

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 22nd October, 1997

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

## ORAL ANSWERS TO QUESTIONS

*Question No.590*

MURDER OF MRS. ORECHI

**Mr. Anyona** asked the Minister of State, office of the President:-

(a) if he is aware that at about 4.00 a.m. on 3rd February, 1996, police offices raided the home of Rev. Ezron Orechi of Nyansakia PAG Church in Kitutu Chache of Kisii District and murdered his wife, Mrs. Nyaituga Orechi, in cold blood;

(b) if the answer to "a" is in the affirmative, what investigations he has carried out into the brutal murder of Rev. Ezron Orechi's wife in pursuance to the letter by Rev. Orechi addressed to the Attorney General, the Office of the President, Nyanza Provincial Commissioner, Kisii District Commissioner and State Counsel; and,

(c) when the culprits will be brought to book for this heinous crime.

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

(a) I am aware that following a security operation to flush out arsonists along the common border between Nyamira and Rachuonyo districts on the night of 3rd February, 1996, the body of the deceased was found with bullet wounds outside her house.

(b) The Kisii Inquest file No.11 of 1996 was opened to facilitate investigations into the death of Mrs. Milkah Nyaituga Orechi. The file was forwarded to the Senior State Counsel, Kisumu, on 21st March, 1996 vide letter Ref.No.CID/C/CRI/Vol.1(65) for perusal and advice.

(c) Arising from my reply in "a" and "b", part "c", therefore, does not arise.

**Mr. Anyona:** Mr. Speaker, Sir, the Assistant Minister says there was a security operation and then this poor lady was found dead with bullet wounds. This is the wife of a man of God, a church pastor. Is the Assistant Minister implying that this lady was involved in whatever illegal activities he alleges to have been going on there? If so, what evidence does he have?

**Mr. Sunkuli:** Mr. Speaker, Sir, I have no such evidence at all and I am not trying to make any such implications. However, what I have found out is that there was a body lying outside the house. The only way open under the law is to look for the cause of her death. The cause of her death will be established as soon as the magistrate has heard this case.

**Mr. Anyona:** Mr. Speaker, Sir, I do not know why the Assistant Minister is contradicting himself. He told us that this woman was found dead with bullet wounds on her body. It is, therefore, reasonable to assume that she was killed; someone shot her dead. So, what other cause of death will the Assistant Minister establish? Since this Question was filed, which is about a year ago, what investigations has the Assistant Minister carried out? Let us not hide behind this inquest scapegoat. What investigations have been carried out? What was the result of those investigations before an inquest was ordered? The inquest is a convenient way that is being used by the police to get away with murder when they will Kenyans.

**Mr. Sunkuli:** Mr. Speaker, Sir, the result of the investigation was that the police were not able to find anybody in particular to prosecute on this matter. Therefore, in accordance with the law, the matter was handed over to the Attorney-General, through the State Counsel in Kisumu. I hope that the State Counsel, after perusing the file, will forward this matter to court, so that the magistrate can order a public hearing of this particular inquest. It is from this joint investigation by the police, who recorded statements that the State Counsel will peruse the documents and

make recommendations, and, finally, the magistrate will be investigating further into this matter that will produce the killers.

**Mr. Anyona:** Mr. Speaker, Sir, this incident took place on 3rd February, 1996. Today is 22nd October, 1997, well over one year later. The Assistant Minister has the audacity to tell us that the file has not yet been forwarded to the Attorney-General and to court. Could he explain the delay in this process of initiating court proceedings? When will this matter come up for hearing?

**Mr. Sunkuli:** Mr. Speaker, Sir, I do not know when the matter will come up for hearing because it is in the hands of the Attorney-General. But I wish to promise the hon. Member that this matter will be expedited. I will request the Attorney-General to take note of the delay and make sure that it goes to court as soon as possible.

**Mr. Angwenyi:** On a point of order, Mr. Speaker, Sir. This incident took place in my own village. So, I have facts to this case. This woman was killed in broad day-light, at 4.00 p.m., in the afternoon. Is it in order for the Assistant Minister to mislead this House that he does not have evidence as to how this woman was killed? I have the evidence and I can give it to him.

**Mr. Speaker:** Order! Hon. Sunkuli, I suppose you can respond, but on my part, as far as the procedures are concerned, that really is not a point of order!

**Mr. Sunkuli:** Mr. Speaker, Sir, I wish to give an undertaking to the hon. Member that I will request the Attorney-General to expedite this matter so that in the next two weeks, we should be able to know when the matter will go to court. As soon as the matter goes to court, the hon. Angwenyi or anybody else can present their evidence before the magistrate.

**Prof. Mzee:** On a point of order, Mr. Speaker, Sir. We expect serious information on this Question. I think that this Question is the property of the House; it does not belong exclusively to hon. Anyona. It is only Mr. Anyona who got the opportunity to ask supplementary questions.

**Mr. Angwenyi:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order! I can assure you hon. Angwenyi, that the Chair has nothing to do with the death of the deceased.

Next Question, Mr. R.K. Mungai.

*Question No.683*

BEATING OF MR. GUCHU BY  
ADMINISTRATION POLICEMAN

**Mr. R.K. Mungai** asked the Minister of State, Office of the President:-

- (a) if he is aware that Mr. Joshua Kamau Guchu, a resident of Kambiti Location in Makuyu Division, was on 13th June, 1997, savagely attacked by an administration policeman at the chief's Camp, thereby causing actual bodily injury to his right eye which is now permanently blind;
- (b) if he is further aware that the incident was reported to the OCS, Makuyu Police Station, on the morning of 14th June, 1997, and that up to now no arrests have been made; and,
- (c) if the answers to "a" and "b" above are in the affirmative, why the culprit has not been brought to book.

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

(a) I am aware that Mr. Joshua Kamau Guchu was injured on the right eye by a fellow patron at Maendeleo Bar as they were fighting over money.

(b) Yes, I am aware.

(c) The complainant has not returned the P3 forms issued to him by the police and he has also declined to record a statement to facilitate police action. Makuyu police inquiry file No.1/1997 is still pending under investigation.

**Mr. R.K. Mungai:** Mr. Speaker, Sir, I wish to thank the Assistant Minister for his reply. But I find it rather odd when he claims that the P3 form which was given to Mr. Guchu was not returned, and he never made any statement. I have a copy of the P3 medical report dated 26th September, and it bears the signature of the Officer Commanding Station (OCS), Makuyu. Is the Assistant Minister in order to mislead the House that Mr. Guchu never made any statement, while I have a copy of the P3 medical report, which I am prepared to lay on the Table?

**Mr. Speaker:** Well, you had better lay it on the Table so that he can respond to you!

*(Mr. R.K. Mungai laid the document on the Table)*

**Mr. Sunkuli:** Mr. Speaker, Sir, the hon. Member has presented a copy of a medical examination report with respect to one Joshua Kamau Guchu. I believe what he regards as the signature of the OCS is the rubber stamp. The rubber stamp reads: "Police Surgery". That seems to indicate that the medical report was filled by a medical officer at the Police Surgery in the Nairobi Area Police, but it does not indicate that the OCS has received this particular form.

I would like to request the hon. Member to request to get the complainant, and take the medical report to a police station, so that he can record a statement to enable the police know what to charge the suspect with. Otherwise, if it remains in his hands, there will be no complainant and the State cannot take any action.

**Prof. Ouma:** Mr. Speaker, Sir, I would like to request for the assistance of the Assistant Minister. Every week, there is a Question involving alleged police brutality against civilians. I would like the Assistant Minister to understand that we have got a common problem here. He should tell us whether he is satisfied that the code of ethics which the police and administration police go through during their training is satisfactory, because something is wrong.

I know of a time when a policeman would simply put his hand on your shoulder and tell you that you were under arrested, but you were not beaten. These reported cases of police beatings and killing of women like the ones which hon. Anyona has been reporting, are so heart breaking. What sort of culture and society are we creating? I am asking the Assistant Minister to agree with me that there is something wrong with the police. Could he tell us whether the police are going through the right training, whether something is wrong, or whether the ethics should be improved?

**Mr. Speaker:** Order, Prof. Ouma! I will allow the Assistant Minister to answer the first part of the supplementary question. The second bit is hypothetical, and hypothetical questions are not allowed!

**Prof. Ouma:** Mr. Speaker, Sir, what I am trying to say is that I believe something is wrong. It cannot be that every week, there is something about police brutality. I am asking the Assistant Minister to tell us whether he believes the same. If he does not believe so, can he investigate and find out what kind of ethics they are going through? There is so much concern about police brutality!

**Mr. Sunkuli:** Mr. Speaker, Sir, I really wish that you would have ruled both parts of the question hypothetical. I respect Prof. Ouma very much; I know that he wants a good Kenya, and condemns police brutality. But police brutality does not feature in this particular Question. The people in question hurt one another while drinking in a bar. Neither the complainant nor the suspect was a police officer. In that case, could I be requested to answer a case on police brutality on another occasion?

**Mr. Speaker:** Are you sure, hon. Sunkuli? If you look at the Question correctly, an administration police officer is mentioned.

**Prof. Ouma:** On a point of order, Mr. Speaker, Sir. The Assistant Minister has told the House that no policeman was involved, but the Question involves an administration police officer. If administration policemen are not police, what are they? Is he in order to deny that administration policemen are not policemen? I think the Assistant Minister is wrong and I would request him to answer the Question, instead of negating it, unless he wants to tell us that administration policemen are not police.

**Mr. Sunkuli:** Mr. Speaker, Sir, I think the House may not have heard my first answer to the Question. I was asked whether an administration policeman was involved. I replied that Mr. Joshua Kamau Guchu was injured by a fellow patron in Maendeleo Bar. For the benefit of the House, the persons who went to arrest the two combatants, whom they wanted to charge with assault in the first place, were administration policemen. But the administration policemen were not involved in the assault.

**Mr. R.K. Mungai:** Mr. Speaker, Sir, the Assistant Minister has agreed that the matter was reported to Makuyu Police Station on June 14th, 1997. My question is: If a statement was made to the police, why has nobody been arrested by the police and charged?

**Mr. Sunkuli:** Mr. Speaker, Sir, the matter was reported to the police by one of the patrons of the bar. The reason why we have not been able to charge anybody, is because the complainant has not come forward to complain to the police.

*Question No.693*

IMPOSITION OF HIGH TARIFFS ON  
KENYAN BEER BY TANZANIA

**Mr. Gatabaki** asked the Minister for Finance why the Government of the United Republic of Tanzania levies high tariffs on Kenyan manufactured beers, while Tanzanian beer products get preferential treatment by the Kenyan Government, in accordance with the terms of the East African

Co-operation Treaty.

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

Tanzania has continued to levy high tariffs on Kenyan manufactured beer because it has abrogated the application of COMESA tariff rates, which confer preferential treatment to products originating from COMESA member States. This has meant that the Kenyan beer, like several other products, now attracts higher tariffs in the Tanzanian markets.

Mr. Speaker, Sir, Kenya is under obligation, as a signatory to the treaty establishing the East African Co-operation, as well as the COMESA treaty, to accord preferential treatment to imports from all COMESA countries, and this includes Tanzania. What is happening is that the Kenyan Government is negotiating and persuading the Tanzania Government to stop charging high tariffs. Tanzania has responded that they are considering the matter, but they were really necessitated by economic circumstances to do what they have done, and it will not be for long. Thank you.

**Mr. Gatabaki:** Mr. Speaker, Sir, while appreciating the answer from the Assistant Minister, I must protest that I have not been given the written answer to the Question. However, Kenyans have been told that a partner state to the East African Co-operation and the common market is abrogating a fundamental issue in terms of the Treaty. This is what led to the collapse of the former East African Community and the common market. Can the Assistant Minister assure Kenyans that the spirit of the East African Co-operation will not again be abrogated, and they are not going to witness the collapse of yet another common market and the very legacy of President Daniel Moi? The only legacy remaining for him, is that we shall not destroy the East African Co-operation.

*(Applause)*

**Mr. Keah:** Mr. Speaker, Sir, I do not know how President Daniel arap Moi comes in here when he is a full-fledged signatory to the East African Co-operation Treaty. It is in that very spirit in which Kenya has affirmatively accorded all the covenants in the Treaty that Kenya continues to permit Tanzanian products here, at the Common Market for Eastern and Southern Africa (COMESA) reduced tariff rates. We could have hit hard on that one but we are not, simply because we are a signatory to the COMESA Treaty and the EA Co-operation Treaty. This is why we continue to suffer. But as I have said, we are, as a Government, discussing with the Government of Tanzania to stop such abrogation forthwith. I would like to add here that Kenyans are benefitting in any respect, because our exports to Tanzania by far exceed what we import from there.

**Dr. Kituyi:** Mr. Speaker, Sir, nice words cannot compensate for the failure of this Government to protect the economic interests of Kenyans in its regional trade. Up to now, apart from this bungled business of beer where, inherently, what we are talking about is not even Tanzania beer, but South African beer bottled in Tanzania, this Government has failed to justify why we do not charge any tariffs on Tanzanian vehicles coming to Kenya. Every Kenyan driving to Tanzania has to pay tariff at Namanga border post. Co-operation is not about surrendering responsibility to protect the national interest. Even when we are getting an advantage in our trade with Tanzania, the advantage to Kenya should be much more if this Government was more serious. The Government should be more serious, particularly in dealing with a multi-lateral offensive by South African wines and beers over the domestic industry in this country. Could the Assistant Minister tell us something buoyant, apart from celebrating a surplus in our trade to Tanzania? What is he going to do to achieve parity in tariff levels between beer sourced in Kenya and beer sourced in Tanzania?

**Mr. Keah:** Mr. Speaker, Sir, Tanzania is a sovereign State, so is Kenya. If hon. Dr. Kituyi is looking for a tit for tat kind of approach, that will not do. In so far as parity of tariffs is concerned, as I have said, the Government is vigorously pursuing negotiations with Tanzania to make sure that those undue disadvantages that are there at the moment, no longer exist. We are a responsible Government; we stick to the treaties and covenants that we have entered into, and we will continue to do so. But we cannot interfere with a sovereign state; suffice it to say that we will, as a Government, follow to the letter, the very things that hon. Dr. Kituyi is talking about, and we are in the process of doing so.

**Mr. Gatabaki:** Mr. Speaker, Sir, the whole idea of forming a common market is the parity of tariffs. We are being told by none other than an Assistant Minister for Finance that one country has abrogated on those tariffs. What is the whole basis of continuing with that co-operation when one partner is reneging on the very basis that determines a co-operation or a common market? Either we are in the common market or we are not. Kenyans are not going to be taxed more heavily by a partner state and yet, continue to be in the same common market. Is the Assistant Minister also aware that Kenya Breweries has been forced to open a manufacturing plant in Tanzania in order to defeat this tariff structure? Is he aware?

**Mr. Keah:** Mr. Speaker, Sir, as for the latter, yes, I have read in the newspapers the efforts being made by

the Kenya Breweries to open a brewery in Tanzania, and this is welcome. Kenyan companies need to spread out in the COMESA and the Preferential Trade Area (PTA) region. But in so far as the enforcement of the covenants within the East African Co-operation and the COMESA treaties are concerned, all I can say is that these treaties are made in good faith and when there is bad faith, like in the case of Tanzania, when they say they are under adverse economic pressures--- What they are doing is not only to Kenya, but to the rest of the COMESA countries. The best we can do is to negotiate and persuade them that the treaties must be adhered to.

**Mr. Gatabaki:** On a point of order, Mr. Speaker, Sir. Kenya Breweries is the biggest contributor to the Exchequer. Is the Assistant Minister not misleading this House by telling Kenyans and the Kenya manufacturers that they should stand idle, because both Kenya and Tanzania are sovereign states, and not press the Tanzania Government to honour the terms of the East African Co-operation Treaty?

**Mr. Speaker:** That is an argument.

**Dr. Lwali-Oyondi:** Mr. Speaker, Sir, may I ask the Assistant Minister whether the unilateral abrogation of the agreement of the East African Co-operation by Tanzania is wrong? If it is wrong, what is in the treaty that could enable Kenya or other members of the Co-operation to take steps against Tanzania? What steps are they going to take in order to discipline Tanzania?

**Mr. Keah:** Mr. Speaker, Sir, that is a good question. I can only presume here that, one of the remedies is to extricate, ex-communicate or remove that member from the Co-operation. But I would like to sound a warning here that if we did that, we would be the overall losers, from an economic point of view.

*Question No.677*

NON-PAYMENT OF DUES TO MR. KINYOKIE'S WIDOW

**Mr. Munyasia** asked the Minister for Local Government:-

- (a) how much money Kapsokwony County Council owes Mr. Pius Kinyokie, a market clerk, in salary and arrears of salary until his death in June, 1995; and,
- (b) whether he could order the Clerk to Kapsokwony County Council to pay this money to the widow immediately, to assist her family of eight children who are starving and have dropped out of school.

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

The late Pius Kinyokie is owed Kshs11,642.20 by the Kapsokwony County Council. The money has not been paid because the widow has not made the claims and her contacts are not known. When she contacts the council and identifies herself, she will be paid.

**Mr. Munyasia:** Mr. Speaker, Sir, what the Assistant Minister has said may only be partly true. It is not true that the late Mr. Pius Kinyokie is owed Kshs11,642.20. My information is that he was owed Kshs40,000 from Bungoma County Council before he was transferred to Mt. Elgon County Council, and then Kshs11,642 by Mt. Elgon County Council as salary. So, the arrears of Kshs40,000 was transferred from Bungoma County Council to Mt. Elgon County Council when they divided the assets and the liabilities between them.

Mr. Speaker, Sir, the widow, accompanied by her brother-in-law, Councillor Patrick Toweet, have been going to the Clerk to Mt. Elgon County Council for a long time, and he has not responded. Could the Assistant Minister now investigate the details of what is owed, and order the Clerk to Mt. Elgon County Council to pay this money?

**Dr. Wameyo:** Mr. Speaker, Sir, I will.

**Mr. Munyasia:** Mr. Speaker, Sir, I am grateful.

**Mr. Speaker:** Next Question!

*Question No.661*

PROTECTIVE MEASURES AGAINST  
CARBACID EMISSIONS

**Ms. Wanjiru** asked the Minister for Environment and Natural Resources:-

- (a) whether he is aware that Carbacid, a natural resource that is emitted from natural holes in Kamae, Kereita, Karangatha and Rwanyambo forest areas, is dangerous and hazardous to the residents of Magumu and Kinale locations;
- (b) if the answer to "a" is in the affirmative, what the side effects of this effluent on human beings

are; and,

(c) what remedial measures the Government is taking to provide protective measures to the residents of these two locations.

**The Assistant Minister for Environment and Natural Resources** (Mr. Lengees): Mr. Speaker, Sir, I beg to reply.

(a) No, I am not aware. An inspection carried out on 8th October, 1997 by an officer from my Ministry revealed that Carbon dioxide is being extracted in Kereita Forest by Carbacid Limited. There is no evidence that Carbon dioxide is emitted from natural holes in Kamae, Karangatha and Rwanyambo in quantities that can be exploited.

(b) Carbon dioxide gas is relatively harmless. Nevertheless, if a person is confined in a cage or hole where there is only  $\text{CO}_2$ , the person may suffocate.

**Prof. Mzee:** On a point of order, Mr. Speaker, Sir. Did you hear the Assistant Minister referring to Carbacid as Carbon dioxide ( $\text{CO}_2$ )? Is he talking about Carbon dioxide or Carbacid?

**The Assistant Minister for Environment and Natural Resources** (Mr. Lengees): Mr. Speaker, Sir, I said carbacid. I think the hon. Member heard me mention carbon dioxide in reply to part "b" of the Question.

(c) At Kereita, where the gas is being exploited from depths of 300 ft, the company has taken the necessary precautions to ensure that there are no leakages. The Government also monitors this exploitation. In Kamae, Karangatha and Rwanyambo, the presence of this natural gas is detected during the digging of pit latrines. This does not warrant remedial measures.

**Ms. Wanjiru:** Mr. Speaker, Sir, the issue here is about the emission of liquid carbon dioxide, that is the carbonic acid which has a chemical formula of  $\text{H}_2\text{CO}_3$ . There are two atoms for hydrogen, one for carbon and three for oxygen.

Mr. Speaker, Sir, this carbonic acid is dangerous to the residents of Kamae and Kereita Forest. This liquid gas comes from the earth's crust, and it has, in the past, caused a breakage in communication. There was an earth tremor which caused this carbacid to be emitted and, as a result, we had a road which sank. In fact, it is very dangerous to drive in that area because of the presence of this carbon dioxide.

Mr. Speaker, Sir, since the United Nations Environmental Programme (UNEP) headquarters is here in Nairobi, what measures will the Government take to ensure that they use the resources which are available at UNEP, so as to harness this liquid carbon dioxide, and ensure that my constituents do not suffer or suffocate from it?

**Mr. Lengees:** Mr. Speaker, Sir, as I said earlier, an officer was sent there on 8th October and my Ministry did not discover anything that is dangerous to the people of Kamae and the underlying parts as mentioned by the hon. Member. If there would have been any dangerous emissions, my Ministry would have contacted UNEP. But so far, there is nothing dangerous to the people of the mentioned areas.

**Prof. Mzee:** Mr. Speaker, Sir, may I draw the attention of the Assistant Minister to the fact that Central Kenya is an actively volcanic area. May I also remind him that nearly five or six years ago, Lake Nios in Cameroon emitted similar gases at night, similar to the ones hon. Wanjiru is speaking of, and whole villages of people were killed because there was no monitoring system. The same thing took place in the Philippines and even Montserrat(?) recently in the West Indies.

Mr. Speaker, Sir, what I am trying to ask the Assistant Minister is: In the light of the experiences that hon. Wanjiru is speaking of, and what your Ministry said nearly four years ago about the Menengai Crater in Nakuru, what is the Government doing through your Ministry, to ensure that there are monitoring systems in active areas, from which dangerous gases and eruptions can emerge? What is the Ministry doing to start a system of monitoring volcanic areas like Homa Bay, Homa Bay Hills, Menengai, Ol Donyo Lengai and other such areas so that we are not caught unawares?

**Mr. Lengees:** Mr. Speaker, Sir, although the question from the hon. Member is very sensitive and good, so far, I am not aware of any plans by the Ministry to systematically monitor environmental degradation. But if he can ask this Question again, I can definitely answer him properly.

**Mr. Wamae:** On a point of order, Mr. Speaker, Sir. Is it in order for me to request Prof. Ouma Muga to give technical assistance to the Assistant Minister so that he can understand the complexity of this problem?

**Mr. Speaker:** Prof Ouma, what was your question?

**Prof. Ouma:** Mr. Speaker, Sir, in simple terms, all that I am saying is that all developing countries monitor their surroundings and dangerous areas are systematically monitored. There is a monitoring system to determine if, for example, Menengai Crater is very dangerous and will one day erupt and engulf the people with gases at night, just like what happened at Bhopal when a gas plant exploded at night and thousands of people were affected and many of them consequently died. I am saying that we should start a system so that mountains like Longonot, Homa, Ol Donyo Lengai

and places like Kinale can be systematically monitored, so that we know the rate of increase and decrease of the danger and we are not taken unawares like the Cameroonians who died at night after inhaling gases from Lake Nios. So, all that I am asking is this: Can the Ministry start that programme now?

**Hon. Members:** He does not understand!

**Mr. Lengees:** Mr. Speaker, Sir, it is not that I do not understand; the Ministry has experts and we are aware of these problems.

**Mr. Musyoki:** Mr. Speaker, Sir, this Ministry is not serious.

*(Loud consultations)*

**Mr. Speaker:** Order! We are hardly following what the Member is saying. What was it that you were saying?

**Mr. Musyoki:** Mr. Speaker, Sir, what I was saying is that can the Ministry be serious in monitoring this "thing" or effluence?

**Mr. Ndicho:** On a point of order, Mr. Speaker, Sir. You know, when a Question comes to this House, it becomes a property of the House and we are very much interested in this Question. Hon. Musyoki has asked whether the Assistant Minister can monitor this "thing" and then he mentioned a word that we did not get. Can he probably say what "thing" should be monitored?

**Mr. Speaker:** What "thing" are you referring to?

**Mr. Ndicho:** Mr. Speaker, Sir, we did not get it from his own mouth.

**Mr. Speaker:** No, will you be patient. Maybe, the thing will come out.

*(Loud consultations)*

**Mr. Ndicho:** Mr. Speaker, Sir, no, he just pronounced something.

**Mr. Musyoki:** Mr. Speaker, Sir, can the Ministry find a way of monitoring this dangerous substance because even on our way to Machakos, there is a tannery company in Athi River which emits gases that make pregnant mothers vomit upon reaching near the factory. Whenever His Excellency the President comes to Machakos to visit us, that factory stops functioning but immediately the President goes back to State House, it starts functioning and people start inhaling those gases. So, could this Ministry be serious and take care of the people of this country?

**Mr. Lengees:** Mr. Speaker, Sir, I admit that is a very sensitive issue. The Ministry sent an expert to the Kereita area who disclosed that carbacid is not harmful. I want to assure the House that the Ministry sends experts all over the country, wherever the problem occurs. I am also requesting hon. Musyoki to ask a Question if he has sensed anything strange in his own area.

**Ms. Wanjiru:** Mr. Speaker, Sir, while appreciating the efforts the Assistant Minister is showing in replying to my question---

*(Loud consultations)*

*(Ms. Wanjiru tapped hon. Gatabaki on the back)*

**Mr. Speaker:** Order! Thank you, hon. Wanjiru. Proceed.

*(Laughter)*

**Ms. Wanjiru:** Mr. Speaker, Sir, considering the health hazards that this carbacid is causing to the respiratory system of my constituents and my neighbour's constituents, what action is the Assistant Minister going to take, in collaboration with the Ministry of Health, to provide remedial measures or to procure drugs which can treat the bronchial diseases that come as a result of breathing this liquid carbon dioxide?

**Mr. Lengees:** Mr. Speaker, Sir, as I have said earlier, carbacid causes no serious problems to human beings. Whenever there is a leakage, people complain of headaches, colds and flu. However, there is no scientific proof to show that it is very dangerous and that it can kill people. The only problem reported is that whenever carbacid is mixed with water, it becomes dangerous to animals and so on. But in any case, the Ministry takes protective measures to ensure that the animals in such areas are protected.

**Mr. Gitonga:** Mr. Speaker, Sir, I come from that area and Kereita happens to be in my constituency. Although I am not a scientist, I know, and I have evidence, that about three employees of this factory have died

recently. Could the Assistant Minister undertake to carry out further investigations to establish the reasons behind these deaths?

**Mr. Lengees:** Mr. Speaker, Sir, if these cases occurred after the investigations were carried out on 8th October this year, then my Ministry will definitely send experts to find out the contents of these emissions.

*Question No.652*

SUBSTANDARD REPAIR WORK ON  
RODI-KOPANY-KARUNGU ROAD

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

(a) if he is aware that the stones put on patches of the Rodi-Kopany-Karungu Road, which is hardly one year old, are posing a lot of danger to motorists; and,

(b) if the answer to "a" is in the affirmative, whether the Ministry is satisfied with the work done on this road and who is meeting the cost of the repair now going on.

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

(a) The Ministry is not aware that stones put on patches on Rodi-Kopany-Karungu Road are posing a lot of danger to motorists.

**Mr. Onyango:** Mr. Speaker, Sir, now that the Ministry has been made aware that stones have been put on that road and they are causing a lot of danger to the motorists, what is the Ministry going to do?

Secondly, part "b" of the Question has not been answered. I wanted to know who is meeting the expenses of the repairs because repair works are going on, on that road.

**Col. Kiluta:** Mr. Speaker, Sir, this road was completed about eight months ago and, under normal circumstances, we have remedial work carried out for one year. So, the road has not yet been handed over to the Ministry. What is happening is that the repairs are being undertaken by the contractor who was doing the work. He has to do that under the defect liability period and until we are satisfied that the work is done properly, we will neither take over the road nor the retention fee.

**Mr. Aluoch:** Mr. Speaker, Sir, I do not know whether that road is constructed with stones or tarmac!

**Col. Kiluta:** I think this is a question of English. We do not have stones there, we have chippings.

**Dr. Lwali-Oyondi:** On a point of order, Mr. Speaker, Sir. The Assistant Minister told us in his answer at the beginning that he was not aware that the stones on the road are causing any problem. Is he in order to tell us that stones on the road cannot cause any problem to motorists?

**Col. Kiluta:** Mr. Speaker, Sir, I said I am not aware of the stones because there are no stones on that road!

**Mr. Maundu:** Mr. Speaker, Sir, the hon. Assistant Minister may not be aware because Rodi-Kopany-Karungu Road is so far away. But that road, "Rodi-- Panya" Road, which is in Kisumu is like the Tawa-Wote stretch, which is 15 Kilometres long, which now has protruding stones---

**Mr. Busolo:** On a point of order, Mr. Speaker, Sir. We know the hon. Maundu as a lawyer and we are used to lawyers being very precise in their use of language. Is he in order to use the words "Panya Road?" What does that mean?

**Mr. Speaker:** What "panya" Road are you talking about?

**Mr. Maundu:** Mr. Speaker, Sir, this Rodi-Kopany Road is like the Tawa-Wote stretch which has protruding stones after the contractor abandoned the project only six months ago. All the roads constructed by these contractors are now dangerous to use. Could the Assistant Minister tell us why they accept to take offers from such contractors or are they influenced by the "eating" culture?

**Col. Kiluta:** Mr. Speaker, Sir, we are aware of both roads but it is unfortunate for the hon. Member because I think I know the road better than he does. He is supposed to be using that Tawa-Wote Road going home, but he does not go home. The Tawa Road is still under construction; it is not even finished!

**Mr. Musyoki:** On a point of order, Mr. Speaker, Sir. This Assistant Minister is not checking what the contractors are doing. Even the road to Machakos, just from JKIA to Machakos, up to Kangundo, is now potholed and the road was constructed only two years ago! These people are not serious. They are spending taxpayers money for no good reason!

**Mr. Speaker:** Order! Order, Mr. Musyoki! You look very familiar! He understands what I mean.

**Mr. Onyango:** Mr. Speaker, Sir, the Assistant Minister says that the road has not been handed over to the Ministry. But I expect someone from the Ministry to supervise what is happening there. The Assistant Minister cannot tell us that they will only check what is happening there when the road is handed over to the Ministry! Now, could the



Assistant Minister tell this House whether the Ministry is satisfied with the work going on there because right now that road has a lot of potholes? There are repairs going on and it is not even one year old!

**Col. Kiluta:** Mr. Speaker, Sir, the Ministry is very much aware of what is going on. We sent the Roads Inspection Unit to check on that road and that is why we said we know that repairs are going on there, and I can assure you that there is no way this Ministry will take over that road until we are happy or satisfied that the potholes and other remedial works are carried out satisfactorily.

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

**Mr. Speaker:** You must allow others to contribute, Mr. Onyango. I will give the last chance to Prof. Ouma.

**Prof. Ouma:** Thank you, Mr. Speaker, Sir. Rodi-Kopany Road is in the centre of Rangwe Constituency. What hon. Onyango is saying is reminiscent of what hon. Achola said one time about Katitu-Kendu Bay Road. It is that sort of bad workmanship where they make the road surface so thin that the stones underneath are protruding. Even if the Ministry is going to take over that road afterwards, the workmanship is so poor that within eight months, the stones are already protruding. Could I ask the Assistant Minister whether he and his Minister are satisfied that these people are worthwhile contractors who make roads with such thin layer of tar that stones underneath are protruding even before eight months are over? Is the Assistant Minister satisfied, in the light of Katitu Road and now Rodi-Kopany-Karungu Road, that these are good contractors?

**Col. Kiluta:** Yes, I am satisfied that the roads are done to our specifications.

**Mr. Speaker:** Next Question!

**Mr. Nthenge:** Mr. Speaker, Sir, before I ask my Question, I beg to apologise for coming late.

*Question No.603*

**Mr. Nthenge** asked the Minister for Local Government:-

- (a) why there has been an increase of malaria cases in Nairobi City;
- (b) whether the Mosquito Control Section is still operating in the City Council of Nairobi; and,
- (c) what measures the Ministry is taking to minimise mosquito menace in the City.

*(Loud Consultations)*

**Mr. Speaker:** Order! Order, Members! Anybody from the Ministry of Local Government?

*(Dr. Wameyo crossed the Floor  
without bowing to the Chair)*

**Dr. Lwali-Oyondi:** On a point of Order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to simply cross from the Opposition side to the Government side without bowing to the Chair?

**Mr. Speaker:** Well, he is wrong but I suppose he was under intense pressure! Would you like to answer the Question?

**The Assistant Minister for Local Government** (Dr. Wameyo): I apologise to the Chair. I was consulting with the Member of Parliament who asked me the other Question I had answered.

Mr. Speaker, Sir, I have the answer to hon. Nthenge's Question, but I find this answer inadequate. Hon. Nthenge being a very senior Member in this House, and I also being a professional, I find this answer inadequate. I will bring a proper answer next week on Tuesday.

**Mr. Nthenge:** Mr. Speaker, Sir, I agree with the Assistant Minister.

**Mr. Speaker:** I agree with you too, hon. Nthenge. Question deferred.

*(Question deferred)*

Next Question!

**QUESTION BY PRIVATE NOTICE**

**HARASSMENT OF MUGIRANGO RESIDENTS BY CHIEF**

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

(a) Is the Minister aware that the Chief of West Mugirango Location is harassing residents of the area?

(b) Is he further aware that he recently beat up Mr. Matoke Nyachogo?

(c) If the answers to "a" and "b" are in the affirmative, what action is the Minister intending to take against the said Chief?

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

(a) No, I am not aware.

(b) What I am aware of is that recently, Mr. Matoke Nyachogo was summoned by the chief of West Mugirango in an arbitration on a land dispute between him and one Daniel Nyamwoka Arasa. During the arbitration, Mr. Matoke assaulted the Chief of West Mugirango. The chief, in self defence, also punched the said Mr. Matoke. Those are the circumstances.

(c) Both Mr. Matoke and the chief have reported to the police and the police are about to take some action.

**Mr. Obwocha:** Mr. Speaker, Sir, the Assistant Minister says he is not aware of part "a", which says that the chief, Jeremiah Nyang'au Nyarangi, has been harassing the residents of West Mugirango Location, not West Mugirango Constituency. That chief had previously been interdicted for over two years when he assaulted a Nyamira Councillor, Mr. Moebi. I have a letter here which indicates that even his own assistant chief, Henry Ayora, of Bundo Sub-Location, with seven APs, on 15th October, 1997, at Mabundu Market, assaulted two teachers again in the same location, even when we had passed the IPPG recommendations that chiefs should stop harassing people for nothing! Now, could the Assistant Minister tell us why the chief, in turn, punched Mr. Matoke Nyachogo, instead of reporting the case to the police, so that he could be arrested? Could he tell this House when he is going to arrest the chief and take him to court? I wish to table this letter so that the Assistant Minister can take action.

*(Mr. Obwocha laid the document on the Table)*

**Mr. Sunkuli:** Mr. Speaker, Sir, I have informed the OCPD, Nyamira, to charge both the chief and Mr. Matoke with affray and they will soon appear before court.

**Mrs. Nyamato:** Mr. Speaker, Sir, I visited Mr. Matoke in hospital on Monday when I was in Nyamira and I found that he was beaten by the chief because the chief found him felling a tree which was near the river. So, there is no question of a land dispute. Mr. Matoke went to report the incident to the police and they refused to give him a P3 form. In 1992, the same Chief beat up a councillor and that councillor was badly injured to the extent that a plane was hired to fly him to hospital here in Nairobi. Later the charges against the chief were withdrawn, his interdiction was lifted and he was reinstated. The two teachers who were arrested by an assistant chief in the same location were arrested because they were found talking to me and because the Assistant Chief supports my opponent. There is general harassment of residents by assistant chiefs and chiefs in West Mugirango. Could the Assistant Minister undertake to come up with a plan of action against these people?

**Mr. Sunkuli:** Mr. Speaker, Sir, I do not know whether I heard hon. Nyamato correctly. She should say 'thank you' because the police are going to charge both the Chief and Mr. Matoke because they fought in a public place.

*(Several hon. Members stood up in their places)*

**Mr. Speaker:** Order! Order, all of you. If the hon. Members do not want chiefs to harass residents, I think hon. Members must also not harass each other.

**Mr. Obwocha:** On a point of order, Mr. Speaker, Sir. Why should that man be taken to court when the chief was beating him and Mrs. Nyamato has confirmed that he was actually felling trees at the river side? There was no quarrel! It is the chief who descended on the man. So, the man to be charged is this chief. Could the Assistant Minister interdict the Chief by removing him from service, pending investigations on this case?

**Mr. Sunkuli:** Mr. Speaker, Sir, as soon as the case is taken before the court, the hon. Member knows that the chief will stand interdicted.

**Mr. Ndicho:** On a point of order, Mr. Speaker, Sir. When the case has reached a final point is when they are charged with affray before a court. Now, this is a case where the chief beat up somebody. Is the Assistant Minister in order to mislead this House that this man was fighting with the chief when the hon. Obwocha has told us that it is the chief who beat up the man? He has misled us!

**Mr. Speaker:** Order! I do not think we should turn this into a court to decide who is right and who is not right, because we do not have the whole story. So, he has been asked questions and he is answering as best as he can. So, could we go to further questions. Hon. Obure, ask your question; do not raise a point of order.

**Mr. Obure:** Mr. Speaker, Sir, the Assistant Minister says that the chief and the victim will both be charged.

I think it is only proper that the police do the investigations. Has the Assistant Minister now become the police, the prosecutor and the judge to determine whether the chief and Mr. Matoke were wrong?

**Mr. Sunkuli:** Mr. Speaker, Sir, I do not know whether hon. Obure knows that it is the police who determine what offence to charge a person with. In this particular case, two people fought in a public place and both must be charged with the appropriate offence, which is called affray.

*(Mr. Achola moved to the Dispatch Box)*

**Mr. Speaker:** Where are you going, hon. Achola? Will you go back, please? I have given the Floor to Mr. Shikuku.

**Mr. Shikuku:** Asante sana, Bw. Spika. Kwanza, mhe. Achola alisimama mbele yangu ili usinione na mwishowe akaondoka.

Kama vile mhe. Nyamato alivyosema, huyu mtu alipopigwa, alienda kwenye kituo cha polisi ili apate fomu ya P3, na maofisa wa polisi wakakataa kumpatia fomu ya P3. Hii ni kawaida. Ofisa wa utawala akipiga mtu, na aende kuripoti katika kituo cha polisi, wanaelewana wao kwa wao. Huwezi kupewa fomu ya P3. Mimi nilimsaidia mama mmoja aliyechapwa viboko mpaka akajiharibia nguo zake. Katika kituo cha polisi cha Butere walimnyima fomu ya P3. Nilimbeba kwa gari langu mpaka Kakamega ndipo akapewa fomu hiyo. Aliangaliwa na daktari na hayo mambo yakaenda mbele. Machifu na polisi wana njama ya kuwanyanyasa wananchi. Kutokana na taarifa ya mhe. Nyamato, kwamba hii si mara ya kwanza huyu chifu kufanya hivyo, nataka mhe. "Mtukufu" Waziri Msaidizi aliambie Bunge hili--- Kwa sababu yule aliyekuwa anaitwa "mtukufu" alikataa kuitwa jina hilo, ninampa huyu jina "mtukufu." Anaweza kuliahidia Bunge hili mambo mawili; kwanza, kama vile mhe. Obwocha alisema, chifu huyu asimamishwe kazi na pili, kwa vile ni kosa la pili, Waziri Msaidizi aliahidi Bunge hili kwamba huyu chifu ataachishwa kazi.

**Mr. Sunkuli:** Mr. Speaker, Sir, "mtukufu" ni jina la Rais au la mtu ambaye anavaa mkufu. Mimi sina mkufu. I have already undertaken what is possible for me to undertake; that is, to bring the chief before the law. As soon as the law finds him guilty, then I can undertake that he will be sacked. No Kenyan should be adjudged guilty before the court declares him so. Therefore, I will present this Chief before a court of law together with his fellow culprit, and they will face the charge of affray. As soon as they are found guilty, then they will face the consequences.

**Mr. Speaker:** Very well, that is the end of it.  
Next Order.

### POINTS OF ORDER

#### CLASHES ON MIGORI-GUCHA BORDER

**Mr. Aluoch:** On a point of order, Mr. Speaker, Sir. I rise on a point of order in connection with the flare-up that has arisen around Ochodororo area between Migori District, Rongo Constituency, Gucha District, and South Mugirango Constituency. We have been having quite a lot of problems on that borderline for the last 20 or so years. Two years ago, we had a flare-up on this borderline. The trouble seems to be coming, all the time, from the Kisii side. I would like the Office of the President to take immediate action and issue a Ministerial Statement urgently, and if possible tomorrow, so that we know how we are going to co-exist peacefully.

Mr. Speaker, Sir, as I am speaking, it has been reported that six people have died and we cannot condone the loss of life to continue. So, we want an urgent Ministerial Statement on this issue from the Office of the President.

**Mr. Speaker:** Very well. Mr. Assistant Minister, do you want to give the statement now?

**The Assistant Minister, Office of the President (Mr. Sunkuli):** Mr. Speaker, Sir, I do not have the Ministerial Statement ready, but I just want to say that, indeed, the Office of the President will urgently issue a Ministerial Statement with respect to the matter he has raised and on the other matter concerning the clashes being experienced in that area.

#### SUPPLEMENTARY INFORMATION TO HON. R.K. MUNGAI'S QUESTION

**The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Kirwa):** Mr. Speaker, Sir, last week while answering a Question by the hon. Member for Makuyu, I undertook to give more information. Up to that particular time, many more districts had opened cess accounts and the amount in question, which is still outstanding at the Coffee Board of Kenya, is Kshs4,214,970.95 from a total of Kshs162,123,096.50

collected for the year 1996/97. The funds are in an interest earning account and once the six district committees open bank accounts, the funds plus the interest will be remitted directly to the respective accounts.

The only districts which are left are Trans Nzoia, Kakamega, Nandi, Machakos, Taita Taveta and the former South Nyanza District. Thank you.

THE PLIGHT OF WHEAT FARMERS  
IN RIFT VALLEY PROVINCE

**The Assistant Minister for Transport and Communications** (Mr. Saina): Thank you, Mr. Speaker, Sir. I beg your indulgence to raise two points of order here. One, although there is collective responsibility, the wheat farmers are exploited because the price of wheat has dropped from Kshs1,800 to---

**Mr. Speaker:** First of all, you never sought my indulgence. Secondly, looking at where you are seated, you are seated in the Front Bench as an Assistant Minister of the Government. You should never be asking anything about the Government on the Floor of this House. You should be telling why this is happening to these farmers. You are totally out of order to do that.

*(Mr. Saina withdrew to the Back Bench)*

**An hon. Member:** Resign!

ASSISTANCE TO SMALL SCALE FARMERS

**Mr. Mwiraria:** Thank you, Mr. Speaker, Sir. By sheer coincidence, I happen to be standing on a point of order in relation to the plight of wheat farmers, although on a very different aspect. I would like the Minister for Agriculture, Livestock Development and Marketing to issue a Ministerial Statement on what action the Government intends to take to assist small scale farmers particularly in Timau, who cannot afford to buy combine harvesters. This year, the rains started rather early in Meru, but to date, more than three-quarters of the farmers have not harvested their wheat crop and, therefore, they cannot grow any crop during these long rains. As it turns out, this is, perhaps, going to be the one year in five when the rains are going to be adequate. Since this matter is becoming a perennial problem, I believe the Government ought to develop a policy on it. The Government should look for ways of assisting farmers to harvest their crop once it is ready. At the moment, we have appealed to the local large scale farmers to assist the poor farmers there, but they can only harvest for two or three hours a day because of the heavy rains and we are likely to lose a lot of crop. So, what action is the Ministry taking to assist those poor farmers who have crops in the shambas which are now sprouting because of the rains and need to be harvested quickly?

**Mr. Speaker:** Very well.

**The Assistant Minister for Agriculture, Livestock Development and Marketing** (Mr. Kirwa): Mr. Speaker, Sir, I have taken note of that.

**Mr. Speaker:** Very well, next Order.

**BILL**

*Second Reading*

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

*(The Attorney-General on 15.10.97)*

*(Resumption of Debate interrupted on 21.10.97)*

**Mr. Speaker:** Mr. Muite, you were on the Floor yesterday.

**Mr. Muite:** Mr. Speaker, Sir, during the last couple of weeks, there has been a very intensified campaign of vilification through the public media seeking to portray the NCEC and some of us who support the reforms which the NCEC is asking for, as anarchists and as people who are determined to bring anarchy to this country. This is happening simply because we have adopted mass action or civil disobedience as a strategy of forcing this Government to implement the reforms which we have identified. The phrase "civil disobedience" is the opposite of war. It is

something civil.

**Mr. Speaker:** What section of the Bill are you referring to, Mr. Muite?

**Mr. Munyasia:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order! Order, Mr. Munyasia! I am dealing with Mr. Muite. Mr. Speaker's order takes preference over every other Member's problem. I have just asked the hon. Member on the Floor, who wants to give the House a lecture on civil disobedience and war, to be relevant. On the rule of relevance, what section of the Bill talks about war or civil disobedience?

**Mr. Muite:** Mr. Speaker, Sir, I have been contributing and arguing on the inadequacy of this Bill; that this is not going to secure the holding of free and fair elections. This Bill merely seeks to add 10 additional commissioners to the Electoral Commission and I have been arguing that, that is not adequate. I have been arguing on how a truly independent Electoral Commission can come into being. So, in my humble submission, I am entitled to develop the argument to show that when we called for the reforms in which we want to secure the holding of free and fair elections, we are not anarchists. Even from the Floor of this House, Mr. Speaker, Sir, you have heard submissions and contributions suggesting that NCEC and those of us who have been supporting the reforms, which the NCEC is asking for, are anarchists who are out to cause bloodshed. So, that is what I was responding to.

I was saying, Mr. Speaker, Sir, that civil disobedience is the opposite---

**Mr. Munyasia:** On a point of order, Mr. Speaker, Sir. There is a stranger in the House. The former hon. Francis Wanyange, whom I thought was the Organising Secretary of FORD-People is in the House. Since he has an office in another registered political party, is it in order that he sits here with us?

**Mr. Speaker:** Who is Francis Wanyange? Quite frankly, I do not think I can recall him! Who is he?

*(Laughter)*

**An hon. Member:** He is sitting here with us!

**Mr. Speaker:** Order! Order! I think the last thing I have read about FORD-People and Mr. Wanyange is that Mr. Wanyange was in FORD-People, but he has denied that. I do not know anything about FORD-People. I have not got any resignation letter from Mr. Wanyange and so if he is the one sitting there, he is a Member!

*(Laughter)*

**Mr. Muite:** Mr. Speaker, Sir, I was saying that people like myself have absolutely nothing to gain from chaos in this country. I would like to put it on record that I have been advocating and will continue to advocate for mass action in order to ensure that there is no bloodshed in this country. At a personal level, I do have a little girl who is 10 years old. She is one of the children who the Member for Butere wants to slaughter. I have nothing to gain by causing bloodshed in this country. Kenyans are entitled to mass action like the teachers' strike and that of the air-traffic controllers. As long as we are not paying these people---

**Mr. Moiben:** On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member for Kikuyu to compare the teachers' strike with mass action? During the teachers' strike, nobody lost his life, but during those pro-reform rallies, people lost their lives. Is he going to be responsible, if people lose their lives?

**Mr. Muite:** Mr. Speaker, Sir, hon. Members are entitled to listen to the views of other hon. Members, whether they agree with the arguments which are being advanced or not. That was hardly a point of order. That was an argument. When the hon. Nominated Member gets his chance, he will make those contributions. But a strike is part and parcel of mass action. It is not just the teachers---

**Mr. Speaker:** Mr. Muite, may I ask you, what section of the Bill talks about mass action? I wish to warn hon. Members that if one does not have anything to contribute on the Bill, please, do not take unnecessary time on the Floor. Relevance is a requirement by the rules of this House and shall be applied to every Member here present to the letter. So, if an hon. Member has an analogy, may that analogy be made briefly. But one must be relevant to the question at hand.

**Mr. Raila:** On a point of order, Mr. Speaker, Sir. In his contribution here last week, hon. Martin Shikuku spent more than two days talking about the mass action. He talked a lot of things which were completely irrelevant to the debate, but he was allowed to make those remarks. Is it not in order for the hon. Member to talk about issues which are relevant to the question of reforms, for instance, the mass action, which bear relevance to the matter that is now being debated in the House? Is he out of order?

**Mr. Speaker:** First of all, when the hon. Member for Butere was contributing, I was not present. So, I cannot deny or confirm what you have said. But assuming that what you have just said is true, that the hon. Member

for Butere spent two days on irrelevancies, that does not mean that the rule of relevancy is obrogated because hon. Shikuku breached it. Two wrongs will never make a right. So, can we stick to the rules? Members are, of course, entitled to take a detour to explain something through an analogy. But the analogy should not become the main subject. It must only be an allusion and one must return to the track very quickly. If one does not do that, one will find himself going astray and going into the wilderness.

So, Mr. Muite, you can proceed!

**Mr. Shikuku:** Jambo la nidhamu, Bw. Spika. Ni lazima rekodi za Bunge hili ziwe safi na za kweli. Kulingana na ujuzi nilionao, ninaweza kuwa nazungumza kwa siku mbili bila kuzungumza yale yanayohusiana na Mswada ulio mbele ya Bunge hili? Nimeambiwa hayo maneno na watu waliokuja katika Bunge hili juzi. They will always be my juniors. Jambo nililosema ni kwamba, kama hayo masahihisho yaliyoletwa na NCEC yalikutubaliwa na KANU, kuna haja gani ya matata? Ndiyo sababu nikasema, hiyo haiwezi kuwa ile agenda tuliyokuwa nayo. Sisi tunaelewa maana ya mass action. Wengine waliumia, na hata Mbunge mmoja alivunjwa mkono kwa sababu ya mass action. Hata wengine walikufa. Hivyo ndio nikasema, wale viongozi wanaotaka mass action ni lazima wawe mbele pamoja na watoto wao na mabibi wao. Lakini wakitaka kuwapa watoto wa wengine pesa na bhangi ili wawe, basi watoto wao watakufa na watakata akili kidogo.

**Mr. Speaker:** Order, hon. Members! I think I have made my general guidance to the House. I think the hon. Member for Kikuyu is also entitled to make his contribution. I think he has taken into account my guidance.

Proceed, Mr. Muite!

**Mr. Muite:** Mr. Speaker, Sir, those who point out what might befall this country are just like the prophets of the old days. That is all we are doing and that does not make us the authors or instigators of civil war in this country. If the reforms we have enumerated, which are the only ones which can secure the holding of free and fair elections, are not implemented; and they are not implemented in this Bill, we have sought and we will continue to seek to bring about those reforms through mass action in order to avoid a civil war. If that does not happen, it does not mean that we are the ones who are advocating for civil war in this country. Unless there is a truly independent Electoral Commission to conduct a fair and free election, then the next elections are not going to be fair.

I would like hon. Wamalwa, hon. Kibaki and hon. Shikuku, who have declared their interest in the presidency, to have a fair chance at having a go at the presidency. I am assisting them in that direction. Without a truly independent Electoral Commission, none of them has got any chance whatsoever of making it. This time next year, we shall be here and President Moi will be presiding over the State Opening of the next Parliament because the elections will not be fair. The current Electoral Commission should be disbanded and a fresh one constituted on the basis and manner we agreed upon at the Limuru Conference. The other minimum condition is that the President of this country should be elected by 50 per cent of the voters and not less.

**The Assistant Minister, Office of the President (Mr. Shamalla):** On a point of order, Mr. Speaker, Sir. Hon. Muite continues saying that he cannot foresee fair elections being held after the reforms are approved. Is he in order to keep telling us about what he terms as fair elections without defining fairness; telling us the difference, in his understanding, of fair elections compared to the elections that we are going to have under the reforms that we are going to approve?

**Mr. Speaker:** I think Mr. Muite is merely expressing his opinion, however wrong it may be.

**Hon. Members:** Yes!

**The Assistant Minister, Office of the President (Mr. Shamalla):** On a point of order, Mr. Speaker, Sir.

**Hon. Members:** Sit down!

**Mr. Speaker:** Order! Who has given you the Floor?

**Mr. Muite:** Mr. Speaker, Sir, fair elections are those elections conducted by an Electoral Commission, the members of which are not appointed by a person who is interested in the results of the elections. It is a commission where the NCKK appoints a given number of people; the Catholic Church appoints a given number of people; the Muslim community appoints a given number of people---

**Mr. Speaker:** Order! Order! Mr. Muite, I think from yesterday you have been talking about the electoral---

**Mr. Muite:** I was responding---

**Mr. Speaker:** Just a moment. Yes, I know you are responding. I think I want to shadow out that issue now. From yesterday, the hon. Muite has said what he considers to be a fair election, and he has said so many times that the present Electoral Commission must be scrapped because it is unfair. So, you are now going to be repetitive. So, move on to another point.

**Mr. Muite:** Mr. Speaker, Sir, I will do that. I was only repeating that for the benefit of the Member for Shinyalu who was probably taking a nap when I was elaborating the issue yesterday.

*(Laughter)*

**Mr. Shikuku:** On a point of order, Mr. Speaker, Sir. You have already ruled that one does not repeat himself, and hon. Muite admits that he has been repeating himself, which is contrary to Standing Order No. 87. I am sure he does not know that, but could you tell him not to dare repeat himself?

**Mr. Speaker:** Order! Order! In fact, the Standing Order states: "No Member shall repeat his own argument or an argument of others". So, when I have already ruled that the issue of the disbandment of the Electoral Commission has been repeated many times, it means neither Mr. Muite nor any other Member will revisit that issue, because it will be repetition.

**Mr. Muite:** Including the Member for Butere and I agree entirely with the Chair. I indicated why I was---

*(Mr. Achola slapped Mr. Nthenge with some papers)*

**Mr. Speaker:** Order! Order! What is the name of the Hon. Member?

**Mr. Achola:** I am getting fed up!

**An hon. Member:** He is Mr. Achola.

**Mr. Speaker:** Mr. Achola, that is the most gross misconduct ever witnessed in this House by a Member towards another, apparently, totally unprovoked. So, Mr. Achola, because of that gross misconduct, itself apparent on his own safety, you are found by the Chair to be guilty of gross misconduct, and you are now excluded, under Standing Order No.88, from the balance of the sitting of this House to ensure the integrity of this House in the face of the public and in the face of Members of this House. You must now take leave for the balance of the day.

**Mr. Achola:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Sorry, you are a stranger.

**Mr. Achola:** But can I defend---

**Mr. Speaker:** You are a stranger.

**Mr. Busolo:** Mr. Speaker, Sir, I did not even hear what---

**Mr. Speaker:** Order! Order! Order, Mr. Achola! Order! Mr. Achola, you must leave. That is not my business. Mr. Achola, you must obey the order of the Chair.

*(Mr. Achola withdrew from the Chamber)*

**Mr. Speaker:** Order! Order! For the benefit of the House and for those Members seated behind, because I said it was apparent on his safety, but it may not be apparent to Members sitting very far from where the hon. Member was. What hon. Achola did is apparently least unknown to Mr. Speaker. He took the Order Paper he was holding, and slapped it on the face of another hon. Member. Apparently, I think it was the hon. George Nthenge, an old gentleman.

*(Loud consultations)*

Order! Order! Mr. Ojode, you are not going to probe the Chair. If the conduct, in the opinion of Mr. Speaker, is disorderly, the right thing for a Member who is aggrieved by another Member to do is to stand on a point of order and seek redress from the Chair or from the House. But we will never accept a situation where Members go physical in this House. No!

Proceed, Mr. Muite.

**Mr. Raila:** On a point of order, Mr. Speaker, Sir. I heard what happened here. It is interesting it will be on record. Hon. Owino Achola took issue with hon. Shikuku that the latter had repeated himself many times in his contribution last week. That was what hon. Owino Achola had said, to which hon. Nthenge said: "These short guys", referring to hon. Owino and hon. Muite, "are making too much noise about the NCEC". So, hon. Achola, in anger and protest hit against his hands at the moment when hon. Nthenge was passing in front of him. He never hit hon. Nthenge with the Order Paper.

**Mr. Speaker:** Order! Order! This matter is closed and I do not think, however, short-sighted---

*(Mr. Ojode interjected)*

**Mr. Speaker:** Order! Order, Mr. Ojode! You had better be very careful. I do not think Mr. Speaker can be

short-sighted as to miss to see such an action taking place right here. If I cannot, I will not be able to recognise the hon. Raila Amolo Odinga. So, can we make that matter rest there.

Proceed, Mr. Muite.

Order! Order! In any case, whatever the circumstance, Mr. Speaker shall never allow Members to go physical in this House, or to abuse one another in this House.

Proceed.

**Mr. Muite:** Mr. Speaker, Sir, the other serious omission in this Bill and which we think is absolutely fundamental, is the issue of the 50 per cent rule. The only way in which we can begin to break down the tribal balkanization, like what we have in Kenya, is by requiring a simple amendment to the Constitution. That should have been negotiated at County Hall and it should have been part of the minimum reform package. One of the minimum clauses which was negotiated at Limuru is the fact that whoever is going to be President in this country should get more than 50 per cent of the votes cast. That way, we will ensure that whoever becomes the President in this country is going to have the support of more than 50 per cent of the Kenyan people and, therefore, whoever is the President will be running this country with the confidence that he or she enjoyed the support of more than 50 per cent of the people who cast their votes.

Mr. Speaker, Sir, there has been a lot of misunderstanding of this clause which, incidentally is supported not just by the Members of Parliament aligned to NCEC, but also by the Catholic Church in this country which has demanded for its inclusion into the new amendments. This is also a clause that has been demanded by the National Council of Churches of Kenya.

Mr. Speaker, Sir, it is not just NCEC which is demanding for this clause. We cannot all be wrong. The NCCCK, NCEC, Catholics and those Members of Parliament supporting this clause cannot be all wrong. The rationale behind this requirement is from the recognition that ethnicity in this country is a major factor. There is not a single tribe or two tribes which can be able to gang up together and get the required 50 per cent.

There has been a lot of disinformation campaign that perhaps this clause is put forward so as to favour the Opposition. That is not true and in fact, this is a clause which probably will turn out as favouring the incumbent. This is because one can foresee that in the first round, and one assumes the voting patterns of 1992 prevail, chances are that no one will get more than 50 per cent in the first round.

But given the nature of politics, one can predict a situation where, in fact, presidential aspirants in the first round will be tearing each other into pieces and they might even forget that, there was also another candidate called President Moi in the first round. So, President Moi could be standing taller and taller while the Opposition, presidential candidates are tearing themselves apart. In the second round, we will be left with two candidates, one of them being President Moi. The losing candidates from the Opposition who might fear to lose will find it easier to support President Moi to form a coalition Government, than to support the remaining Opposition presidential candidate because of the damage they would have done to each other during the campaign. So, this is not a clause that necessarily favours the Opposition and I would urge that, when this Bill is withdrawn, the two clauses that must be inserted in it should be the 50 per cent and one to constitute a truly independent Electoral Commission. If this is done, it would have my full support, and I know it would have the support of those Members of Parliament from the Opposition who are supporters of the views of NCEC. If those two clauses are included in the Bill, we will support it 100 per cent as an interim measure, and we would be prepared to participate in this coming election. That is all we asked for! Because if we do not, then the elections will be quite clearly unfair, and the curtain will go down on those of us who have been asking for constitutional reforms through civil means. When that curtain goes down, and it goes up again, all of us will have become irrelevant.

Let us not overlook that every year, Kenya is discharging into the labour market half a million young men and women, and yet, there are no jobs. Unemployment in this country has reached unacceptable and intolerable levels. There cannot be a situation where all Members of Parliament from both KANU and the Opposition have vehicles and they do not endure the poverty that the majority of Kenyans are going through. These people are not going to wait for us forever.

**Dr. Toweett:** On a point of order, Mr. Speaker, Sir. The hono. Member has said that our jobless youths are increasing every now and then. But why should some people call for the stoppage of aid from foreign countries?

*(Laughter)*

**Mr. Speaker:** Order! Order! That is not a point of order but a question, and we have already passed that stage.

Proceed, Mr. Muite.

**Mr. Muite:** Mr. Speaker, Sir, I was drawing attention to the potentially explosive situation we have in this



country, and the only way to defuse that time-bomb is by giving us some of the reforms which we are demanding. Those reforms are the two clauses I had mentioned earlier. That is the only way we can have free and fair elections. If we do not, then something is going to happen which I was merely drawing the attention of Members to. There will be an explosion in this country if the next elections are not accepted by Kenyans as having been free and fair---

**Mr. Musyoki:** Ninasimama kwa jambo la nidhamu na ninauliza kama ni haki kwa Mbunge mwenzangu kusema pasipokuwa na uchaguzi huru na haki kutakuwa na ghasia katika nchi hii? Tunamfahamu kabisa kwamba yeye alikuwa rafiki wa Mkuu wa Sheria wa nchi hii wa zamani, Bw. Charles Njonjo, na walikuwa wanafanya kazi pamoja, kisha, Bw. Njonjo akawa Waziri wa Mambo ya Katiba katika Serikali ya Kenya. Baadaye, vyama vingi vilipoanzishwa, Bw. Muite alihusika kikamilifu kwa kuanzisha FORD(K) akifikiria kuwa Mzee Jaramogi Oginga Odinga atakapokufa, atachukua uongozi. Hiyo haikuwezekana, na akaanza tena *Mwangaza Trust*. Kwa hivi sasa, yuko kwa *SAFINA*.

**Mr. Speaker:** Order! Order, Mr. Musyoki! I think Members must familiarize themselves with what amounts to a point of order and if you do so, you must be able to stand and raise that point of order. As far as I am concerned, the matters raised by the Member for Machakos Town are points of argument and his own opinion. I think, unless you really have a serious point of order, you should not unnecessarily interrupt your colleague.

**Mr. Muite:** Apart from points of argument and his own opinion, there were a lot of incorrect assumptions with a lot of untruths. I was merely drawing attention to why the reforms we are asking for are critically important. I was talking about unemployment, poverty, the collapsing educational system from universities to secondary schools, health services and many others.

**Mr. Speaker:** Order, Mr. Muite. Are you sure you are not going too far in your deliberations?

**Mr. Muite:** Mr. Speaker, I will leave it there by merely saying that the other issue that must be addressed, even as we talk about these reforms, is the reason why there is so much discontent and poverty. This is why we are asking for these reforms so that we can usher in a Government which can be able to contain the plundering and theft of public funds. That is the reason why we are insisting on the reforms I have alluded to, and I want to give an example.

Even as this Government is saying that it is committed to the implementation of these reforms, it is at the same time preparing to pay out an additional figure of KshS. 2.5 billion to Mr. Kamlesh Pattni and Mr. Gideon Moi out of the Goldenberg money. This is the sort of thing that is not going to endear Kenyans into believing that, this Government is going to adhere to the reforms we are debating in this House. This is why they want to kill my professional colleague, Mr. Philip Murgor, because he is trying to stop Grand Regency from being given back to Mr. Kamlesh Pattni. I believe a cheque has already been written out for KshS. 2.5 billion. Now I would like to lay the papers on the Table.

*(Mr. Muite laid the papers on the Table)*

With those few remarks, I wish to strongly oppose the adoption of this Bill in its present form.

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Speaker, Sir, I was going to stand on a point of order, but now I will take this chance to contribute to the Bill. I am surprised that the hon. Member for Kikuyu collects a lot of rumours that have been spread by his friend, Mr. Gatabaki, in this month's issue of the *Finance Magazine*, to come and make them issues of discussion in this House.

Mr. Speaker, Sir, it is not---

**Mr. Muite:** On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Assistant Minister to accuse me of collecting rumours from the Member for Githunguri, when I have laid on the Table of this House a letter from the lawyer, Mr. Murgor? I have not laid on the Table of this House a copy of the *Finance Magazine*, but the letter written by the lawyer for Central Bank of Kenya, Mr. Philip Murgor. I think the hon. Assistant Minister should read that correspondence first, before he opens his mouth.

**Mr. Speaker:** Order! Order! Can this debate be devoid of personalities? I am sure we are not legislating for any individual.

Proceed, Mr. Sunkuli!

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Speaker, Sir, I want to join my colleagues in congratulating those who sat in the IPPG meetings in order to bring reforms to this country.

*(Applause)*

The reforms came as a result of requests, you can call it pressure, from the people of this country, mostly hon. Members, to the Government, which, in turn, responded to their requests.

Mr. Speaker, Sir, many people say that the Government was placed under pressure, but what is wrong with governments responding to the pressure from their own people? The Government acted democratically and did what the people wanted.

**Mr. Gatabaki:** On a point of order, Mr. Speaker, Sir. The hon. Assistant Minister has mentioned my name here disparagingly. He has abused me and given a connotation that I am spreading rumours. I categorically say that the hon. Assistant Minister is out of order and I am not a rumour monger, but he is!

**Mr. Speaker:** First of all, you are right to say that he is out of order to say that you, the hon. Member for Githunguri, are a rumour-monger. But you are also out of order when you say that he is also a rumour monger. So, both of you are totally out of order. Proceed, Mr. Sunkuli!

*(Applause)*

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Speaker, Sir, when we started the IPPG meetings, and I am glad to reveal that I was in the Constitution and Legal Reform Committee, we looked into several matters, including the documents of the NCEC. The NCEC document was incorporated almost in its entirety. It always surprises me that, when persons, no matter what they call themselves, sit and make certain demands and the demands are met, they do not have the courtesy to say "thank you" and then sit down.

Mr. Speaker, Sir, people want to shift the goal posts because the ultimate goals of some people were not the reforms. Actually, some of them did not want the reforms. Instead, they were using the reforms as a means to an end, and as long as that end has not been fulfilled for them, then the reforms are not meaningful. However, I want to congratulate and thank those Members who came to the IPPG meetings with a sober mind; that is, to bring the reforms necessary to transform this country. That has been achieved because the reforms we are now debating in this particular Bill are minimum reforms. These are short term measures.

I want to respect the opinions of those who say that the reforms do not go far enough. Yes! They do not go far enough, because they are minimum reforms. We have also made another commitment: another Bill has been drafted for more fundamental changes to come to this country. We must say that the reforms which will be implemented in the form of these Bills will facilitate a smooth, fair and free election.

Mr. Speaker, Sir, a lot has been debated about the Electoral Commission and it was a matter of great consideration in the IPPG meetings. The IPPG proposed that the Electoral Commission be expanded, so that its membership does not become less than four, but it should also not be more than 21. That was a fundamental change in the Electoral Commission. The Committee also recommended that the ten extra Members who will be appointed, will be appointed from lists provided by the Opposition.

Mr. Speaker, Sir, specific amendments were demanded by Members of the Opposition and those specific amendments were inserted in the Constitution. These are the amendments we now wish to move here. But when hon. Members cast aspersions and say that all matters of detail must be placed in the Constitution, it is not fair. First of all, it is not fair because it is not in the spirit of the IPPG. The IPPG made a specific recommendation that the President must appoint ten extra Members from lists provided by the Opposition, which the Government has accepted. I am sure that the ten extra Members will be appointed from lists provided by the Opposition. There is no reneging from that fact; that is a matter which will be done.

It is a test of our sincerity as a Government and it is not a matter which must go into the written law. However, it is a matter that we need to implement now and not in future. When more fundamental changes come, we can say so. But for this year's General Election, the Government has accepted that the ten extra Members of the Electoral Commission will be appointed from lists provided by the Opposition. Therefore, there is no reason at all for anybody to cast aspersions on the sincerity of the Government on this matter.

We all went to the IPPG trusting one another. At first we did not, but we developed a level of trust that surprised me. When I hear an hon. Member, who in the first place, did not approve of any matters in the IPPG meeting criticising the spirit of the IPPG, I get surprised. The spirit of the IPPG is based on trust. The President will appoint ten extra Members from lists provided by the Opposition Parliamentary Parties. That does not need to go into the written law.

Mr. Speaker, Sir, the fundamental thing about these amendments is that they must be passed. If they are not passed, then some of the amendments which were passed during The Statute Law (Repeals and Miscellaneous Amendments) Bill will become irrelevant. We have said in the--- For instance, we have said in the Statute Law (Repeals and Miscellaneous Amendments) Bill that the nominated councillors should be nominated in accordance with the proportion of the parties that have already been elected into particular councils. If this particular Bill does not pass, then that particular matter would be unconstitutional because it will have no constitutional basis. It would be better that we pass this Bill now, so that we are able to implement those matters on nominated councillors.

The amendments to Section 84 touch on questions of election courts. It is surprising that today we say that democracy is the highest demand in our country and the principle element of democracy is the matter of the election. When a party is aggrieved after an election, he can only have one court hearing his case. The Constitution is to be amended so that the highest matters of the land can be entrusted to the highest court. I heard the hon Attorney-General say that the main reason why the appeals were not allowed in matters of petition cases was because of the East African Court. That indeed was true, but I think there was something which was fundamentally true; that, at that particular time, the then Attorney-General, Mr. Charles Mugane Njonjo, did not trust the highest court of the land, because he did not trust the judges of the Court of Appeal. He did not trust them because he could not manipulate them. He said these matters should not be taken to the highest court of the land. So he said that the highest matters of this land should be subjected to only one court which was not the highest court.

This Government trusts the highest court of the land as well as all the judges of the land. Because of that, the fundamental matters of the State, the fundamental matters of democracy, should be allowed to be determined by the highest court of this land. It is awkward that an election petition should have no appeal. We should pass this particular amendment so that we can effect that matter because under the miscellaneous amendments the number of judges have been increased. We want most of these judges, after election to pay attention to hearing of petition cases. As soon as the petitions have been filed, and some parties are not satisfied with the ruling of the High Court, these matters should be trusted to the highest courts of the land, so that we can get a fair hearing. These are the matters that we intend to amend in our Constitution and that is why it is fundamental to have that particular matter.

Hon. Muite has raised the question of the 25 and 50 per cent rule, but let us agree on one thing, that this country is comprised of 42 tribes. I hear people saying that we should have considered the religious communities; that we should have considered what nowadays is referred to as "civil society". Now, I first heard of this word "civil society" being used seriously in one conference I attended with Prof. Anyang'-Nyong'o in Sweden, and I thought that perhaps the Swedish people must really attach a lot of importance to this word "civil society". But if you apply the term "civil society" in Kenya, and say you need to listen to the "civil society", the churches; in fact, what you will be doing in short is to duplicate the people you are listening to. You will be listening to some people sitting as NGOs, another time sitting as churches and another time sitting as their tribe.

I come from Trans Mara. I challenge anybody, including the man who is in charge of NGOs and the NGO forum, to say how many NGOs come from Trans Mara, and in what way the "civil society" is representative of the Kenyan society. There are some communities in this country that got the advantage of education early enough, and they are the ones who are able to make use of the aid that comes from abroad. Some other areas in this country do not know anything about what is called "civil society". NGOs are a conglomeration of units that are concentrated in particular parts of this country and those are only representative of those parts of the country. So, if you say we should have gone to listen to the NGOs, hon. Muite himself might one day decide to sit as CLARION, another moment he might decide to sit as the PCEA, another time he might decide to sit as the Member of Parliament for Kikuyu.

*[Mr. Speaker left the Chair]*

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

If you want to listen to all these people you will be listening to only one person. The only way to be fair in this country is to pay attention to the ethnic composition of the country. The only unit that actually comes very near to the ethnic composition in this country is this House. That is the only thing worth listening to.

Mr. Temporary Deputy Speaker Sir, not very many Maasais go to church, I swear to you. Very few are members of the Presbyterian Church of East Africa (PCEA) because the PCEA has never gone beyond the Rift Valley. PCEA influence ends where the Valley descends. There are some churches that consider themselves very active. The National Council of Churches of Kenya's (NCCCK) powers are not nationwide. It does not necessarily represent those people who fear God in this country. The Catholic Church, to which I belong, is composed of the priests and the laity, but we are never consulted before a pastoral letter is written. In fact, most of the bishops only come to append their signatures to the pastoral letters drafted by one man in Waumini House.

I was surprised the other day when one Catholic bishop actually said that the Catholic Church wants a coalition Government and that we should have included it in the reform package. Yes, we made possible the formation of a coalition Government, but I do not find it necessary for one bishop to say that the Catholic church does not find it satisfactory. He said that---

**Mr. Obwocha:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Most of us are Catholics. Is the Assistant Minister in order to mislead this House that it is only one person who makes the decisions in the Catholic

Church, when we know that the Executive Committee has a chairman. It is in the top echelons of the leadership of the Catholic Church who makes decisions. Is he in order?

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, hon. Henry Obwocha comes from Kisii Diocese. The Bishop of Kisii Diocese is called Joseph Mairura Okemwa, and he does not believe in a coalition government. I can vouch for that because I went to school with that particular Bishop. I know that he must have been equally surprised to hear another bishop from Central Province saying that we should have included a coalition government in the reforms package.

what is clear now is that the only way in which changes can come to this country fairly is through considering the ethnic composition of the country. It is very clear---

**Mr. Shikuku:** Jambo la ufahamisho, Bw. Naibu Spika wa Muda. Namshukuru mhe. Sunkuli kwa kunipa nafasi hii ili nimpashe habari. Mnamo mwaka wa 1992, tulipokwenda kwa uchaguzi wa mwaka huo, marehemu Jaramogi Oginga Odinga alikuwa mgombea kiti cha urais wa FORD(K). Naibu wake alikuwa ni mhe. Muite, aliye Mbunge wa Kikuyu. Kulikuwa na masikilizano kwamba mhe. Muite angepewa kura za ubunge lakini marehemu Odinga angepewa kura za urais za sehemu ya Kikuyu. mhe. Muite nami tunajua ukweli ni kwamba Mhe. Muite alipata kura zaidi kuliko marehemu Jaramogi. Hii inaonyesha kwamba kuna ukabila. Katika uchaguzi huo, watu wa Mikoa ya Kati, Nyanza na Rift Valley walipiga kura kivyao. Watu ambao hawakupiga kura wenyewe kwa wenyewe ni Waluhya na Wakamba.

**Mr. Muite:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member for Butere to use Kikuyu Constituency as an example to illustrate that there is tribalism when he knows that I walked from house to house looking for votes for the late hon. Jaramogi? The 3,000 votes that my friend, the late hon. Jaramogi, got, was the highest in Central Province. In Kikuyu Constituency, he even got ten times more than President Moi.

**The Assistant Minister, Office of the President** (Mr. Sunkuli): It is a matter of common knowledge that hon. Muite is the only Member of Parliament who represents a constituency with a name of a tribe. That is the very embodiment of his philosophy---

*(Applause)*

Mr. Temporary Deputy Speaker, Sir, I was saying that the only way to be fair in this country is not to say that we should listen to civil society because civil society is only a representative of some communities in this country. I want to say that even some of these priests do not necessarily receive messages from the Almighty God. I have always said it here. Some of them receive messages from my colleagues here. Before these changes were made, and it was imminent that the IPPG was going to succeed, certain people had already made arrangements to run out of this country. Indeed for some of them, it was irreversible, they had to go. Reverend Timothy Njoya made arrangements to go and study abroad. Reverend Njoya himself is a member of the NCEC. He was also a member of the delegation that recently went to try to influence the Canadian Government and the Government in Washington. He only becomes a priest when he wears the robe. Inside him, there is an element of his tribe, and he is never fighting for any justice in this country. He is fighting for the justice of his tribe. He never sees any wrong done to anybody else, unless that person comes from Kikuyuland.

Mr. Temporary Deputy Speaker, Sir, I want to say this because today, when there are two or three tribes fighting, like the Kurias and the Kisii, who talks about it? Supposing the Kikuyus were involved; what kind of noise would we be having in this country? That is why I am saying that we should never listen to people who are saying "Let us listen to the Churches" because they are not churches. They are only using the church to cover their tribal feelings. That is why we want to say that if you want democracy to flourish in this country, let us come to this House and discuss it in this House because this is the only House that has its true representatives. If hon. Muite, for instance, is full of praise of the NCEC, is it not because the majority of the 600 people who were brought there to eat mandazi were loyal to them.

*(Laughter)*

Those were not people who were selected from all corners of this country. They must have come from selective parts of this country. If today I was given as much money by the Westinster Foundation and some of the foreign masters of my colleagues, I can get 600 people from River Road and put them in Ufungamano House. There was nothing miraculous about that. The hon. Member wanted people who were loyal to him.

That is why I am saying that the other people of the NCEC should treat this House very seriously, and this House can only operate within the rules. When people say that we should postpone elections, what does that actually mean? Does it not mean that we break the rules? We do not want to be unfaithful to the people of this country. Today,

in my constituency, there are eight people who want to contest to come to this House. They will never forgive me if I voted and said that the period of this House should be extended. They should be given a chance to prove whether they are able to come or not. Behind every one of us, there is a Kenyan who wants to come to this House by the right given to them by the Constitution. The people of this country are so prepared for the elections, that they wish they could be held tomorrow.

Mr. Temporary Deputy Speaker, Sir, when the hon. Members say that we should extend the period of this House, that amounts to total betrayal of the wishes of the people of this country. When people say "We want to go and sell our policies to the people" that surprises me. I have a lot of respect for the hon. Member for Butere and I know that he would like to have a little more time to look for votes. Also, in good faith, I agree with him that, indeed, these things need to be understood by our people. But one thing that hon. Members should know is that according to the Constitution of this country, elections should be held before the end of this year.

Mr. Temporary Deputy Speaker, Sir, the truth of the matter is that no matter how much you preach FORD(A) in Trans Mara, you will probably get not more than five people. Those people will probably come from a tribe where FORD(A) is predominant.

There are no policies of NDP to sell in another part of the country like Central Province because, no matter how many times hon. Raila goes to Central Province to preach NDP, his party will not be "bought" because it is a tribal party. It is not a question of parties being allowed to go out to preach because, until we form political parties in the Opposition rather than tribal parties, there is nothing to preach any more.

**Mr. Ojode:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Assistant Minister in order to claim that the NDP is a tribal party and cannot be sold in Central Province and yet the deputy party leader, Prof. Maloiy, comes from Kajiado and he is a Maasai?

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! That is his own opinion. It may not be exactly right or wrong. That is his own personal opinion. Therefore, you cannot ask whether he is out of order or not, unless you want to contribute.

Continue, Mr. Sunkuli.

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, under the Maasai practice, there are some cows that always lag behind the herd and, as a result, they are eaten by hyenas. I am sure that the substance of the Maasai will never support the NDP. If the hon. Member would like to satisfy himself by taking dropouts who have never been known to be of any good among the community, then that is what the hon. Member deserves. The truth is that let us give other reasons. For instance, if hon. Nyagah was living in the Rift Valley, Coast or North Eastern Provinces, he would be in KANU today. But, under the circumstances, because of the tribal element of it, he belongs to the DP. There is absolutely no reason---

**Mr. Nyagah:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Does the Assistant Minister know that my father, hon. Jeremiah Joseph Mwaniki Nyagah, KANU life member No.7, is still in KANU up to date? Out of my own choice, and because of the ills practised by KANU, I moved out of KANU to join the Opposition. Is he in order to insinuate that I have no choice but to be in the Opposition because my area is an Opposition stronghold? He is also forgetting that there is a KANU sycophant in the name of my brother?

*(Applause)*

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, between Joe Nyagah and hon. Norman Nyagah, I do not know who is a sycophant because they both still live in hon. Jeremiah Nyagah's home. They still lived with him even when he was a Cabinet Minister.

**Mr. Nyagah:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member is misguided. First, I am a grandfather of a three year old child. I am 47 years old. I live both in Gachoka and Nairobi on my own. Is he in order, if he is still living in his mother's shelter, to insinuate that I live with my father?

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! There should be no more of that debate. Could you go back to the Bill?

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, I do not want to take a long time, but the message I intended to pass in this particular matter is that the spirit of the IPPG was the spirit of minimum reforms. In view of the fact that we are going to make fundamental changes in our Constitution, the sooner we pass these changes, the better, so that we can give the people of this country a chance to give us a new mandate to come here. Let us not use all manner of excuses to extend our mandate. For example, some of my hon. friends would like to have some funny parties registered. They have a lot of room in the number of parties that have been registered as a result of the IPPG request.

**Mr. Muite:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Assistant Minister in order to suggest that because there are a number of parties, people have a choice, when he ought to know that the essence of multi-partyism is that even if people wanted a 1,000 parties, they should be allowed to have them? Any person who wants to form a party should be permitted to do so. We know that some of these recently registered parties are KANU-sponsored.

**The Assistant Minister, Office of the President (Mr. Sunkuli):** Mr. Temporary Deputy Speaker, Sir, if hon. Muite himself had made a request for his political party to be registered, I would, perhaps, have taken him seriously. But I think he is talking about some foreign people that attempted to use him to register a party which they then called a "Kenyan party". There is no Kenyan party that wants to destroy this country. Let us all make a commitment to the preservation of Kenya as a nation. We must make a commitment to preserve our country as a nation and not to create parties that want to destroy this country.

**Mr. Raila:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I hate to interrupt the hon. Member, but is he really in order to insinuate that SAFINA is a foreign party? Could he tell this House what is "foreign" in SAFINA? Is it Mr. Richard Leakey, a third generation Kenyan? Can he tell us the foreign link in SAFINA, other than Mr. Richard Leakey?

**The Assistant Minister, Office of the President (Mr. Sunkuli):** Mr. Temporary Deputy Speaker, Sir, could the hon. Raila direct the question to the deputy chief of mission of some embassy who, the other day, said that SAFINA should be registered? Why did that particular person not make reference to the IPK party or any other political party? What is the interest of foreigners in SAFINA? Why is it that the Kenyan public is not pressing for the registration of SAFINA, but the pressure is coming from outside? The money is coming from outside and every small attempt to put pressure is being directed to the outside in order for that pressure to come inside Kenya. There is nothing Kenyan about SAFINA at all.

**Mr. Mulusya:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Sunkuli in order to say that foreigners are agitating for the registration of SAFINA, while it is only one American Embassy official who told the Government to register SAFINA? Several hon. Members, I included, have already told the Attorney-General that he is making a big mistake by not registering SAFINA. This is because it is part of the IPPG package that all political parties should be registered. We have white people in KANU. We have Mr. Kamlesh Pattni, who is a thief, in KANU. So, what is wrong with embassies being interested and insist that the IPPG package should be respected and implemented?

**The Assistant Minister, Office of the President (Mr. Sunkuli):** Mr. Temporary Deputy Speaker, Sir, hon. Mulusya is an honest man and, of late, I do not like to disagree with him. I was not referring to the Americans at all. I was referring to some foreigners. But because hon. Obwocha is a good friend of mine and wants to speak, I beg to support this Bill.

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, I do not want to take a lot of time because I know that there are several other hon. Members who would like to contribute to this very important Bill. I am not going to do what another hon. Member did last time; speaking for three hours and repeating himself.

In introducing this Bill, the Attorney-General made some preliminary observations and expressed an air of optimism, that with these reforms, and with the passing of this Bill, we are on the way to eventually resolving our constitutional crisis. I want to tell the Attorney-General that he is not alone in the misguided belief that, we are finally on the road towards resolving our constitutional crisis.

Mr. Temporary Deputy Speaker, Sir, in 1967, there was The Constitution of Kenya (Amendment) Bill, Bill No.1. The late hon. Tom Mboya, in seconding that Bill, had this to say:

"I would rather draw the attention of the House, and in this case, including the Members of the Opposition, to the fact that this represents the end of a very long constitutional journey".

According to the late hon. Tom Mboya, that was the end of a very long constitutional journey. He has been proven wrong by history. It was rather not the end of the constitutional journey, but the beginning of a constitutional crisis; a crisis that has led us to where we are today.

From 1967, when the Bill was passed, several other amendments to the Constitution were introduced. The Bill which was passed in 1967 saw the extension of the life of that Parliament by two years, because the Senate was being amalgamated with the Lower House, to give those changes time to take root. I said, during my contribution to The Statute Law (Repeals and Miscellaneous Amendments) Bill, that what we are going through right now is very much similar to what happened in this country in 1967. This is because we are intending to introduce fundamental changes aimed at facilitating free and fair elections, and that now, like then, there is need to give these changes time to take root, if we are intending to have free and fair elections this time.

Mr. Temporary Deputy Speaker, Sir, on the eve of 1995, President Moi made a statement, in which he said that 1995 was going to be a year of constitutional reforms, and that he was going to invite foreign experts to come and

help in collecting the views of Kenyans and draft a Constitution, which would later on be tabled before this House for debate. Immediately after that statement was made, several foreign missions in this country greeted it with a lot of optimism. Most of the foreign countries offered to provide experts to help in that exercise. However, by the month of May the same year, the President began to backtrack on his statement. He began to prevaricate. Whereas in December, he saw the need for comprehensive constitutional review, he began to make contradictory statements by May. Come September, he became categorical and said that there was nothing wrong with the current Kenyan Constitution, which he had sworn to defend, and that constitutional amendments are so involving and complicated that they cannot be done in a hurry. Come the beginning of 1996, the story had completely changed. This time, there was no need for constitutional reforms and, in any case, reforms cannot be tied to elections, and reforms will be done when the country will be ready for them. By the beginning of this year, he said that there will be no reforms before the elections, and that there was no need to reform the Constitution because it had been tried and tested. I am saying this to underscore one point: It has to be accepted that KANU has been forced against their wishes, to agree to constitutional reforms.

Mr. Temporary Deputy Speaker, Sir, those of us who went to the NCEC did not go there because we wanted.

We had begun by asking in this House, that we wanted the Constitution to be reformed. But it is only after all our demands were met with deaf ears, that we decided to go back to the people, where the constitutional reforms really belong. The Constitution is a contract between the people and the Government. The reason why I was taken aback when I heard hon. Sunkuli talking very carelessly about the civil society, is an expression of extreme ignorance on the part of the Assistant Minister, to try and undermine the role of the civil society.

**The Assistant Minister, Office of the Vice-President and Ministry of Planning and National Development** (Dr. Misoi): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for hon. Raila to insinuate that Ministers and Assistant Ministers are ignorant of the role of the civil society? We know the role of civil societies and Non-Governmental Organisations (NGOs). But what we are saying is that, they should not assume roles that do not belong to them.

*(Mr. Raila interjected)*

**The Temporary Deputy Speaker** (Mr. Ndoto): Order! Hon. Raila, you cannot accuse another hon. Member of being ignorant of something. That is in bad taste and I would like you to refrain from doing that. Proceed!

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, what I was trying to imply is that the civil society has become very important in today's governance, that I was taken aback to hear an Assistant Minister of the Government, talking very lightly about the role of civil societies in such fundamental issues as constitutional reforms.

When we talk about civil societies, we are not just talking about the NGOs. We are talking about the populace itself and representative institutions of the populace. We should not over-play the role of Parliament in this. Parliament is elected and it is a representative democracy. We also have direct democracy. But the sum total of all the civil societies and elected representatives of the people, is what we need to deal with an important issue like the constitutional reforms. The people who met at Limuru, although they may not have been representing the people of Kenya completely, were not hand-picked. However, there was an attempt to try to involve the civil society in the exercise of the constitutional reforms. I think in that respect, the Limuru Convention was a success.

Mr. Temporary Deputy Speaker, Sir, they are saying that the people who have continuously resisted constitutional reforms cannot be relied upon on their own volition to try to change that Constitution. The picture that is being given of St. Paul on the way to Damascus, having seen the light and now being converted to Christianity is not exactly true. Just three months ago, these very same people were shouting at the top of their voices and saying there will be no reforms before elections. Now, they are telling us that they are better reformers than ourselves.

Mr. Temporary Deputy Speaker, Sir, I now want to come to the Bill--

**The Assistant Minister, Office of the Vice-President and Minister of Planning and National Development** (Dr. Misoi): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Raila in order to allege that Kenyans who have been supporting constitutional reforms at the right time are not capable of executing the same; when we have taken the challenge based on the public opinion that this was the right time, people had the consensus and we are on the move? Is he in order to mislead the country?

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, all that I was saying was that, this document itself is a testimony to the fact that we are not dealing with St. Paul on his way to Damascus, who has been converted to Christianity. I am not saying that people cannot reform; I am saying that these people have not exactly reformed; that the IPPG was meant to hijack the reform process and to sabotage it. This is what they have been succeeding in doing in this document.

Mr. Temporary Deputy Speaker, Sir, now I want to show--- And I will use a few clauses in the Bill. Clause 2.1(a) states:

"The Republic of Kenya shall be a multi-party democratic State."

That is a very categorical statement: "It shall be a democratic multi-party State." A multi-party State means that every Kenyan who meets the legal requirements and wants to register a political party, is allowed by law to do so. This is also based on the so-called spirit of the IPPG. In the IPPG, they said that all the political parties that have applied for registration, and whose applications were pending before the Registrar-General, shall be registered, but that if any of those parties are not registered for one reason or the other, then the Constitution will allow for independent candidates to stand and contest elections.

The fact that two parties whose application have been pending, SAFINA and the Islamic Party of Kenya (IPK) have been denied registration, and that this amendment does not also include a provision for independent candidates standing, clearly shows that the spirit of IPPG has died somewhere between County Hall and this House. We need an explanation, because the country was told that independent candidates were going to be allowed, short of registration of all political parties which had applied. The country needs to be told why this is not happening. Multi-partyism means that political parties are allowed to operate freely. That is why some of us are opposed to the so-called single Opposition presidential candidate to oppose a KANU candidate. I am saying that we did not want to withdraw with one hand what we have been fighting for. We have not been fighting for a two-party State. We have been fighting for a true multi-party democracy. All that is required is a level playing field for all these political parties, then the people of Kenya will eventually take care of the rest. When we are talking about a multi-party State, and then in the same breath we go on to talk about Opposition as if Opposition itself is an amorphous organisation, we are contradicting ourselves. Opposition consists of different political parties. The only thing that unites them is that for the moment, they are all sitting on this side of the House. But otherwise, all these political parties have got their own ideologies, different political manifestos, programmes and policies. So, some of these political parties are different among themselves, just as they are with KANU. We should, therefore, reflect that heterogeneity in this document.

Mr. Temporary Deputy Speaker, Sir, Clause 3, which deals with Section 7 of the Constitution, says:

"That the President elected shall form a Government consisting of members of the party that nominated him."

If you have done so and then you have now made provision for a coalition government, it is a farce. If this amendment is meant to allow for the formation of a coalition Government, why are they afraid of saying so in the Constitution? Why do they not mention the word "coalition" in the Constitution? It is because they did not want to have a proper coalition Government in the true sense of the word. Coalitions are formed between political parties negotiating a package and agreeing, after which the parties involved form a joint Government. But what is being provided for here is something that is going to be unique to Kenya; that a President is free to form a Government from members of his party and members of other political parties. The anomaly---

**The Minister for Co-operative Development** (Mr. Munyi): On a point of order, Mr. Temporary Deputy Speaker, Sir. I have been listening to what hon. Raila has been saying, but in actual fact, he is contradicting himself. A good example is the United States of America where they are free to form political parties, but there are only two political parties. There are more examples we can give him, but he should not contradict himself.

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, I do not know that there are only two parties in the United States. I know there are many parties including the Communist Party of America. I am aware that there are very many political parties in the United States, but there are only two main political parties, that is, the Democratic Party and the Republican Party. But even this is through evolution; it is by choice of the American people and it is not by law.

Mr. Temporary Deputy Speaker, Sir, no party has ever been denied registration in the United States; you are very free to register a political party and you can also stand as an independent candidate. For example, Mr. Ross Perot has tried it two times. So, that is a very different situation. I would like to give an analogy here, where we are going to be faced with a situation where, a political party does not attain a working majority. For example, President Mwinyi has not attained a working majority and is now appointing his Cabinet. So, he will appoint his Cabinet from Members of other parties who are in the Opposition. Those Members who are in his Cabinet will be sitting on the other side of the House, while the rest of the Members of that party, that are not in the Cabinet, will be sitting on this other side of the House. That, in my view, is not a coalition government, because it will mean that if this particular government brings a Bill before the House, and the party whose other Members are on the other side of the House, are opposing that Bill, that party will oppose that Bill from this side, but their Members who are in that cabinet, will be bound by the principle of collective responsibility, to support that Bill. That is abnormal in my view. It is not a coalition government. A coalition government means that two parties have agreed and all of them will sit on one side of the House and the Opposition on the opposite side.



Mr. Temporary Deputy Speaker, Sir, what is proposed here is abnormal; it is meant to undermine multi-party democracy. Because, for all intents and purposes, the Members of the party which is in the Opposition, but who are on the other side, will have defected from their party. If this Bill had been passed during the life of this Parliament, there would have been no need for Members of Parliament from Shinyalu, Ikolomani, Lurambi, Lugari, Migori, Ndhiwa and so on to defect. All President Moi needed to do was to drop some of the Assistant Ministers from his Cabinet - because there are already women in the House - and offer these people, positions in his Cabinet as Assistant Ministers. That way, they would just cross the Floor. So this in effect, is what this Bill is allowing; that as a leader of a party in the Opposition, you will have no control over your Members. So long as they are appointed into the Cabinet, they can walk across and sit on the other side and technically, be still Members of your party. But for all intents and purposes, they have defected to the party in power.

Mr. Temporary Deputy Speaker, Sir, this is going to undermine the multi-party democracy that we have been searching for. If we are trying to make a Constitution, let us not do so as a matter of expediency, but draft a Constitution that is going to last this country forever. In other words, what we are doing is facilitating defections from the front door rather than through the back door, where these Members will be required to go and face the electorate again.

Mr. Temporary Deputy Speaker, Sir, Section 40 of this current Constitution has parts "a" and "b". That is the section of the Constitution that deals with defections. Part "a" was introduced in 1964 to facilitate defections of Members of KADU to come and join the Government. The beneficiaries in this House today include the hon. Member for Butere, and the hon. Member for Baringo Central. It was made easy at that time to enable Members of KADU to cross the Floor and join KANU, without necessarily having to go for by-elections. Part "b" is the one that was introduced in 1966. That was the KPU amendment that now required a person to go back to the electorate and seek re-election. I am saying this to emphasise the fact, that this Constitution has been amended so frequently, every time to deal with a particular situation. That is what we are also doing now with this particular Bill.

**Mr. Muite:** On a point of information, Mr. Temporary Deputy Speaker, Sir. I would like to inform hon. Raila that constitutionally, a true coalition government can only come into being in a parliamentary system where Executive authority is vested in a Prime Minister, who would then be the head of all parties with the majority in Parliament. There can never be a true coalition government - in fact it is a contradiction in terms - in a presidential system where Executive authority is vested in the President.

**Mr. Raila:** Thank you, hon. Muite, for that information.

Mr. Temporary Deputy Speaker, Sir, Clause 4 of this Bill states:-

"Section 16 of the Constitution is amended in subsection 2, by inserting the words and commas "subject to the provisions of any written law", immediately after the word "shall".

Now, the Attorney-General argued that this in itself, did not contradict the current Constitution. But Section 3 of the current Constitution states:-

"If any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void".

Mr. Temporary Deputy Speaker, Sir, this is a contradiction, because it is trying to make this Constitution subject to any other written law. The Constitution is supreme, so that if there is any other law that contradicts the Constitution, the Constitution prevails. I know that in mathematics, when you are dealing with differential calculus, you are differentiating, and when in integral calculus, you are integrating. You cannot be integrating and differentiating at the same time. Now, if it is just written: "Subject to any other law", you are now making this Constitution subject to any other written law, and yet in other clause it states that any law that is inconsistent with this Constitution is irrelevant. This is a contradiction.

Mr. Temporary Deputy Speaker, Sir, Clause 5 of the Constitution deals with Nominated Members of Parliament and states that, these Members of Parliament shall represent special interests.

Mr. Temporary Deputy Speaker, Sir, it is stated that these Members shall represent special interests and shall be nominated by parliamentary parties according to their proportions in the National Assembly taking into account the principle of gender equality. Now, who is going to give guidelines to political parties to ensure that those who are being nominated represent special interests? Special interests in this case, I understand means minority, religious, ethnic, professional interests and so on and so forth. If political parties are going to have the liberty of making nominations, how are you going to ensure that there is gender balance? If you are going to nominate ten or 12 Members, how are you going to ensure that each and every party's proportion is balanced that there is that equity in the nominations?

Mr. Temporary Deputy Speaker, Sir, in the past we did have what we call the Specially Elected Members and there was a provision for a Senate sitting jointly with the Lower House to constitute an Electoral College which then went ahead to elect Specially Elected Members. It is only when the Constitution was amended that such powers were

given to the President and if we are talking about diffusing power and removing the power away from the presidency, then there should be no need for these names again being forwarded to the President to appoint. If political parties are nominating, then the President becomes superfluous and irrelevant. There is no need again for the President to appoint these people.

Mr. Temporary Deputy Speaker, Sir, Clause 6 deals with the Electoral Commission. Now the spirit of IPPG---

**Mr. Shikuku:** Jambo la nidhamu, Bw. Naibu Spika wa Muda. Nafikiria mhe. Mbunge anayezungumza analipotosha Bunge hili. Hii ni kwa sababu anasema kwamba vyama fulani vikiteua watu wao, Rais hana haki yakuwateua tena kwa sababu that will be irrelevant. Ukweli ni kwamba katika sheria ya sasa, hakuna kifungu ambacho kinasema kwamba vitateua watu sasa. Rais ndiye anawateua Nominated Members. Sasa Rais hatakuwa akifanya hivyo kama ilivyokuwa hapo mbeleni. Sasa ni vyama ndivyo vitampatia majina hayo. Wakati ukifika wa kufanya comprehensive amendments, jambo hilo litaangaliwa tena. Lakini kwa hivi sasa, hiyo level playing ground ambayo ni ya muda ndiyo tunajaribu kuweka.

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, what we have been told here is that the spirit of IPPG was to ensure that there was a level playing field for the coming elections and we have been saying that it cannot be level if one of the players is having the power to make this very self-important appointment. I am saying this because this refers in equal ways or it adds more weight with regard to the point that I am trying to make again. This is because I am saying that if we have already nominated, why is it necessary again for the President to appoint? Why should it not be taken as given?

Mr. Temporary Deputy Speaker, Sir, the point becomes more apparent when we go to Clause 6 which deals with the composition of the Electoral Commission. We have been talking about minimum reforms before the election to ensure that the electoral playing field is level. We said that---

**Dr. Otieno-Kopiyo:** On a point of information, Mr. Temporary Deputy Speaker, Sir. In jurisdictions where the President appoints members of the Electoral Commission, the President is himself not a contestant like in the Indian situation where there is a Prime Minister who is a contestant. The President is not. He exercises the constitutional functions. For that reason then, it is okay that the President can appoint members to a body whose duty is to oversee the elections. But in a case where the President himself is actually one of the players, then there is no level playing ground when the President does the appointment of people who are supposed to oversee his own election.

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, I thank hon. Dr. Otieno-Kopiyo for that information. That is the point that I was trying to make, that the playing field cannot be level when one of the players is also appointing the referee. We are talking about fairness of these elections and we had talked about a complete overhaul of the Electoral Commission, as a result of our experiences during the 1992 General Elections. That is the reason why we said that we wanted the current Electoral Commission to be scrapped and in its place, we put a new Electoral Commission, and that we agree, as all the players jointly, about the composition of that Electoral Commission.

Mr. Temporary Deputy Speaker, Sir, instead, the IPPG has retained that Electoral Commission and opted for an expansion of that Electoral Commission by adding ten new members and then assuming that by adding ten new members, we are going to cure the malaise. I am saying that this amounts to tying a bandage around a rotten wound without applying any medicine to it. We are doing nothing in medical terms. We are confounding the problem because the current Electoral Commission is not independent and has not been run efficiently. Its operations have been shrouded in a passive manner. I have nothing personal against Retired Justice Zaccheus Chesoni because the hon. Member for Butere said the other time that those who are calling for the removal of Justice Chesoni were tribalists. The hon. Member for Butere himself is on record, so many times before, as saying that Justice Chesoni should be removed. We are wondering when the position changed. Did it change with his "eating of ugali" in State House? Now, hon. Shikuku is saying that those who are calling for the removal of Justice Chesoni are tribalists.

**Mr. Shikuku:** Jambo la nidhamu, Bw. Naibu Spika wa Muda. Nafikiri mhe. Raila anajaribu kuweka mambo ambayo yanaweza kudhuru sifa zangu kwa kusema pengine ni ugali ambao unafanya nisema Justice Chesoni aendelee na kazi yake, na hali mimi nimesema, na nitarudia, ya kwamba mimi nilialikwa na ni mimi ambaye niliambia dunia kwamba niliitwa na nikala ugali na Mtukufu Rais. Mbunge anataka kulifanya jambo hili kuwa kubwa sana na hali hakuna mtu aliye karibu na Mtukufu Rais kushinda yeye kwa sababu Mtukufu Rais alihudhuria matanga ya babake na pia Rais alitoa pesa za kujenga kaburi la babake. Hata wakati alipokuwa akitoka kule Kabarak na akapatikana na ajali na wengine wakafa alisema kwamba ana haki ya kwenda kumwona Mtukufu Rais. Yeye akienda Kabarak hali ugali, lakini mtu mwingine akienda, basi yeye anakula ugali. Sasa unaweza kuamini mhe. Mbunge kama huyu?

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, I do not know whether that qualifies to be a point of order. I will treat it---

**The Temporary Deputy Speaker (Mr. Ndotto):** That is necessarily a point of order. He is asking you

whether you are in order when you allege that when somebody goes to Kabarak it is not in order, and when you go there it is in order?

**Mr. Raila:** No, Mr. Temporary Deputy Speaker, Sir. He knows the fact that I have not gone to Kabarak, and if I am to go there, I will go there during the day. But all that I was saying was that his position has changed substantially from 1992 because information have we got, which was used to file a case in the High Court to get Justice Chesoni disqualified as the Chairman of the Electoral Commission, was supplied by none other than he himself; the Member for Butere.

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! May I say that you are debating the Bill on Constitutional reforms and we are not debating hon. Martin Shikuku or any other Member of Parliament here. Hon. Raila, if you want me to allow you to continue contributing, then you must stick to the Bill.

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, I was merely emphasising a point because when the hon. Member for Butere spoke here last week, he made certain insinuations-- I do not want to refer to them, I would rather treat them with the contempt they deserve. He made a remark that President Moi--

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! Order! Hon. Raila, maybe you have exhausted your contribution. May I remind you that I have ruled that you stick to the Bill and that you do not talk about other members of Parliament here.

**Mr. Raila:** Mr. Temporary Deputy, Sir, I was saying that it cannot be fair that one of the players appoints a referee for the rest of the other players. We are being told about the spirit and the agreement at County Hall, that it is understood that the Opposition parties are going to appoint the ten additional members of the Commission. First, the equation is wrong; that KANU has got 11 members and the Opposition is now being asked to appoint ten other members. It is not right because KANU is just another political party like the other political parties. On what basis is KANU being allowed to retain its 11 members and the Opposition is only being allowed to appoint ten other members? I want to give an example of Mozambique. The Mozambican law says that ten members shall be appointed by the Government, that is understood to be FRELIMO. The Opposition--

**The Minister of State, Office of the President** (Mr. Biwott): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member for Lang'ata in order to mislead the House, and indeed Kenyans, that the present independent Electoral Commission, which at the moment contains 11 people, is all 100 per cent KANU, yet it is known that some of those in the Electoral Commission were actually suggested by the Opposition, and therefore, it is not true that the 11 are entirely KANU, but representatives of the whole country?

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, if some of those members were appointed by the Opposition, I do not know. I know that FORD(K) did not appoint anybody, the Democratic Party did not recommend anybody and I also know that the FORD(A) did not recommend anybody.

But be that as it may, if you look at the history of that Commission, it began, first, as a Constituency Boundaries Review Commission before the repeal of Section 2(A). When we were finally allowed to form Opposition political parties, we insisted that since we did not have an input in the appointment of that Commission, it should be disbanded so that a new one can be constituted. That **[Mr. Raila]**

was resisted by the Government and we went to court. But the courts, being what they were, ruled against us. But we are on record that we went to court to challenge the composition of that Electoral Commission on the grounds that it was not independent; that it was not appointed in consultation with the Opposition, which did not exist at the time it was appointed. So, we went with that Commission into elections, the elections were massively rigged with the connivance of that Commission.

For example, on the day of nomination, 20 Opposition candidates were barred from presenting their nomination papers at the nomination centres. When we appealed to the Commission to facilitate the nomination of these people, it referred us instead to the courts. So, that Commission did not act as an independent Electoral Commission. It acted as a partisan KANU Commission. That is why when the term of that Commission came to an end last year, we appealed to the President to involve the Opposition in the constitution of the Commission. Again, the President defied and ignored all our pleas and proceeded to single-handedly re-appoint most of the members of that Commission, minus two who were more independent minded and replaced them with some of his sycophants.

Mr. Temporary Deputy Speaker, Sir, I am saying that 11 members gives KANU too much advantage in that Commission. Why is one per cent share so important when it comes to share-holding in a company? Why would one insist on a 51 to 49 per cent? This is because that one share can be very vital when it comes to crucial decision-making in a company. Likewise, out of the 11, the extra one member, is very critical in as far as decision making in that body is concerned.

Mr. Temporary Deputy Speaker, Sir, the composition of the Electoral Commission should be proportionate because KANU represents certain electorates. If we go by the figures of 1992, KANU's votes are known and the Opposition parties' votes are also known. That would be a much better criteria in deciding or determining the

composition of the Electoral Commission. In Mexico, each and every political party appoints one representative to the Electoral Commission. There are eight parties, and therefore, there are eight members of the Electoral Commission, including the ruling party which appoints only one member. Then the rest of the civil society appoints 12 who are vetted by the eight because they have more weight than the 12.

**An hon. Member:** Which country are you talking about?

**Mr. Raila:** Mexico. That makes them 20. When the 20 sit, they then elect their chairman who shall be independent because he owes no allegiance to any particular political party. But to tell us that we are going to have an independent Electoral Commission, whose chairman is appointed by the President who is also a candidate, We are cheating ourselves!

**Mr. Mulusya:** On a point of order, Mr. Temporary Deputy Speaker Sir. Is the hon. Member for Lang'ata in order to advocate for the sacking of the Chairman of the Electoral Commission, yet when Parliament was giving him security of tenure with the other Commissioners, hon. Raila was among the Parliamentarians who strongly advocated for the independence of the Electoral Commission?

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, the hon. Member is very much aware of what security of tenure means in this country. He knows that the Attorney-General enjoys security of tenure, but the hon. Attorney-General is very much aware that if the President wants him to leave, he will leave, the security of tenure notwithstanding. We have had Attorney-Generals who have been removed when they were enjoying security of tenure.

**Dr. Lwali-Oyondi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member for Lang'ata has just said that there has been a breach of the security of tenure of, for example, the Attorney-General. While we are trying to correct a mistake, is he in order to suggest that we have to continue the same; trying to take away the security of tenure of the Public Service members who are supposed to have it? Is he in order to suggest that we should continue with it?

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, I do not know whether that was a point of order. But what I was saying is that, I know that the previous Attorney-Generals, Mr. James Karugu, Mr. Kamere, Justice Muli, all left in circumstances that suggested that the security of tenure did not try to protect them.

**The Assistant Minister, Office of the Vice-President and Ministry of Planning and National Development (Dr. Misoi):** Mr. Temporary Deputy Speaker, Sir, is it in order for hon. Raila Odinga to give parallel examples of a single-party era with and the present era of full multi-party democracy; where all constitutional offices are protected by the law? Is he in order to mislead this House and the nation at large?

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, whether single-party or multi-party, we are talking about security of tenure and we are saying that security of tenure can be used to protect somebody who is partisan. We are saying that we need to have an independent Electoral Commission. Let us appoint a person of integrity to that office. If you appoint somebody who is already compromised to that office and then you provide him with the security of tenure, you compromise the integrity and credibility of that Commission. This is all that we have been saying. In 1992, we said many things. We said that the then Chairman of the Electoral Commission had been compromised because his conduct as a judge had been found wanting. As a result, the Commission recommended his removal as a judge. Therefore, that rendered him completely unsuitable for the post of the chairmanship of the independent Electoral Commission. So, I am saying that:

(a) We are not getting an independent Commission that we desire.

(b) It has not been stated here explicitly, that the Opposition parties are going to appoint the additional ten members. The Constitution is such an important document that cannot be left to rely on goodwill; that there is a spirit of the IPPG. If there is a spirit of the IPPG, why is it not written here?

What is so difficult in writing here that the additional ten members shall be appointed by the Opposition parties, then go further and agree on how the ten members are going to be appointed, because Opposition parties are also independent parties. They are going to disagree as to the composition of the members of the Electoral Commission. How many of these are going to be appointed by FORD(A), DP, FORD(K) and how many are going to be appointed by NDP?

**An hon. Member:** NDP is already done!

**Mr. Raila:** NDP is not yet done. So, we are---

**Mr. Busolo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. We have been subjected to too much talk regarding the independence or otherwise of the Electoral Commission Chairman. Would I be in order to demand from those who are demanding for what they are referring to as a "truly independent Electoral Commission headed by a true Chairman" to also be more rigorous and thorough and tell us the institutional and social base of what they refer to as a "true chairmanship of such Commission?"

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, this is what I have said by giving an example. I have

given two examples. I gave an example of Mexico, where once the parties---

**Mr. Busolo:** Not foreign ones!

**Mr. Raila:** No, he said that I should give him examples. I have given another example of Mozambique. We need to go by experience elsewhere. I thought the hon. Member asked me to give an example.

**The Assistant Minister, Office of the President (Mr. Shamalla):** On a point of order, Mr. Temporary Deputy Speaker, Sir. Kenya, as a Commonwealth country, derived its laws mainly from Britain and the Commonwealth. Is hon. Raila in order to be quoting for us laws pertaining to Mexico and Mozambique which are quite foreign to our own laws?

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, the hon. Member does not know that in Britain there is no electoral commission. Maybe that is the information that he needs.

**An hon. Member:** They do not even have a written constitution!

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, they do not even have a written constitution, but we do have a written Constitution and we are both members of the Commonwealth. I can give another example from South Africa and Namibia, who are members of the Commonwealth, if that will satisfy the hon. Member. In South Africa, again the political parties nominate members of the electoral commission, but when these members meet some other members coming from the civil society--- Even in South Africa, they have foreign members appointed to their electoral commission. They have external members in their electoral commission; people who are not South Africans; they are provided with that independence. So, during the last elections in South Africa, it was only the electoral commission whose conduct was never in doubt because the Electoral Commission of South Africa conducted the elections to the satisfaction of all the political parties that took part in those elections.

Mr. Temporary Deputy Speaker, Sir, even in Malawi, the electoral commission members are jointly appointed by all political parties. There is equality in representation of the electoral commission. So, this will provide a level playing field.

Mr. Temporary Deputy Speaker, Sir, we said that we wanted to have a level playing field for these elections. The taste of the pudding lies in the eating. Let us look at these reforms against the coming General Elections. Are the elections for 1997 going to be any different from the general elections in 1992? That is a test! Will these amendments that were proposed here ensure that the 1997 elections are freer than they were in 1992? The answer is no, and our reason is the question of the conduct of the Electoral Commission.

Mr. Temporary Deputy Speaker, Sir, we are now being told that we are going to appoint ten members, or ten members are going to be added to the Electoral Commission. Parliament is going to be dissolved and then elections are going to be called within this year. When are the ten members from the Opposition going to have time to be able to examine the electors registers, which we know have been rigged? When are those millions of Kenyans who have not been registered as voters going to be registered? When are they going to be enfranchised? When are these additional 10 members of the Electoral Commission going to have time to participate in the appointment of Returning Officers to ensure that the Returning Officers themselves are not hand-picked by the current Electoral Commission to deter the input from these new members? How are the other people whose parties have been refused registration going to be facilitated to participate in the elections? How are the members of SAFINA and IPK going to participate in the elections? Free and fair elections, mean that every person who wants to stand for elections or who wants to participate as a voter, is allowed to do so. We have nearly five million Kenyans who have been denied registration as voters because of lack of identification cards and the slow process of the registration exercise. This partisan Electoral Commission only allowed 43 days for the voter registration exercise. So, we are going to disenfranchise very many Kenyans, more than the people we disenfranchised in 1992. In 1992, we allowed 60 days for voter registration, but this time we only allowed 43 days.

Mr. Temporary Deputy Speaker, Sir, we are not going to have free and fair Press. If the elections are going to be held in December, when will the KBC be liberalized to air the views of Opposition parties and to allow them the opportunity to address Kenyans? How are the Opposition parties going to reach the people because we are talking about the spirit of IPPG, yet today, if you tune on KBC radio or television, it begins its news bulletin with the phrases, "Mtukufu Rais", "Makamu wa Rais", "Waziri wa Elimu, Bw. Kamotho", "PC", "DC", "DO", and so on? Some of my colleagues in the Opposition do not see that they are being taken for a ride. It is shameful that Members of the Opposition should be applauding what amounts to just hanging themselves. How are we going to have free and fair elections if the Opposition parties are so impoverished the way they are? Some of them use kiosks as party offices behind Olympic in Kibera. Hon. Martin Shikuku knows about this, yet he is saying that he is ready to contest against KANU. He is, of course, actively working for KANU. You can only be actively working for the ruling party if you agree that you want to go to the elections with all these odds staged against you.

I am sorry for the hon. Member for Rarieda because he does not see that he is headed for slaughter. I am sure that he does not have money to finance his own campaign in Rarieda unlike the KANU hawks who have hoarded

money through various avenues. We have the Somaias, the Pattins, the Sajjads and many other people who have done that. How can we have free and fair elections under those circumstances?

**Mr. Temporary Deputy Speaker, Sir,** we do believe, and nothing will convince me otherwise, that a number of hon. Members of the Opposition who participated in the IPPG talks and gave it sanction, have been compromised to destroy multi-party democracy in this country.

With those few remarks, I--

**Mr. Obwocha:** On a point of order, Mr. Temporary Deputy Speaker, Sir. We have a lot of respect for the Member for Lang'ata, the NDP leader, but is he in order to allege that those of us who participated in the IPPG talks have been compromised? We have not been paid any money? Is he really in order? We expect some decorum from him.

**The Temporary Deputy Speaker (Mr. Ndotto):** Order! Order! Hon. Raila, I have also listened to you and most of your contribution has tended to discuss the conduct of other hon. Members. You are completely out of order and you have to withdraw your remark. If you want to proceed, you have to withdraw your remark.

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, I was actually concluding my contribution, but there are very many ways of being compromised. You can be ideologically compromised. You do not have to be just materially compromised. I did not mean that they were materially compromised.

**The Temporary Deputy Speaker (Mr. Ndotto):** Mr. Raila, you are definitely making the situation worse. I want you to withdraw the remark that the hon. Members who participated in the IPPG talks were compromised.

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, I withdraw the word "compromised" and substitute it with "false promises"; That they have been induced with "false promises".

**The Temporary Deputy Speaker (Mr. Ndotto):** Order! Order, Mr. Raila! I think hon. Muite is misleading you because you are soon going to be in trouble. He is the one who gave you the idea.

**An hon. Member:** Mr. Muite gave his idea--

**The Temporary Deputy Speaker (Mr. Ndotto):** Order! Order! I have also ears to hear what you are saying when you are seated. Hon. Raila, will you withdraw that remark unconditionally and proceed with your contribution?

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, I have said that they have been induced with empty promises.

**Mr. Achieng-Oneko:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

*(Mr. Achieng-Oneko remained standing in his place)*

**The Temporary Deputy Speaker (Mr. Ndotto):** Order! Order! I am on my feet, hon. Achieng-Oneko. Hon. Raila, do you know that you are contravening the rules of this House? I have asked you to withdraw the remark, but you have insisted on going round it. May I ask you for the last time to withdraw your remark unconditionally.

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, I had withdrawn the word "compromised".

**Mr. Achieng-Oneko:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Raila used the word "induced" or "inducement"---

**The Temporary Deputy Speaker (Mr. Ndotto):** He has withdrawn.

**Mr. Achieng-Oneko:** Has he withdrawn both words?

**Hon. Members:** Yes!

**Mr. Achieng-Oneko:** Good!

*(Laughter)*

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, these elections are going to determine the fate or the future of this country. A lot has been said here about violence.

**Mr. Munyasia:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I think the hon. Raila is on record as having said, "With those few remarks, I beg to oppose". After saying that, he sat down. He has not caught your eye a second time. So, why is he speaking twice on this particular Bill? Is he in order?

**The Temporary Deputy Speaker (Mr. Ndotto):** I did not hear that one and so, he has the benefit of doubt.

**Mr. Muite:** Munyasia is a heckler!

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, before I was interrupted, I was saying that a lot has been said in this House about violence; it was said by the---

**Mr. Mulusya:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I have a lot of respect for hon. Munyasia. The hon. Paul Muite has just said that hon. Munyasia is a heckler. Is he in order to say that? Is it not in order for him to substantiate or withdraw that remark?

**The Temporary Deputy Speaker (Mr. Ndotto):** Order! Order, hon. Mulusya! Unfortunately, I did not hear that word and Mr. Muite was not contributing. Proceed, Mr. Raila.

**Mr. Munyasia:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I am honest about this and the HANSARD will bear me out. The hon. Raila had completed speaking and I remember that hon. Osogo and I stood up to catch your eye. That was when the point of order was raised by the hon. Obwocha. So, is it in order that hon. Raila should speak twice on this Bill? That is a serious matter which must be resolved. The HANSARD will bear me witness.

**The Temporary Deputy Speaker (Mr. Ndotto):** I am indeed, advised by the Clerk that hon. Raila had actually completed his contribution. So, I am giving him two minutes to wind up his contribution.

**Mr. Raila:** Mr. Temporary Deputy Speaker, Sir, I am saying that a lot has been said about violence and I was very happy to hear the hon. Vice-President and Minister for Planning and National Development speak elaborately against violence. I am happy that he has now realised the folly of violence. He will at one time apologise to Mrs. Wambui Otieno, who lost an arm in Ngong when we went to open an office there.

**The Vice-President and Minister for Planning and National Development (Prof. Saitoti):** On a point of order, Mr. Temporary Deputy Speaker, Sir. I note the insinuation made by hon. Raila. Has he got tangible evidence that I was actually involved in organising the attack on Mrs. Wambui Otieno?

**The Temporary Deputy Speaker (Mr. Ndotto):** Order, hon. Raila! I am tired of standing up every time to caution you on this matter of discussing other Members. Therefore, I take it that you have finished what you had to say. I am not going to allow you to proceed.

**The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo):** Mr. Temporary Deputy Speaker, Sir, we seem to have forgotten the history that created the IPPG. We seem, at this time, to think---

**Mr. Muite:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Through you, I would like to request hon. Osogo to use the word "some of us" because when he says "we seem to have forgotten", he is including everybody. Some of us have not forgotten. Let him talk about himself or at least, himself and some other Members. Some of us have not forgotten.

**The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo):** Mr. Temporary Deputy Speaker, Sir, I will stress the word "we". We seem to have forgotten the history that created the IPPG. If the hon. Member for Kikuyu wants to exclude himself, he is free to do that.

Mr. Temporary Deputy Speaker, Sir, some of us who started speaking to hon. Members from the other side of the House had already seen what was going to happen in this country. It could be better if the hon. Member for Kikuyu could say he knows what was going to come and he still insists that it should come. This country was breaking, because even the friends of this country were worried. Those of us who live on the borders of this country were hearing a lot of what was happening in the neighbouring countries and that fomented what was going to happen to this country. There was a strange feeling that what was happening in Zaire was going to happen here. We have got children and this country to guard. We decided to come together and save the situation. Nobody can deny that we, at least, removed some of the pressure and tension that was in the country at that time. If it is going to be recreated, let it be created afresh by some of the hon. Members who have opposed this Bill. Examples of what was going to happen in this country were being given. Some were saying that this country will go the way the Philippines went, when the churches led the toppling of the President of that country. Another country had to send an aeroplane to pick that President and they took him to a place from where he did not come back. There were those stories and we were worried. We are still worried when we see that some Kenyans--- In fact, I am yet to be told whether they have children at all, in this country. Some Kenyans are still pursuing the idea that if we fail in this House, then they will mobilise people into mass action. We did not chase them from the IPPG, neither did the police! They saw what we were arriving at and knew that we were trying to save the country, and they withdrew from the streets. They watch television and read newspapers, and they see children suffering from malnutrition. Those children belong to poor families. We should not take the debate in this House as a joke. The hon. Members from the Opposition who have opposed this particular Bill know very well that this Bill is not the final one. Indeed, when the hon. Member for Langata quoted the late Tom Joseph Mboya in his speech, when he said that was "a long constitutional journey", he should have read further in that HANSARD to understand what the late Tom Joseph Mboya said.

Mr. Temporary Deputy Speaker, Sir, I remember that very well because I was sitting in the Front Bench. He never even meant the dissolution of the Senate. It was at that time when we were trying to ban the KPU, the late

Jaramogi Oginga Odinga's party. That was the time he said that in 1967. We did not extend the sitting of Parliament for two years. Hon. Raila was definitely misleading the House, but I did not want to respond to that at that particular time. The only time when the extension of the life of Parliament was done, was during the time when the Senate was dissolved. The reason was that the Electoral Commission then had to find constituencies for the 41 Senators and that had to take time. That was the only time when the life of Parliament was extended. When an hon. Member quoted section 10 of the IPPG report, it was a gross misrepresentation of the facts contained therein. A *Sunday Nation* writer said that the IPPG Committee on Constitutional, Legal and Administrative Reforms, which I was a Member, recommended that the names of the 10 Commissioners to be appointed by the Opposition parties will also be included in the Constitution. We cannot do that! The Constitution cannot bear the names of people because it is a document to be used by the posterity. Political parties might not be there at that time to appoint 10 Commissioners to the Electoral Commission.

Mr. Temporary Deputy Speaker, Sir, on page 41(1) we said very clearly:

"The Committee deliberated on the need of having an independent, impartial and an inclusive Electoral Commission."

We deliberated on this for a long time. It took us two solid days to arrive at that conclusion. One of the days was when the President was conducting a fund raising for the National Women Development Fund at Uhuru Park. We were locked in here discussing that section and we did not attend that funds drive.

The committee recommended that Section 41(1) of the Constitution be amended. We are now recommending that Section 41(1) be amended. We recommended that the Bill be amended by deleting the word "others" and inserting after the words "not less than four" the words "not more than twenty-one". Then, the next page reads as follows:

"The committee recommends that the President do appoint the additional ten commissioners from a list of names submitted to him by parliamentary Opposition parties".

We did not recommend that it goes to the Constitution, and knew the reason. Some hon. Members, who are also lawyers, and who know what a Constitution is, still insist that we should have said that the Opposition parties nominate ten electoral commissioners. We left that for the proposed Constitution Review Commission to look into and see how best it can be done. We did not include it in the present constitutional reform proposals. So, there are a lot of those things---

**Mr. Muluya:** On a point of order, Mr. Temporary Deputy Speaker, Sir. It is only fair that the proposed Constitutional Review Commission be left with the entire responsibility of deciding how the members of the Electoral Commission will be elected in future. It is the duty of the proposed commission to look into the wording and see how this will be done. We will realise that the current members of the Electoral Commission will end their terms at different times. The members who will be appointed from the Opposition will also end their five-year term at different times. So, the new commission is supposed to see how it can co-ordinate the future nomination of members of the Electoral Commission, and this will then be included in the Act.

*(Applause)*

**The Assistant Minister for Agriculture, Livestock Development and Marketing** (Mr. Osogo): Mr. Temporary Deputy Speaker, Sir, those of us who participated in the IPPG talks know very well what the hon. Members opposed to the IPPG are after.

**An hon. Member:** Yes, we know it. They refused to attend the talks.

**The Assistant Minister for Agriculture, Livestock Development and Marketing** (Mr. Osogo): We know it. We had said that we should not allow them to have their way.

*(Applause)*

And if we do, this country will regret. Somewhere in Nakuru, a foreigner from a friendly country told one of the Kalenjin Members of Parliament: "Sooner or later, you will be a refugee".

**An hon. Member:** A refugee?

**The Assistant Minister for Agriculture, Livestock Development and Marketing** (Mr. Osogo): That is frightening. That was said at the climax of the NCEC meetings, when they were being beaten up. The foreigner said: "One of these days, sooner or later, you and your people will be refugees". Now, that is frightening, and if Members cannot see that, then it is a problem.

Mr. Temporary Deputy Speaker, Sir, I said that living at the border is a big problem and it is my area which was going to be an entry point for invasion of this country by foreign forces.

**Mr. Muite:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Hon. Osogo has made a very serious



innuendo. I request the Minister of State, Office of the President, in charge of internal security, to listen in silence to the serious innuendo being made by hon. Osogo that those of us who did not participate in IPPG were planning to make people go out as refugees.

**The Temporary Deputy Speaker** (Mr. Ndotto): What is your point of order?

**Mr. Muite:** Is it in order for hon. Osogo to connect whatever that unnamed diplomat said to an unnamed Kalenjin, that the Members of Parliament who did not attend the IPPG are the ones who are going to cause people to go out as refugees when quite sincerely, we want real reforms? We are doing this, in fact, in order to stop anybody from ever becoming a refugee in this country.

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! Order! There is a point of order raised by Mr. Muite. Mr. Osogo, do you want to respond to that?

**The Assistant Minister for Agriculture, Livestock Development and Marketing** (Mr. Osogo): Yes, Mr. Temporary Deputy Speaker, Sir. First of all, I did not mention any diplomat but a foreigner. So, Mr. Muite is putting those words into my mouth.

But I can only say that what I have said is very well known to hon. Muite. If he does not know it, let him say so.

*(Applause)*

**The Assistant Minister, Office of the President** (Mr. Shamalla): Mr. Temporary Deputy Speaker, Sir, I had lunch with hon. Muite---

**The Temporary Deputy Speaker** (Mr. Ndotto): I want you to raise your point of order.

**The Assistant Minister, Office of the President** (Mr. Shamalla): Yes, I am doing so. I had lunch with hon. Muite today where he told me that, in fact, we are very lucky to have made it, and that at the end of this Parliament, he is not going to step in this House again until he does so as the President of this country.

*(Applause)*

**Hon. Members:** Shame! Shame!

**The Assistant Minister, Office of the President** (Mr. Shamalla): Gentlemen, is hon. Muite in order to confuse us, bearing in mind the fact that they discussed amnesty for President Moi, after he and his group take over the leadership of the country, and he now fails to consider seriously that his ambition is destructive for this country?

*(Laughter)*

**Mr. Ndzai:** On a point of order, Mr. Temporary Deputy Speaker, Sir. It appears that the contributions by Members to this Bill are becoming repetitive. May I move that the Mover be called upon to reply?

**Hon. Members:** No, you are not serious!

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! Order! I cannot decide the matter raised alone, but I have to put it to the House to decide. Therefore, I will put the Question that the Mover be now called upon to reply.

*(Question, that the Mover be now called upon to reply, put and agreed to)*

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

**Dr. Lwali-Oyondi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Member for Magarini to stand up on a constitutional Bill like this and joke around with it as if it was an ordinary Bill? Is it also in the spirit of reforms for him to do so?

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! Order! I am afraid you cannot discuss what the House has already passed. Therefore, we have to proceed.

**Mr. Mulusya:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! Mr. Mulusya!

**Mr. Mulusya:** On a point of order Mr. Temporary Deputy Speaker, Sir. I do not intend to challenge the decision of the Chair or the one which has been made by the House. However, may I request the Chair to rescind that decision since we have not had a chance to discuss and ventilate fully on this Bill. It is very important that the Chair allows that because the House needs a two-thirds majority, to pass this Bill. However, given the manner in which the

matter is now being handled, I can assure the Chair that this is not going to be. We, as Members of the Opposition and KANU, feel that we have gone too far. We will not agree to be pushed around here, whereas outside, we are being accused of having been bribed by KANU. We will not be involved in that. We want this decision to be rescinded so that we can continue to debate on this Bill.

*(Applause)*

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! Order! Order! Mr. Mulusya, you are merely challenging the decision, not only of the Chair, but also of the House. And you have no right to do that. We have to go by what the House has decided, but not by what you or I want. Therefore, I am not going to allow any more points of order challenging that decision. But if you have any other point of order, I will accept it. Proceed, Mr. Attorney-General!

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, first, I want to pay tribute to the Members of this House who have contributed to this very important Bill.

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

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! Order! Mr. Kapten, what is the problem?

**Mr. Obwocha:** This is not fair! If you want a two-thirds majority to pass this Bill, you cannot move the closure yourself, without consulting us. We are Members of the IPPG. No! No! We cannot accept it!

**Mr. Kapten:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I am repeating what hon. Mulusya said. This is a constitutional matter, which needs the support of both KANU and the Opposition. We were all involved in the IPPG and we want to pass this Bill, but before we pass it, let us satisfy Kenyans that every Member who wants to speak on this Bill has been given an opportunity. We do not want to be rushed. It is a matter of life and death for Kenyans. Therefore, we are pleading with you to allow Members who have not spoken on this Bill a chance to speak, so that when time comes to pass it, we will all agree and pass the Bill. Otherwise, we are treading on very dangerous ground.

**An hon. Member:** Very much!

**The Temporary Deputy Speaker** (Mr. Ndotto): I am afraid I will not go back to a decision which has been made by the House and, therefore, we will proceed as decided earlier by the House.

**Mr. Obwocha:** On a point of order, Mr. Temporary Deputy Speaker, Sir!

**The Temporary Deputy Speaker** (Mr. Ndotto): Order! Order! Hon. Obwocha, will you, please, sit down? Dr. Lwali-Oyondi, can you too sit down? Hon. Obwocha, I know you want me to rescind the decision. The House has already made a decision that the Mover be called upon to reply. Therefore, my decision is that we proceed according to the decision of the House.

Proceed, Mr. Attorney General!

**Mr. Obwocha:** On a point of order, Mr. temporary Deputy Speaker, sir. I know that even the Chair was involved in this matter of the IPPG. The other side needs this side as much as we need the other side. We are pleading with the Chair to realise that this is a constitutional matter. When it comes to voting, you need two thirds majority. The House itself can rescind that decision. There are rules in this House which can be used to facilitate that. In fact, most of us had not contributed on this Bill and you know that many Kenyans are anxiously waiting for us to ventilate certain issues that we have not covered. You are rushing as if it is a simple matter. I am pleading with the Chair to realise that the House has the ability and the authority to rescind its own decision.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Ndotto): Hon. Members, it is now time for the interruption of Business. The House stands adjourned until tomorrow, 23rd October, 1997, at 2.30 p.m.

The House rose at 6.30. p.m.