Sri Lanka and they were not paid higher salaries than our own local staff, who are on contract terms. In fact, that is one of the reasons why, when they arrived here, two of them left. This was because they tried to change their terms, but we told them that they had come here on the clear understanding that they would be engaged on the same terms as the local staff.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I thank the Attorney-General for that clarification because it is important. If the Attorney-General is intending to hire external input into the constitutional review process, let us not have that experience. One of those lawyers shoplifted and then she had to be smuggled out of this country. Imagine a lawyer from the Attorney-General's Chambers shoplifting! This is very serious.

The Temporary Deputy Speaker (Mr. Wetangula): Prof. Anyang'-Nyong'o, that had no bearing on their professional competence, did it?

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, that was what I was wondering about.

(Laughter)

The Attorney-General (Mr. Wako): On a point of information, Mr. Temporary Deputy Speaker, Sir. That particular lady was a very good lawyer, but she may have been a compulsive shoplifter. Even in the United Kingdom, millionaires and other rich people are compulsive shoplifters. They will shoplift something very tiny from M/s Harrods, M/s selfridges or from M/s Marks and Spencer. She is one of the lawyers who left the country because of her terms and conditions of service.

The Temporary Deputy Speaker (Mr. Wetangula): Prof. Anyang'-Nyong'o, it is called "kleptomania". It has no bearing on one's intelligence.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, this kleptomania seems to hit people who work at the Attorney-General's Chambers. I hope that when we get experts to come and review our Constitution, we will not get kleptomaniacs.

The Temporary Deputy Speaker (Mr. Wetangula): There was a king in England who suffered from kleptomania!

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, on a more serious note, I do know that in matters of constitutional reform, we may need external service, especially for comparative purposes. We may need somebody from Hong Kong, because of their recent experience of changing from a colony to a Republic at a very late stage in history, and of being a highly developed industrial City State. When you are drawing up a constitution for that kind of nation, you need a lot of expertise. If we are going to have a Constitution Review Commission, especially one that will consider such new concerns like the ones the Attorney-General mentioned earlier, namely; "to examine and review the place of property rights and land, including private, Government and trust land, in the constitutional framework and laws of Kenya, and to recommend improvements that will secure the fullest enjoyment of land and other property rights", we will definitely need foreign input. But that foreign input will be affected by remuneration. This is because if the foreigners come here and are remunerated purely in shillings, they may turn into shoplifters.

We must bear in mind that part of the remuneration will be in hard currency. If the Permanent Secretary to the Treasury is going to be the sole administrator of this fund, and the funds will come from the Consolidated Fund, then we must factor in the foreign exchange component of our expenses. Where will this foreign exchange component of our expenditure come from? Are we going to raid our foreign exchange reserves in the Treasury? Can we make other arrangements? This is where aid comes in. Now, I want us to talk constructively to foreign donors in connection with that foreign component in our constitutional review process. We can negotiate with a foreign government or a foundation to support experts who will come from abroad to help the Constitution Review Commission. That support can be given in terms of manpower and not necessarily financial aid. This could be the contribution of the Netherlands, the Dag Hammarskjold Foundation, the Jawaharlal Nehru Foundation, or the Corazon Aquino Foundation in the Philippines.

Mr. Temporary Deputy Speaker, Sir, each of these Foundations could be approached - I am prepared to lend my good services to the Government in approaching them - to fund an expert who will provide specific input into the constitutional review process. I know for certain that writing property rights and regulations into the Constitution, in this modern age, is very complicated. For example, we are moving away from a highly state-centred economy, where the State owns property, which is being privatised. We can learn from the example of the East European countries, where individuals were actually re-tracing their steps to find their properties, which had been acquired by their States, but which were then being handed over to private individuals. This process involved a lot of legal work. For example, the International Court of Arbitration in Geneva knows for certain the kind of experts that deal with these things. We could consult the International Court of Arbitration in terms of sourcing experts, who will come here and make an input into the constitutional review process in respect of the issues mentioned by the Attorney-General, particularly, those in Clause 10 that are referred to extensively.

I am reminding the Attorney-General that when it comes to the foreign exchange component of the constitutional review process, we do not necessarily need to deplete our meagre foreign exchange reserves in the Treasury. This is the kind of thing where, if somebody is really genuinely concerned in supporting the democratisation process in Kenya, they can help. The International Idea organisation in Stockholm can help us. I know that the International Idea organisation is very much interested such undertakings. I would ask the Attorney-General, to approach my good friend, the Director-General of the International Idea in Stockholm to help us finance this kind of expertise in our constitutional review process. I have already said that I will be able to assist.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Wetangula): Order! Order! Hon. Members, it is now time for interruption of our business. The House is, therefore, adjourned until tomorrow, Wednesday, 5th November, 1997, at 9.00 a.m.

The House rose at 6.30 p.m.