

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 15th May, 1996

The House met at 9.00 a.m.

*[Mr. Speaker in the Chair]*

## PRAYERS

## NOTICE OF MOTION

### IMPLEMENTATION: BEIJING PLATFORM FOR ACTION

**Mrs. Ngilu:** Mr. Speaker, Sir, I beg to give notice of the following Motion:-  
THAT, in recognition of the great need to enhance the political and economic empowerment of women; in view of the key importance of the Platform For Action of the Fourth United Nations Conference held in Beijing in September, 1995; in enhancing women empowerment, and further recognising that there are many bottlenecks that hinder grassroots women access to information, this House calls upon the Government to:

- (1) Translate, interpret, simplify, clarify and disseminate the Resolution of The Platform for Action to the grassroots women.
  - (2) Convene seminars, workshops and other fora in all sub-locations to explain the Beijing Platform For Action.
  - (3) To allocate adequate budgetary provision for the enhancement of the welfare of women; implement and carry out continuous monetary assessment of the said Platform For Action.
- Thank you.

## ORAL ANSWERS TO QUESTIONS

*Question No. 410*

### ARREST OF POLITICAL VIOLENCE OFFENDERS

**Dr. Otieno-Kopiyo** asked the Minister of State, Office of the President:-

- (a) how many people have been arrested and charged with offences relating to political violence in Kenya since 1992 general elections; and,
- (b) how many of these offenders have been convicted.

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

- (a) A total of 389 people have been arrested and charged with offences of violence related to political activities.
- (b) Out of the 389, 33 have been convicted; 142 have been acquitted, and 83 have had their cases withdrawn and, presently, 131 cases are pending before court.

**Dr. Otieno-Kopiyo:** Mr. Speaker, Sir, I wish the Assistant Minister could have shed more light into these cases. Our view on this side is that the Government is abetting and promoting political violence in a bid to promote the doctrine of divide and rule. We, in FORD(K), witnessed various cases of violence---

**Mr. Speaker:** Are you making a speech or asking a question?

**Dr. Otieno-Kopiyo:** I am giving the background on an important issue that I think the Speaker should also give me time to be able to do so. It is a grave issue.

**Mr. Speaker:** Order, Dr. Otieno-Kopiyo! It is not the question of the Speaker giving you time. It is the question of you following the rules. You put the question and it will be answered.

**Dr. Otieno-Kopiyo:** Mr. Speaker, Sir, some questions are longer than others and it is not part of the debate. I want to be able to talk to the Assistant Minister and get him to answer these questions.

**Mr. Speaker:** Just put your question.

**Dr. Otieno-Kopiyo:** But I have to put it in my own words.

**Mr. Speaker:** Order, Dr. Otieno-Kopiyo! It does appear like you are unnecessarily now taking [Mr. Speaker]

issue with the Chair, when all that the Chair did was to bring your attention to the fact that you should put your question.

**Dr. Otieno-Kopiyo:** Please, give me time to do so.

**Mr. Speaker:** It depends on how long it takes.

**Dr. Otieno-Kopiyo:** Mr. Speaker, Sir, I am asking the question, and it is not the Speaker asking the question. So, I want to ask the Assistant Minister this: Could the explain to this House how come, for example, that people who are known to have committed murder, beaten up people and threatened others have not been arrested even after reports have been made to the police? In the case of the recent elections of FORD(K), a man was murdered at the All Saints' Cathedral, and we asked a Question in this House regarding that incident. The Assistant Minister told us here that somebody had been arrested and would be taken to court, but up to now, nothing has happened. Why is the Government not taking these issues seriously?

**An hon. Member:** Correct!

**Mr. Sunkuli:** Mr. Speaker, Sir, I take serious exception to the fact that the hon. Member for Kasipul-Kabondo actually said that the Government is abetting and, in fact, promoting the fights in FORD(K). I want to say here that the fights of FORD(K) are created and promoted by the members of FORD(K). Hon. Dr. Otieno-Kopiyo just happens to belong to one of the factions. The Government has nothing at all to do with the fights in FORD(K). The Government only comes in when the members of FORD(K) stop playing politics and start going into violence. I gave a comprehensive statement before this House about the actions taken by the Government, and I have already given, in this answer, an indication, that we have arrested no less than 300 people who participated in political violence.

I know that every time members of the Opposition have a problem in this country, they want to blame the Government for it. But members of FORD(K) must learn to carry their own crosses; they must learn to elect people who are responsible politically, who can learn politics instead of running violence.

**Mr. Speaker:** Yes, Dr. Otieno-Kopiyo!

**An hon. Member:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order! I have given the Floor to Dr. Otieno-Kopiyo

**Dr. Otieno-Kopiyo:** Mr. Speaker, Sir, we have named names and the Government knows the perpetrators. They have photographs of the people who participated in these violence and they have had statements from us. All we are asking is: Why is this law being applied discriminately? In any case, it is illogical to argue that FORD(K) should take care of itself when the law enforcement mechanism for which we pay is with the Government.

**Mr. Sunkuli:** Mr. Speaker, Sir, I accept that once members of FORD(K) begin to fight among themselves physically, the Government must come in to clean up the mess. But what I am saying here is that the principal responsibility of ensuring that a state of chaos does not arise falls on every citizen, and we as a Government have acted. I have said that we have already had 33 people convicted after arrest; 83 persons have been acquitted upon trial, and 131 cases are pending before court. Is that not adequate action?

**Prof. Mzee:** Mr. Speaker, Sir, the Government knows exactly who the perpetrators of this violence are, the source and who is planning it. If they are serious to stop violence, they know exactly where to go; to the source, because they know where the source is, and that is in Agip House. Why has the Government done absolutely nothing? When the youth are being recruited to go and cause violence, why do they not stop it at the source? This Government should not fail to stop this violence, unless it has an interest and it is the one which is sponsoring this violence against peaceful members of FORD(K), and that includes Dr. Otieno-Kopiyo and myself.

**Mr. Sunkuli:** Mr. Speaker, Sir, I do not know whether hon. Mzee wants to make the Government a party to the disorder in FORD(K). The fact is, if hon. Prof. Mzee and hon. Dr. Otieno-Kopiyo have other evidence to implicate somebody else, they should be gallant enough to report the matter to the police, write statements and present themselves in court as witnesses and we shall be able to prosecute.

**Mr. Sifuna:** On point of order, Mr. Speaker, Sir. Is it in order for the hon. Assistant Minister to mislead this House that it is actually FORD(K) followers who are beating up or causing violence during election time when it is known, recently in the Starehe by-election, that there were so many Maasais who were beating up FORD(A) supporters and the FORD(K) supporters were not there? Now, they are telling us that it is only FORD(K) yet KANU supporters are the people behind the whole thing. Is he in order?

**Mr. Sunkuli:** Mr. Speaker, Sir, I do not know about this political party called 'Maasais' and another people called 'FORD(A)', but what we are talking about here is a serious matter, that the members and leaders of FORD(K) have treated this nation to a spectacle of disarray and political violence and they should be told this, so that they can stop these activities and go into serious politics, if they have any.

**Mrs. Ngilu:** Mr. Speaker, Sir, it would appear like the Assistant Minister is concentrating on political violence in FORD(K), and yet this Question really is asking about political violence in the country since 1992. I am aware that in my constituency there has been so much violence, and yet there is very little FORD(K) activity. Can the Assistant Minister assure this House that there is not going to be any form of political violence of any nature, whether it is KANU, FORD(A) or DP? That is what the Question is asking for here.

**Mr. Sunkuli:** Mr. Speaker, Sir, I am personally not aware of any violence that has taken place in Kitui Central. But what is clear is that the hon. Member for Kitui Central should also try as much as possible, like every citizen, to keep strictly to the law because sometimes people go to unlicensed meetings and the Government cannot be able to supply security because they are unaware of the meetings, and the hon. Member should be good enough to say that there has not been political violence in Kitui Central.

**Mr. Speaker:** Order! That Question has taken ten minutes and it is not the only one we have. Next Question, Mr. Ndicho.

**Mr. Ndicho:** Mr. Speaker, Sir, before I ask this Question, I wish to apologize to hon. Ekidor because I have learned that he was putting those glasses because his eyes are ailing and he is my good friend, and I really feel deeply concerned. I sincerely regret and apologise to him.

**Mr. Speaker:** Well, I suppose that you should also regret for taking the time of the house in jest! Proceed.

**Mr. Ndicho:** I did not hear what you said, Mr. Speaker, Sir.

**Mr. Speaker:** I said you should also apologize for taking the time of the House in jest!

*Question No.171*

TRANSFER OF ASSETS AND LIABILITIES

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

(a) if he could order, as a matter of urgency, the Kiambu and Murang'a County Councils to hand over to Thika County Council, all the files on assets and liabilities of the areas which originally were in the two districts, but are now part of Thika District; and,

(b) if he could direct the Kiambu County Council to desist from administering the markets and other plots which are now within the jurisdiction of Thika District.

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

(a) The Kiambu and Murang'a County Councils have handed over to Thika County Council, all files on assets and liabilities of the areas which originally were in the two districts but are now part of Thika District.

(b) Kiambu County Council is not administering any markets or plots which are now within the jurisdiction of Thika District since they have already been handed over.

**Mr. Ndicho:** Mr. Speaker, Sir, this is a very sad state of affairs because this is exactly the opposite of the truth. The truth is that both the Kiambu County Council and Murang'a County Council have refused to hand over not the files, but the assets. Right now, Kiambu County Council is administering a market in Juja township which covers an area of five acres, and they have now turned to sub-dividing this market into plots, and the Clerk to Kiambu County Council, Mr. P.M.G. Kamau, is handing over these plots and selling them to individuals. So, my question here is on the assets, because we can be given the files and they keep the assets. We do not want the files; what we want are the assets themselves and also the liabilities. So, the way this Question was answered is completely the opposite of what the situation is. The Clerk to Thika County Council is already compiling a list for me of the assets which he wants, and he tells me that Murang'a and Kiambu County Councils have refused with them. So, may I ask the Ministry, through the Chair, that this Question be deferred so that they can go back to the field and ask whether the assets have been given to Thika County Council, not files; it is the assets we want.

**Mr. Kamuren:** Mr. Speaker, if it is the wish of the hon. Member, I would buy that time to enable the Ministry to investigate and then we can come up with a very concrete answer.

**Mr. Speaker:** Well, if that is the position, we will defer it to some time in June.

*(Question deferred)*

*Question No.221*

## WATER SHORTAGE IN MOMBASA

**Prof. Mzee** asked the Minister for Land Reclamation, Regional and Water Development:-

- (a) if he is aware that Mombasa Town is receiving less than 40 per cent of its water requirement;
- (b) what short and long term programmes he has to alleviate water shortage in town; and,
- (c) when the Ministry will start sinking boreholes at strategic areas in Mombasa town.

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

(a) Yes, I am aware that Mombasa town and other areas of the coastal region receive a total 83,000 cubic metres of water per day against a demand of 180,000 cubic metres of demand per day. This constitutes about 46 per cent of the demand.

(b) The National Water Conservation and Pipeline Corporation which, is the water undertaker in the coastal region, is undertaking several short and long-term programmes to alleviate water shortage in the area as follows:-

(i) In terms of the short term programme, it intends to increase water production through Sabaki pipeline by 36 per cent from 35,650 cubic metres to 100,000 cubic metres per day by drilling four additional boreholes at Baricho Water Works.

(ii) It intends to increase water production at Tiwi boreholes by 53 per cent from the current 4,000 cubic metres to 7,500 cubic metres of water per day by sinking an additional five boreholes along the Tiwi well field,

(iii) It intends to rehabilitate Baricho Water Treatment Plant and replace old pumps in the station with new ones.

All in all, these short-term measures will increase water supply to Mombasa and coastal areas by approximately 37 per cent.

In terms of the long-term, the Corporation intends to construct the second Mzima pipeline; two, to rehabilitate and extend the existing distribution pipeline in Mombasa town and its environs; and three, to construct sewerage system for Mombasa town.

(c) In view of my answers to "b" on the Question, and the fact that boreholes in Mombasa island cannot deliver portable water, there will be no need of sinking boreholes in Mombasa town.

**Prof. Mzee:** By the way, Mr. Speaker, Sir, I never received a copy written of the answer. However, I have been asking this Question practically every year since 1993 and up to now, there is absolutely no change. In actual fact, since 1992, there has been no new industry built in Mombasa because of the shortage of water. In addition, there are certain industries which have dismantled their factories and Kaluworks is one of them. It is a very serious situation. We do not have any new industries coming up and existing industries like Kaluworks are dismantling their factories and the answers which I have been given since 1993 have been the same. My question is, when will the Sabaki boreholes be sunk to increase the water supply in Mombasa by 36 per cent? When will the Tiwi boreholes be increased to increase the water supply by 53 per cent?

**Mr. Speaker:** Order! Order, hon. Prof. Mzee. The Minister has to answer one question at a time. I also wish to warn the House that at exactly ten O'clock, Question Time will be up and I intend to stick to one hour for Questions. I think it is best that Members who are asking Questions should ask them precisely, and those answering should do the same, taking into account that there are other Members who want their Questions answered as well. So, you had better not be too wordy. Proceed, Prof. Mzee.

**Prof. Mzee:** My question is, when will these short-term and long-term programmes be implemented?

**Mr. Ligale:** I do share entirely the sentiments expressed by the hon. Member and I know that the supply of water in the Coast region is causing us a lot of concern. I can now confirm that the first borehole at Sabaki has already been sunk and it is delivering water. My Minister and I visited Sabaki area about two weeks ago and the contractors were on site. They were sinking the second and third boreholes. So, that work is already in progress. With regard to Tiwi, contracts have been awarded and that work should be in progress any time now. With regard to the long-term aspects, this is a major project that involves funds from the World Bank and negotiations are in place now, and I expect that within the next year or so, work should start in that area.

**Mr. Nthenge:** Would the Ministry consider blocking one of the big rivers, particularly the Sabaki River, so that we can have a lot of water in addition to the water that we are getting now from Mzima Springs, so that

there is a very big dam which will also help in irrigating parts of the dry region?

**Mr. Ligale:** Mr. Speaker, Sir, for our purposes, Mzima Springs is the best solution. There is cleaner water there and it will flow to Mombasa by gravity. Sabaki River is highly silted because of activities upstream, and it is more difficult to purify it.

*Question No. 471*

TARMACKING OF KIBWEZI-KITUI ROAD

**Mr. Muoki** asked the Minister for Public Works and Housing when the Kibwezi-Mutomo-Kitui Road (B7) will be tarmacked to make it passable.

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

There are no immediate plans to tarmack the Kibwezi-Mutomo-Kitui Road due to non-availability of funds. However, the Ministry will continue to maintain the road to keep it motorable.

**Mr. Muoki:** That answer is very disappointing given that this road was surveyed way back in 1973-74 for tarmacking, and it is a class B7 road which links the entire Eastern Province with Coast Province, North Eastern Province and parts of Central Province. Last year, I raised a Question through Private Notice, and the same Assistant Minister promised that he will look for Kshs283 million to have something done on the road. Now, he comes here and says there are no immediate plans to tarmack this road.

Can he tell this House whether he is committed to looking for funds to have the road tarmacked or whether his Ministry is not concerned about the people of Kitui District at all?

**Mr. Mwamzandi:** My Ministry is committed to seeing that the road is tarmacked and we also know that it is priority number one according to the DDCs in Kitui and Makueni Districts. The funds required to tarmack this road is a big amount of money Kshs2.9 billion. We have not been able to get this money so that we could tarmack the road.

**Mrs. Ngilu:** I really sympathise with hon. Muoki because he comes from Mutomo. In 1992, when the Head of State came down to Kitui to conduct his campaigns, he promised that this road was going to be tarmacked. Is the Assistant Minister this time not just dishonouring the Head of State's promise that this road was going to be tarmacked?

**Mr. Speaker:** By the way, hon. Ngilu, are you a Minister?

**Mrs. Ngilu:** I will be in the next Government!

**Mr. Speaker:** I am worried about now. It is stated clearly in the Standing Orders that you cannot invoke the President's name as authority for what you are saying. I was just reminding you about that Standing Order. Proceed, hon. Mwamzandi.

**Mr. Mwamzandi:** I have already said that my Ministry is committed to seeing that the road is tarmacked, but the amount of money required is so huge that we are still looking for it.

**Mr. Muoki:** What is disappointing about the Question I am raising is that, although the Assistant Minister is saying he does not have enough funds for the tarmacking of the road, we have been getting aid from some friendly countries, and some of these funds have been used in tarmacking roads in other places yet he says this road is a priority in both Makueni and Kitui Districts. So, could the Assistant Minister take action? It is not a question of promising to be committed because he did promise the same thing last year, and this is another year. Could the Assistant Minister take action to make sure that this road is passable by building bridges and tarmacking the bad sections and, at the same time, look for donor funds to have the road tarmacked because it is a vital road for this region?

**Mr. Mwamzandi:** My Ministry, in 1995/96 financial year, sent Kshs1,207,500 for the construction of drifts at Ngilua River and also spot gravelling from Mwangemi to Kisuli, and further---

**Dr. Kituyi:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to read some written document which has totally no bearing to the Question asked so clearly by the hon. Member?

**Mr. Speaker:** Well, I thought hon. Muoki asked you why you are not using the funds you get from donors to tarmack that road and instead, you are doing it elsewhere?

**Mr. Mwamzandi:** Mr. Speaker, Sir, Mr. Muoki asked if, in the meantime, there could be drifts constructed, and I am giving the figures which we have spent there for that work.

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

**Mr. Speaker:** Very well. Next Question. Sorry! Mr. R.K. Mungai.

**Mr. R.K. Mungai:** Thank you, Mr. Speaker, Sir, but I am disappointed because I do not have a written reply to my Question, which I demand.

*Question No 167*

CONSTRUCTION OF THIKA-NYERI ROAD

**Mr. R.K. Mungai** asked the Minister for Public Works and Housing:-

- (a) whether he could inform the House what type of contract was awarded to HZ & Company Limited for construction of the Thika-Nyeri Road, and how much money was involved; and,
- (b) what the current status of the project is and how much money has so far been paid.

**The Minister for Public Works and Housing** (Prof. Ng'eno): Mr. Speaker, Sir, let me [**The Minister for Public Works and Housing**]

beg the indulgence of the House to answer this Question in the afternoon because---

**Mr. Speaker:** I am afraid the afternoon's Order Paper is already here.

**The Minister for Public Works and Housing** (Prof. Ng'eno): Mr. Speaker, Sir, then tomorrow, because actually there is a confusion. I had been informed that the answer had been brought, but then, I have found out that the answer is not there.

**Mr. Speaker:** Very well. Tomorrow, then. Next Question, Mr. Munyasia.

*Question No 226*

NUMBER OF ADULT LITERACY CLASSES

**Mr. Munyasia** asked the Minister for Culture and Social Services:-

- (a) how many adult literacy classes the Ministry has been running in Sirisia during the years 1993, 1994 and 1995; and,
- (b) what salary is paid to each adult literacy teacher.

**Mr. Speaker:** Is there anybody here from the Ministry of Culture and Social Services?  
Next Question, Dr. Lwali-Oyondi.

*Question No 075*

CONDITIONS OF SERVICE FOR UNION WORKERS

**Dr. Lwali-Oyondi** asked the Minister for Labour and Manpower Development:-

- (a) whether there are terms and conditions of service for workers employed in the Trade Union Movements; and,
- (b) if the answer to "a" is in the affirmative, whether he could ensure that they are implemented.

**The Minister for Labour and Manpower Development** (Mr. Masinde): Mr. Speaker, Sir, I beg to reply.

(a) Yes.

(b) Yes.

**Mr. Speaker:** Very well, next Question then.

**Dr. Lwali-Oyondi:** Mr. Speaker, Sir, that reply is too short.

**Mr. Speaker:** What do you expect me to do, Dr. Lwali-Oyondi?

**Dr. Lwali-Oyondi:** Mr. Speaker, Sir, I do not have my glasses and I am having great difficulties in reading. Could I ask the Minister, arising if from his reply, why do the trade unions punish their own employees and pay them very little salaries? As a matter of fact those who are representing various trade unions in Nakuru are now becoming very, very thin due to the fact that they are earning very little and they are sometimes sacked without the normal rules and procedures that are laid down by the Ministry being followed.

**Mr. Masinde:** Mr. Speaker, Sir, I do not see why any employee, whether he is an employee of the trade unions or not, should get anything below the Statutory Minimum Wages Pay Order. If there are such cases, obviously my officers will handle them. However, employees in various trade unions have also formed their own

union called Kenya Union of Employees of, Voluntary Association Trade Union and Allied Organisations. They have a trade union for workers in various trade unions. So I assume that, that Trade Union is looking after its workers and I know that it is doing so because already, they have signed a collective bargaining agreement (CBA) with the trade union representing the Railway Workers.

**Mr. Ndicho:** Mr. Speaker, Sir, I represent a lot of people who are working in various factories in Thika. The employees of those trade unions are suffering a lot because the top leadership of COTU, which is supposed to represent them, is leaning towards a political party in this country. The majority of the workers who are refusing to also lean on that particular party are being victimised. Can the Minister assure this House that the victimisation and frustration that these people have been subjected to because of refusing to lean on KANU is going to stop, so that there is freedom in the trade union movements?

**Mr. Masinde:** Mr. Speaker, Sir, first of all, I want to inform the august House that there is no trade union which is affiliated to KANU, not even COTU. Secondly, COTU is just an umbrella union of all trade unions or most of the trade unions. Each trade union has its own constitution and secretary-general to look after the welfare of the employees who are members of that particular union. It is the employees who elected their representatives. The Government does not have to order the secretary general of individual unions on how to look after their employees. The Government is there to make sure that justice is done where any trade union feels that the employers are mistreating their employees, the Ministry of Labour and Manpower Development would be ready to look into the situation.

*Question No. 226*

NUMBER OF ADULT LITERACY CLASSES IN SIRISIA

**Mr. Munyasia** asked the Minister for Culture and Social Services:-

- (a) how many adult literacy classes the Ministry has been running in Sirisia during the years 1993, 1994 and 1995; and,
- (b) what salary is paid to each adult literacy teacher.

**Mr. Speaker:** Is there anybody here from the Ministry of Culture and Social Services?

*(Question deferred)*

**QUESTIONS BY PRIVATE NOTICE**

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

(a) Is the Minister aware that Administration officials, that is, chiefs in Dagoretti, are currently forcing all residents to contribute Kshs 500 every time they go for any reports or services to their (chiefs) offices for the proposed huge KANU Harambee for the youth?

(b) Could the Minister issue a circular to stop this undesirable practice with immediate effect in Dagoretti, and Kenya in general?

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

- (a) I am not aware.
- (b) Harambee contributions are voluntary and no Provincial Administration official is allowed to force the people to contribute funds. This has already been explained to the officials by none other than the Head of State himself.

**Mr. Kamuyu:** Mr. Speaker, Sir, it is very unfortunate that the Assistant Minister is not aware. I have here 22 names of Dagoretti residents who have been asked to pay Kshs 500 each so as to be given funeral permits by the area chief. May I also comment that this House does not go by what is written in the newspapers. Apparently, the Assistant Minister says that this has already been explained by none other than the Head of State. That has been read in the newspapers, but that is not what I am asking. I am asking for a circular to be issued because a lot of people in Dagoretti are suffering. They cannot have any services from any chief.

May I also, through you, Mr. Speaker, Sir, inform the Assistant Minister that in Vokoli Location in Webuye District, sufurias have been confiscated by chiefs and assistant chiefs, if people have no money to pay for

this fund. This obviously, is nothing, but a collection for the National Youth Development Programme (NYDP). Can the Assistant Minister be serious and also issue a circular today to stop this matter before it explodes? Kenyans will refuse to pay any taxes, leave alone this forced Harambee.

**Mr. Sunkuli:** Mr. Speaker, Sir, there is absolutely no justification in the hon. Member's utterances. I have already stated that the Government has directed all its officials that there is nothing like forced Harambee. I do not know of any situation in Dagoretti, as alleged by the hon. Member, that actually exists. The truth is that people are contributing to the fund generously and voluntarily.

**Mr. Mwaura:** No!

**Mr. Kapten:** Mr. Speaker, Sir, the Assistant Minister must take this matter very seriously. In my own constituency chiefs are forcing people to pay by collecting their hens, sufurias and everything because of harambee contributions. Even the national identity cards, although the Government said that it is a free exercise, the chiefs are forcing people to pay money before they are issued with forms for registration of the youth to get identity cards. What is the Assistant Minister doing to ensure that the directive given by the Head of State because he has already said that the Head of State has issued directives which are followed by the Provincial administration?

**Mr. Sunkuli:** Mr. Speaker, Sir, if anybody is aware of any breach of this type of directive by our officials, he should report it to me or give me further information. I have said that I would like to have specific instances given to me by hon. Members and I will investigate that. But there is no reason why the Members of the Opposition should launch a campaign against the National Youth Fund. That is what the whole debate is about here.

**Mr. Speaker:** It is Question Time, Mr. Muite.

**Mr. Muite:** Mr. Speaker, Sir, does this Government admit that they are determined to collect or extort money for the next elections? If this Fund is to assist the youth, and nobody is objecting to the youth being assisted, why does this Government come up with proper proposals so that the Fund can be administered objectively by the Government instead of being administered by KANU? Does this Government actually accept that this is simply a way of collecting money for KANU for the next elections? And they are lying to the youth that they are going to give the money to them.

**Mr. Musyoki:** On a point of order, Mr. Speaker, Sir. Could the hon. Member for Kikuyu Mr. Muite substantiate his claims that the

[**Mr. Musyoki**]

Government is intending to use the money for the next general elections? If he cannot substantiate, then can he withdraw.

**Mr. Speaker:** Mr. Muite, you have been asked to substantiate.

**Mr. Muite:** Mr. Speaker, Sir, there is absolutely nothing to withdraw. In my own constituency what the hon. Member---

**Mr. Speaker:** Order Mr. Muite. I did not ask you to withdraw. I asked you, as a first step that you are being challenged and it is not me challenging you. An hon. Member is saying that you made a statement which he wants you to substantiate or withdraw.

**Mr. Muite:** Mr. Speaker, Sir, first and foremost there is a list here from the hon. Member for Dagoretti. If a Member of Parliament can bring a similar list, on the--- Mr. Speaker, Sir, there are many examples and we have got a history. Mr. Jirongo is being sacrificed and we know what happened in 1992. And this Government is determined to have a repeat of that. They are lying to the youth that they are going to assist them objectively. They are not. This is a Fund to mislead the youth for the purposes of elections and it is being administered by KANU.

*(Applause)*

**Mr. Speaker:** Order! It is Question Time now.

**Mr. Sunkuli:** Mr. Speaker, Sir, the hon. Muite is conducting a campaign against a Fund that the Government intends, through it, to improve the well-being of the youth in this country. When hon. Muite says that the Government is trying to raise money for the campaign, that is nothing but a very far-fetched imagination of the hon. Member. I would not like to say it is malicious because I do not want to impute malice on the part of the hon. member. The hon. Member for Kikuyu has a Fund that is well known by everybody here and he is on his road to State House and he can say anything that will make him go there. The truth is that the hon. Muite, and other Members of the Opposition, know that the Youth Fund is very popular with the youth of this country and they do not want the Government to do what the youth of this country would like to see done to them.

**Mr. Achieng-Oneko:** Mr. Speaker, Sir, is the Assistant Minister aware that the Chief's Order Act



including forcing the innocent wananchi to contribute to anything that the Government asks even including telling the people to go naked as it used to be during colonial days because the Chief's Order Act is a colonial Act which we have been always demanding to be removed from the laws of Kenya?

**Mr. Sunkuli:** Mr. Speaker, Sir, I have read the Chief's Authority Act very carefully and I do not see which part the hon. Member is referring to.

**Mr. Kamuyu:** On a point of order Mr. Speaker, Sir. May I, through you, request that I know present a list of 22 complainants in Dagoretti who have been refused burial permits until and unless they pay Kshs 500 per family and their bodies are still lying in the mortuary?

**Mr. Speaker:** Order! Is it a list compiled by you or is it compiled by a Chief?

**Mr. Kamuyu:** I have summarised it but the complaints go through the Chief who is pretending---

**Mr. Speaker:** Well, as far as I know, there is very little difference between what you put on paper yourself and what you say verbatim. It amounts to the same thing.

**Mr. Kamuyu:** But---

**Mr. Speaker:** Order Mr. Kamuyu! The source is the same and the source is you. Next order. Sorry we have two other Questions. Mr. J.K. Ndzai.

#### SETTLEMENT OF MAGARINI SQUATTERS

**Mr. Ndzai:** Mr. Speaker, Sir, I beg to ask the Minister for Lands and Settlement the following Question by Private Notice:-

(a) Will the Minister, as a matter of urgency, state the fate of about 500 families living at Mjanaheri, Mamburi and Ngomeni areas of Magarini Division, Kilifi District, who are threatened with eviction following the allocation of land Ref. No. 125154 measuring 2,962 hectares to Coastal Aquaculture Limited?

(b) Why were the squatters, who have resided in the area since time immemorial and who have developed the land, not given priority in the allocation?

(c) Will the Minister nullify this irregular allocation of the said land, since it was made in total disregard to the plight of the indigenous people?

**The Assistant Minister for Lands and Settlement (Mr. Kaino):** Mr. Speaker Sir, may I ask to be permitted to answer these two Questions tomorrow from hon. Ndzai and hon. Nthenge? My people are working now on the answers.

**Mr. Speaker:** You do not have the answer now?

**The Assistant Minister for Lands and Settlement (Mr. Kaino):** I do not have the answers but we shall be prepared tomorrow.

**Mr. Speaker:** what do you say Mr. Ndzai?

**Mr. Ndzai:** Mr. Speaker, Sir, if it is tomorrow then I oblige.

*(Question deferred)*

**Mr. Speaker:** Next Order.

#### MOTIONS

##### REPEAL OF OPPRESSIVE STATUTES

Noting that the repeal of Section 2A of the Constitution has not *per se* established a democratic and civil society in Kenya, this House resolves that the Attorney-General takes expeditious measures to enable Parliament to repeal The Public Order Act, The Chief's Authority Act, The Vagrancy Act The Preservation of Public Security Act, sedition laws and other oppressive enactments.

*(Mr. Shikuku on 8.5.96)*

*(Resumption of debate interrupted on 8.5.96)*

**Mr. Speaker:** Mr. Orengo, you have a balance of five minutes.

**Mr. Orengo:** Mr. Speaker, Sir, this is a very important Motion as I had said the last time and I hope that in the spirit of democratisation, the Government will see to it that this Motion is passed without amendment. I did say the last time that many of the statutes which are mentioned in this Motion, and which we are asking this Government to bring a Bill to repeal these laws which were put in place during the colonial era.

Mr. Speaker, Sir, since I have a short time, I will try to be brief. Harry Thuku was jailed by the colonial Government, way back in 1926. Dedan Kimathi was hanged for struggling for the liberty of this nation. Jomo Kenyatta and Achieng-Onyko, who is here, were imprisoned and detained.

Mr. Speaker, Sir, their rallying cry at that time was this, "give me liberty or death." They believed that it was better to die on their feet rather than to live on their knees. I have been wondering for a long period of time why this Government is opposed to the repeal of these laws that we have mentioned in this Motion. I have agonized that a Government which knows how hard the people of this country struggled to bring about independence should find it difficult to repeal these statutes.

The only answer I could come out with last night, is the realization that the leadership of KANU is not a direct product or consequence of the forces of liberation. The leadership of KANU today, is an illegitimate child of colonialism and the collaborators; the homeguards. That is why, this Government finds it difficult to remove from our statute books the detention laws, the Preservation of Public Security Act, and also go ahead and amend the Constitution accordingly so that the Constitution as it is in place should not provide for or justify detention without trial. If you are one of the people who suffered and was detained in Mwanda Island, Mageta Island or at the Hola Prison Detention Camp, the first thing that you would think of, is the repeal of the detention law; that we should not have detention without trial.

Mr. Speaker, Sir, during the colonial days, Africans or natives were not allowed to meet in public places. In fact, right up to about 20 years ago on the way to the Embakasi Airport, there used to be an old structure where all the meetings in Nairobi were held. It was very popular with the late Tom Mboya, because the Colonial Government wanted to suppress public meetings in so far as the forces of nationalism were concerned. Even today, this Government is wary of public meetings; that, the Opposition and other democratic forces should not hold public meetings. So, the Constitution gives the right to hold public meetings, but in order to hold a public meeting you are supposed to go and kneel to a DC for weeks or months before a licence can be granted or a permit issued for the holding of a public rally. This law should be repealed. It is a law which came into place during the colonial times and it was supposed to suppress political activity in the country.

Mr. Speaker, Sir, even now, nearly 30 per cent of the Members of the Opposition, in fact, nearly 50 per cent have had court cases or have been arrested on some trumped up charges because the sedition laws as they exist in our statute books were supposed to provide for a catch-all situation and it is time that these laws were repealed.

With those few remarks, Mr. Speaker, Sir, I beg to second the Motion.

*(Question proposed)*

**Mr. Nthenge:** Mr. Speaker, Sir, it is known that we were under the Colonial Government and the Colonial Government had different intentions from ours. When we became independent, we changed from the direction the British Government or the Colonial Government was moving because it was moving backwards. Their idea was to make sure that the "White man" in this country was quite happy and they did not care much about our position. Now, they had these laws for their own good. Why should we keep them? Because we are going their direction and the Chief had to be given power and all these other laws quoted here for the sake of the British Government moving well. We are very late, we should have done it in 1963 because the intention of these laws is to harm the indigenous Kenyan.

Mr. Speaker, Sir, I hope and wish the Attorney-General now advises Kenyans properly because I am sure he cannot act alone, but the intention of these laws must be known and the intention is to harm the black Africans in Kenya. Now, maintaining of these laws is nothing else, but as it were calling the British Government to come back or rather we do what they used to do to harm the majority.

Mr. Speaker, Sir, we do not have to go very far. First of all it should be known that even a chief now, according to the Chief's Act can detain a Minister. Now, Mr. ole Sunkuli, for example, could be locked up by his own chief at home. He is powerful and he is acting within the Laws of Kenya. It is ridiculous that the boss can be locked up by the most junior officer. These laws were silly and they had a purpose so, why do we keep them? The intention of going to sit at the table is to eat and get satisfied. If you are not hungry, why do you go to a table? You do not need to. So, the stupidity of these laws, we do not have to emphasise. We who worked with

the British Colonialists know how pinching they were. Sometimes they were relaxed, but it is not all the time they were relaxed. The other day you saw one of the hon. Members of this House being embarrassed in front of the public by an employee. The employees; the civil servants are supposed to be under this Parliament, and the junior goes and tells his boss, "no, you are not going on." You can see how ridiculous it is. The Attorney-General is a professional lawyer, he knows that every law must have an intention. What is the intention of these laws? He knows it is wrong, but what can he do? He is a civil servant, he is there to advise. It is up to us politicians to agree that we do not require these laws and just scrap them from the book and enact other better laws which can help this country to develop.

Mr. Speaker, Sir, why did I go into politics in the colonial days? I joined the wagon which was left alone by hon. Achieng- Oneko, the late Kenyatta and so on, when they were detained by the British Government. Then we joined them to say that the African in his own country, Kenya, should have some freedom and should do what he wants. Now, we were blinded, immediately we got into power and we forgot some of these things. They exist in our books for nothing. They were put there by the creators, who have now left this country, for their own purposes although it seems they have come back in disguise and they are doing a lot of harm. They are the ones actually causing us to still have these laws. Let us be frank, let us be open. If the British people who are here have to go because we have changed this, let them go.

But we have had enough of this. It is finally misused. We might have even our President being told by a chief; "sit down". Anything can happen; a Member of this House can be manhandled by a chief. It starts slowly. A big river has a lot of tributaries and it starts slowly and towards the end it becomes a big river. Now, we are going to start slowly, and in the end the Minister who defends them here, he will be mistreated by them. Hon. Kones will be told by the chief, "please you are not going to address them, you tell people to go away". That kind of a thing is about to happen. The other day it happened to me, a senior politician of my standing. I am senior because I was an elected Member in this House, representing an area now with over 10 Members. I was told the other day by a young DO, younger than my own children, that I cannot address a meeting even with a licence. Three times, the people were told to go away. I tried to plead with him, but he said, "let us start again" then he breaks it. Should this kind of a thing happen in your own country? Imagine a DO who is like my grandson, telling me, "you cannot address these people" and they have come to listen to me! There is no fight, there is nothing wrong but because he want to show his might, he says, "the meeting is called off" and people are dispersed. Hon. Shikuku and hon. Icharia were with me in their own constituencies. It happened also in Nyanja's constituency. Now, why to we retain these silly laws in a multiparty country? It means everybody should say what he likes, if he has no following, I am sorry about it. Let him air his ideas but he has no following. Everybody should be free to say what he likes and let the public judge. When it comes to election, hon. so-and-so who has been acting silly is not elected because he did not do things the way the owners of the country wanted, and that is the meaning of election. So that we keep on changing and getting the right people and the right people are now ourselves who are saying that these laws are wrong and bad and they should be got rid of. It has been practised, and once you do something in practice, the theory losses it meaning. Because if you tell us a wonderful theory but in practice it cannot work, then we will go back to practice. Now, the practice is that a chief can tell hon. Members tomorrow that, "you are not going to do this" and the hon. Member who is senior to the chief, if he is hon. Kones, he is more senior than a chief, both academically and in honour - Hon. Kones will never accept to be a chief; it is a junior job, but how do you go and work under a junior? The chief has the power; he commands his policemen, "tell all these people to go away, Kones will not address them." If it has been tried and it has shown that the results are wrong for heaven's sake, hon. Wako should advise the Government and agree so that we scrap these laws and enact better laws.

*[Mr. Speaker left the Chair]*

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

Everything must have a purpose, and the purpose of these laws was to oppress the Africans. Now, does the African need to oppress his fellow African? Because the purpose of this was to oppress, and the British Colonialist wanted to use the same law to oppress the Africans. Does the African also want the same laws to oppress the other Africans? I never went to Britain to seek for Independence for that purpose. I meant an African to be lead by another African for a better country. That is why I went there, that is why I gave up my business. I was almost becoming a very rich man, but I gave up that idea so that we all become independent. Now, if we are going to change use our laws to oppress our own people for heavenly sake, then we had better call

back the British Government. If we are exactly the same, why did we get rid of them? I think we are getting worse. I worked under the British Government, I was even an elected Member under the British Government, and some of them were listening to problems better than our own people. But because of these wrong laws, they ask, "what can you do?" What can hon. Kones do? "The law is in my favour, I am going to tell people that there is no meeting." In fact, we have never had a single civil servant, removed from office because of such misbehaviour. This means we do not know where we are. In fact, if a person does that the Head of State should be informed and order that to lose his job.

With these remarks, I be to support the Motion.

**The Assistant Minister for Commerce and Industry** (Mr. Osogo): Mr. Temporary Deputy Speaker, Sir, stand to oppose the Motion. If I were in the shoes of the person who moved the Motion, I should not have requested the Attorney-General to do what the Motion is requesting. I should have drafted this Motion to ask this House to appoint a Select Committee to review all these Acts. Some of us have read all these Acts. They have got some bad provisions and some good provisions. For example, the Chief's Authority Act has got several bad things, but it has also got the provision where a chief would force a Kenya citizen to produce food to avoid hunger.

That is an element which is good and it has be retained because we need that. If the Mover of the Motion had drafted it the way I said, probably the Select Committee would have drafted or agreed to draft only one law to cover all these, because they are related The Public Order Act, The Chief's Authority Act, The Vagrancy Act, are all inter-related, and there would be provisions in one Act that would probably cater for this. There are quite a number of very useful provision in these acts that have to be retained by any Government, be it my brothers across, If they formed a government. They will need some of the provisions there which are very important. So, what I have found faulty is the drafting of this Motion. They have asked the Attorney-General to take expeditious measures to enable Parliament to repeal this Acts. The Attorney-General is in this Government and this Government would only say, that it would enable Parliament to review the provisions of all these Acts and remove those that are oppressive. That would make sense because the Attorney-General is in this Government and he would have to be guided by this Government.

So, Mr. Temporary Deputy Speaker, Sir, my contention is that since the Attorney-General is being asked to take measures, I do hope that the Minister who is going to reply on behalf of the Government is going to request that this House requests the Government to look into the possibility of reviewing these Acts and possibly to remove the very offensive sections that are provided for in these Acts. Nobody can deny that some of these Acts are very offensive and many of us have suffered from these Acts. Right from the colonial days, Chiefs arrested people using these acts and so on. But then, other good provisions should not just be thrown out by repealing them. So the question of reviewing these Acts should be looked into. I am convinced that they could help to reduce statutes in our books. They would come into one Act only to constitute one chapter of the Kenyan Law; it will greatly help. So, I hope my brothers sitting opposite have seen the fault in the Motion, because if it was a Select Committee, it would comprise of them and us, and some legal brains in here, looking at these Acts and bringing amicable Acts that would help any Government that would require them. But as it is now, repealing all these Acts will not help and I am certain that the Government will not allow the Attorney-General to do just that.

With these few remarks, I beg to oppose the Motion.

**The Minister of State, Office of the President** (Mr. Kones): Mr. Temporary Deputy Speaker, Sir, thank you very much for giving me this opportunity to also contribute on this Motion. I would like to thank the Member who has brought in this Motion and say what hon. Osogo has said that probably the drafting was a bit harsh. The drafting did not leave the Motion with the spirit that it was meant for.

I would like to propose an amendment by deleting the words "not *per se* and established" appearing in the first and second lines respectively, and further by deleting the words "Attorney-General takes expeditious measures" and the word "oppressive" appearing in the third and fifth lines respectively, and substitute it by inserting the words "contributed to" between the word "has" in the first line and the words "a democratic" appearing in the second line. Further, by inserting the words "the Government reviews the following laws" between the word "the" and the words "to enable" appearing in the third line, and further by inserting the words "or amend where necessary" between the words "repeal" and "the" in the third line. Further, by inserting the word "colonial" between the words "other and enactments" in the fifth line. Therefore, the amendment Motion will read as follows:-

Noting that the repeal of Section 2A of the Constitution has contributed to a democratic and civil society to Kenya, this House resolves that the Government reviews the following laws to enable Parliament to repeal or amend where necessary, the Public Order Act, The Chief's Authority Act, the Vagrancy Act, The Preservation of Public Security Act, sedition laws and other colonial enactments.

Mr. Temporary Deputy Speaker, Sir, you can see from the amendment that we are not actually, as a Government, totally opposed to the amendment of these laws. What we are seeing is a situation where some of these laws are still useful. I will give examples of the Chief's Authority Act. There are certain good laws that are useful to the community but there are others that we feel are outdated and colonial and they must go. There is an example of what hon. Osogo said, where a chief could use his power to try and force certain people with too much food to give it to the hungry. That is a good thing to do. Where the chiefs use their power to prevent the burning of grass is good. Where a chief uses his power to prevent communities from destroying forest, is a good thing. Where a chief uses his powers to prevent cultivation along the riverbank, is a good thing but where he uses it to try and prevent an hon. Member from addressing a public rally, a public rally that is meant to educate the public on a disaster that is likely to hit the country, is wrong. There is no sense in us saying that the whole thing is bad without necessarily looking at the good side of it. The unfortunate thing about the Chief's Act is that, sometimes chiefs would like to use what gives them power and leave out what actually serves the people. That is a wrong interpretation of the law. This is why we want these chiefs to go through certain seminars so that they selectively go for what is good for those communities. All of us in this country do not live in the same area. Certain areas are more developed than others. In certain areas like North Eastern Province, the Chief's Act is used to protect water catchment areas so that animals can drink water from one source for a time and then move on to another area. This may not be applicable in an area like Bungoma because water is everywhere. If what we are saying receives the spirit of the whole House, we will say that the Government proposes certain sections of this Act to go and retain what we feel is good. That is why I am talking of review and amendments of these laws as opposed to repealing.

I think The Public Order Act which the Members have talked about, some of it actually needs some bit of review. Sometimes Members ask for licenses to hold public rallies and they are told to wait for 14 days and sometimes there is no evidence to show that those licenses have been processed within those 14 days. In this way, DCs can sometimes play around the issue. I think something must be put in place so that if one is going to get the license he is told there and then instead of waiting until the 13th day, only for the application to be turned down. These are things that we feel should be done. Democracy may not be achieved overnight. As much as we would like to carry on with democracy, we should not also overspeed it so that, when we completely do away with what is there, we should come up with an explanation. We also do not want to stay without anything. Anytime we remove something, we must replace it with something more acceptable to the communities. We are not doing it for the sake of the Opposition. This must be understood very clearly. We are doing it for the good for this nation. We are in a process of achieving democracy and no country in the world has actually said that they have achieved total democracy. Democracy is a process that grows and you must let it grow. It must get the good spirit from both the Opposition and the Government. We know that certain things are quite inhibitive and we should not forget that a lot of these Acts like the Chief's Act were enacted in 1937 before I was born.

**Mr. Achieng-Oneko:** I had been born!

**The Minister of State, Office of the President** (Mr. Kones): I am sure hon. Achieng-Oneko was born then and he must have gone through a lot of this and he is a good witness to all these laws. Some of these Acts are bad, but the process of change must be totally and carefully monitored, so that we do not overdo things at one time.

Mr. Temporary Deputy Speaker, Sir, I do not intend to speak much on this Motion, because everything in it is good but only its approach is unsuitable. Hon. Shikuku wants it implemented today, but we are saying we should implement it in bits. This is because eventually, we will achieve its objective. Hon Shikuku may not see the achievement of this objective in his life time, but he will see changes occurring. I do not even intend to see all these changes taking place in my life time. We are saying that the process must start. There has to be a beginning and this is the beginning.

With these few remarks, I beg to move the amendments.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I wish to second the proposed amendments. The Government is committed to reviewing these important pieces of legislation which affect the public life of this country. In fact, that is why on 17.8.93 I personally launched the task force to review all legislation on security. That task force had specific mandate to review the Public Order Act, the Preservation of Public Security Act, the Societies Act and the Chiefs Authority Act. As I have said again and again, repealing an Act is a very easy part. The difficult part is to ensure that we have adequate laws consistent with the total and full protection of human rights, rule of law, democracy, law and order, national security and public order. Such a law must be put in place simultaneously as the above Acts are repealed or amended.

For example, the Public Order Act that we have in our statute books is the same as the ones you will find in most of the Commonwealth countries in this part of Africa. However, we are aware that in some of those other

countries the Public Order Act has been repealed and replaced with a piece of legislation called "the Peaceful Assemblies Act". I can inform this House that the task force I set up is half way through with looking into our Public Order Act and what other Commonwealth countries have done. It is trying to see whether this Act should be repealed and replaced with another Act or whether it should be amended as appropriate.

The Preservation of Public Security Act as you may know, or be aware, is itself, in fact, specifically mentioned in Section 85 of the Constitution of Kenya. In fact, it is almost the only Act of Parliament which is specifically mentioned in the Constitution under Section 85. This Preservation of Public Security Act covers many fields. The definition of public security covers issues such the defence of the territory and the people of Kenya, security and the safety of persons and property, the prevention and suppression of a rebellion, mutiny, violence, intimidation and so on. It covers issues such as maintenance of administration of justice, provision of sufficient supplies and services essential to life and wellbeing and so on. These issues are important and must be dealt with. So, you cannot just say that we should repeal the Act without making sure that somewhere within our laws, we have legislation which can take care of the issues which are taken care of under it.

The Societies Act is also one of the Acts which the task force is specifically looking into. It is true that this Act is out of date and the task force is looking into it with a view to replacing it with three different registration Acts, which will deal with the registration of welfare societies, religious bodies and political parties.

Much has also been said about the Chiefs' Authority Act. As the Mover of the amendments stated, there are also certain positive features in this Act. We agree that there are negative features in this Act, but there are also certain positive features in this Act, which deal with administration at the grassroots level. When one talks about environmental matters, agricultural matters and other matters, which also come under the Chiefs' Authority Act, then one would want to see how those issues will be dealt with at the grassroots level if we have to repeal this Act.

It is true that the Ministry of Environment and Natural Resources may have officers up to the divisional level, but it does not have officers at the locational and sub-locational levels. So, we need a mechanism through which the important issues related to agriculture, the environment and so on can be dealt with at the grassroots level. It is that mechanism that one has to try to put in place before we just say we are repealing the Chiefs' Authority Act.

As hon. Osogo said, in all these Acts there are both positive and negative things. We have to do away with the negative aspects and see how we can take care of the positive aspects in all these Acts. We can do this in some form of legislation or other form. It may mean repealing these Acts and incorporating some of their positive aspects in other environmental or agricultural Acts. That exercise has to be gone into. In fact, it is being gone into today as we speak here by the task force on security legislation.

I also support the amendments because it is not really for the Attorney-General to introduce Bills here. It is the Government which brings to Parliament public Bills for debate. The Attorney-General advises the Government, drafts Bills which are approved by the Cabinet and then brought to this House as Bills, not of the Attorney-General, but of the Government. It is the Government which makes decisions in all these matters.

With those few remarks, I beg to second the proposed amendments.

*(Question of the first part of the amendment,  
that the words to be left out  
be left out, proposed)*

**Dr. Kituyi:** Thank you very much, Mr. Temporary Deputy Speaker, Sir. I am glad that there is an emerging positive spirit in the KANU side. Although KANU hon. Members try to wash down some of the critical Motions brought in the House, some of them are speaking as if they have reached the road to Damascus in the process of democratisation. I will eventually support the proposed amendment in the absence of a viable alternative, although there is a problem with the language of the amendments as proposed. This is because once you turn the first sentence of the Motion about the repeal of Section 2A of the Constitution into positive form, you do not notice that you are saying: "Notwithstanding..."

But, Mr. Temporary Deputy Speaker, Sir, be that as it may, I want to talk about the more substantive things. The critical challenge before us now is how to create conditions for a democratic society to take root in Kenya. To the citizens of this country, democracy is not the presence of a multi-party Parliament. Democracy is to what extent people can be able to stand up to the failed points of authority. Democracy is to what extent people can also say no when they see that they are being wronged. To a lot of these people, the critical entry point of power is the chief, the assistant chief and the village head.

Mr. Temporary Deputy Speaker, Sir, I appreciate what hon. Kones mentioned here. But it is even more

outrageous than what has been mentioned about what chiefs are doing in this country. Today, we live in a country which has totally liberalised the marketing of farm produce. We also live in a country where, while the Government has told you that it has no business looking for a market for your maize, a chief can ban you from selling roast maize in the market. It has already started happening. When you go to Webuye, you hear that a chief has banned the roasting of maize in public places, under the powers of the Chiefs Authority Act. That same chief cannot tell you where you will sell your maize when it is dry, and when you do not have any place to sell it.

It is very easy and convenient for members of the Government to say that repeals should not be rushed because there are some useful components of these repressive and oppressive laws. There are some useful components but this Parliament, during the current Session, has had the experience of repealing Acts. We repealed the Exchange Control Act and we knew there were some components of it which were useful. In tandem with the repeal of the Exchange Control Act, we amended the Banking Act to take on the useful functions. So, what I am saying is that the fact that, there are some components of this Act which are positive, does not mean they can not be repealed. It means that we can in tandem with those repeals, introduce amendments to other existing laws to take on both those positive functions.

The chief in this country not only resembles a colonial officer in the attire he puts on, but also, he resembles the colonial official in his perception of his duties. He is not a representative of the people. He is not about facilitating the people, but he is about barking orders down to the people.

Some of us have suffered the humiliation of seeing little chiefs and assistant chiefs totally mis-understanding what their functions are in the society, and trying to demonstrate loyalty by harassing us. Some of us have had the humility to restrain people from killing these chiefs who think that their most important duty in their areas is to cause as much inconvenience to Opposition politicians and their supporters as possible.

The management of public affairs in this country is being very much tarnished by chiefs who do not understand that their duty is not to harass wananchi who are seen to be against the Government. It has been raised in this House today, and I wish to revisit this as a reality, that whereas the Government has told this House, and it is in the media, that the contribution to the Youth Development Fund is a voluntary exercise, it is a reality in this country that chiefs and Assistant Chiefs are visiting and harassing citizens of this country, over contributions which are supposed to be voluntary. It is a statement that when the Government has positive intentions, its inability to reach out to chiefs and sub chiefs, to make them understand that they are not supposed to be harassing mwananchi, are not being sufficiently communicated.

The empowerment of the citizens of this country to appropriate their rights cannot progress without removing the obstacle that lies in their way. This obstacle is called the extension of the provincial administration.

An hon. Member here talked about permits and licenses for rallies being made readily available. It is a totally ridiculous phenomenon that in a country where we are purporting to be in transition towards democracy, you must go and seek permission from someone before you talk to the electorate. Look at it this way: In a situation where provincial administration is beholden to KANU; when I go to seek permission from the provincial administration to talk to people, I am indirectly seeking permission from KANU to talk to the people. Multi-party competition is likened to a situation where we are competing to seduce a girl. How can I go to seek permission from a person who is interested in the same girl, before I talk to the girl, and you talk about fairness? There is absolutely no justification for that provision in the laws of this country.

Apart from that, there is an area which many people have not appreciated. As our country increasingly becomes urbanised, and as our population increasingly ceases to have access to major natural resources like natural forests, beaches, marine parks and so on, it becomes increasingly necessary for the citizen of this country to have recreation. For the appreciation of the biotic riches of our country, we need direct access to certain reserves of natural resources. The Vagrancy Act was a colonial enactment which was supposed to control the movement of the African native. Presently, it is totally inconsistent with the need for Kenyans to enjoy the beauty of their country, because of its inhibition of access to resources that are important for all of us. We cannot appropriate the benefit of conservation if the Vagrancy Act stops from accessing some national heritage that accidentally lies on private territory.

I have been arrested in a church in my Constituency by a contingent of armed policemen in two Land-Rovers, driven for 250 kilometres from my Constituency to Kericho and stayed in the police cell overnight and then driven on to Kisii to be charged under the sedition laws. I was arrested and told that I had committed a crime because I made utterances that were calculated to cause disaffection against the President. If you look at this, one of the principle challenges of an Opposition Member of Parliament is to try to cause maximum disaffection against the Government of the day, so long as it is within reasonable limits. I believe that if the disaffection I cause against the President and his Government because of their inability to perform and their inability to facilitate democracy in this country, I believe I will be earning my salary by doing as best as I can. It

is ridiculous when you start harassing an Opposition in Parliament which is supposed to show an alternative management of public affairs, simply because it has done things which has caused disaffection against the Government of the day. I cannot see how I can be honest to this country without causing disaffection against the President of KANU. It is inconsistent with democracy and competition to transfer legislation which was meant to protect the dignity of the Queen of England to the leader of a party leading a Government; which party wants to maximise public disaffection against it. This is the contradiction about sedition laws.

About detention without trial, this country has suffered the pain of seeing its best sons destroyed by detention in the colonial period. Many Kikuyus suffered the fate of being treated like animals in their own country because they were fighting a white man who was "sitting" on them. The Preservation of Public Security Act was used in the colonial period to massively hunt and drive Kikuyus out of Narok District like wild animals. Those who suffered the pain of detention did so because they believed that one day, they would live in a society where they would not be jailed without being given a chance of trial.

But 33 years after Independence, boasting that we are now a modern society, and that we belong to the community of civilised nations, we still have on our Statutes, a provision that a person can be arrested, incarcerated for a non-limited period of time without being told why he or she has been arrested. There may not be a person who is in detention right now under this provision, but why should we continue to have on our Statutes a law which allows anybody to put you into detention without trial. When Hon. Oneko suffered detention for so many years and in so many different places, what does he feel in his dying years, when he sees that his grand-children are still exposed to a regime of Government which allows for detention without trial.

With those few remarks, I beg to support.

*(Question, of the first part of the amendment,  
that the words to be left out be left out,  
put and agreed to)*

*(Question, of the second part of the amendment,  
that the words to be inserted in place thereof  
be inserted, proposed)*

*(Question of the second part of the amendment,  
that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Question of the Motion as amended proposed)*

**The Vice-President and Minister for Planning and National Development** (Prof. Saitoti): Mr. Temporary Deputy Speaker, Sir, first of all, let me say that this amended Motion is an indication on the part of the Government that we are going to examine our Legislation, and indeed, some of the proposals that have been made by hon. Members of the Opposition, with a very open mind. We do not take a very doctrinal position that because the proposal has been served by the Opposition, it must, in itself, be rejected. Matters which do affect the well being of Kenyans, and well-being of this nation, are matters that should be handled by all of us, irrespective of our own party positions. It is in that seriousness that last week, when a Motion was brought here regarding the Electoral Commission, we did not throw it out. Instead, we felt that the best thing was to improve on that one by bringing in an amendment in order to convey our feelings that this is an evolutionary society. Kenya is a dynamic society. Times are also changing and as they do change, things cannot remain static. It is important to keep on upgrading various things to be in tandem with whatever has happened elsewhere.

In this respect, this amendment as is put here, does make one thing quite clear which was not in the original Motion. Namely; that when the Government repealed Section 2(A), it was for no other reason than to enhance a democratic system. It is not that we did not have democracy. Democracy was there, Kenya has had elections right from its inception as an independent country in 1963 and all those elections were there. Kenyans have continued to elect their own members into this Parliament. Only in 1981 or 1982 was there a change to make the country a *de facto* one party system. When it was removed, we reverted to what the founding fathers of this nation wanted Kenya to be, and that has continued. Therefore, the way this Motion states here, it does take cognisance of the fact that, yes, when Section 2(A), was repealed in the Constitution, that merely enhanced the democratic status of this country. Also, what we are now going to do is only to ensure that this country continues



being democratic because we do not want to go back. There is no doubt that in some of these Acts which were enacted many years ago, during the Colonial period, there are certain aspects of them which could very well be said to be obsolete. But there are also certain aspects of them that clearly need to be preserved. What this particular Motion is asking this House to do is carry out the whole review of these Acts with an open mind. It should be carried out in a rational manner, not in a completely emotional manner. To say that: "All these Acts are bad, repeal them"; that denies a thorough analysis of the various aspects of these Acts. Those particular aspects that, clearly, are not up to date, and are probably undesirable in modern Kenya, the Government will, definitely, purge them out.

There is, for example, the question about the powers that have been conferred on the Chiefs. I want to say this, if only to argue from the rear guard: I do not think that it is fair to condemn the activities of all the chiefs in this country because they have done a commendable job. They have been the ones who have been able to impart the information of the Government to the people further there. They have also been the ones to ensure that at least laws and order are kept. If you have a nation where the rule of law is not there, then you do not have a country. You have disorder and anarchy and, I am sure that nobody wants anarchy in this country. Yes, there could be isolated cases because these are human beings. Maybe, certain chiefs could very well have taken the law into their hands. They could have abused the law. Those aspects in the Legislation that allow for that kind of latitude certainly require to be amended. But those aspects that allow the chief to be able to ensure that things are going on very well, to ensure that they are able to give the necessary advice, right there at the grassroots, at the village level, should be preserved. But as I said, this is going to be looked at very carefully.

There is, of course, the Vagrancy Act. I think, there is no doubt that, that particular Act could fairly be considered to be obnoxious. There are various aspects of it which are going to be looked into. Perhaps, we may very well come to the conclusion that there is no need of that. Well, in the very old days, there was no question that when the Europeans were the Colonials here, they did not want to see the Africans moving into their various places. Then they needed something or an excuse to be able to arrest somebody like hon. Shikuku because he had a black face. Today, I do not think that we need that sort of thing, but once again, it is going to be looked into. At the same time, there can be no doubt, that the reason why all these various Acts have been there for the last 32 years after our independence is that they also carry certain good aspects. We are going to look into them.

There is a question like the Public Order Act. Let me assure this honourable House that it is not the pleasure of the Kenya government to put anybody behind the bars without any trial, and that one is indicated by the fact that, as we are talking today, we do not have anybody in detention under this particular Act. I would like to say that the Government would wish not to put anybody there.

**Mr. Shikuku:** Repeal it!

**The vice-President and Minister for Planning and National Development (Prof. Saitoti):** However, hon. Shikuku says that we repeal it. But all we want to say, and I have said it at the very outset, is that we want to look at things in a very orderly way because we are a very orderly nation. We want to examine all the various things. What I want to say here is that what normally keeps a nation and democracy together is for the people of that nation to have respect for the laws that are enacted. We are the leaders elected here by the people and what we do legislate here should respect the wishes of the people. Therefore, once we enact our laws, the first person who should talk about the **[The Vice-President and Minister for Planning and National Development]** facts must be respected. If all the hon. Members here in Parliament respected all the laws that we have in this nation, and conducted ourselves in a more respectful and civilised manner, I am sure there would be no problems at all. But, of course we have had occasions when we have had problems. This does not concern all the hon. Members, but quite a few people have had problems. All these issues will be looked into.

There is another thing that I want to say here. Every country decides, on the basis of its own vision, what democracy means to the people. There is no standard rule as to what democracy is. This has been the misconception all along; that, look, if you follow a certain pattern, then you do not have democracy. I want to say this: The Japanese have got their own system of government and their own laws. To the Japanese people, they do have a democratic system. It is not entirely western. There is the misconception that if you follow a western diet of government, then in a way, that is democracy. That should not be the case.

Mr. Temporary Deputy Speaker, Sir, there are certain parameters, the bench mark which we will say, fine, if we you meet under that, that is democracy. But those do not have to be pursued through either western system or eastern system. The Chinese have their own system. If you ask the Chinese, do you have a democratic system? They will say, yes, we have a democratic system. The Chinese have voted them and it is important. The Japanese will say the same thing, and so on. What I am saying here is that, we as Africans, must agree as to what the factors of democracy are. We must be critics. We should not be in a position where, at any given time, we must always be led by the nose to give the impression that we are incapable of being able to think. But I

believe that is very important. We have many lawyers who are well qualified and we have many Kenyans and other Africans, and we want them to make their contribution.

In winding up, Mr. Temporary Deputy Speaker, Sir, I want to say this should be conceived as goodwill on the part of the Government, a recognition that this is an evolution system.

I beg to support.

**The Temporary Deputy Speaker** (Mr. Wetangula): Before hon. Wamalwa takes the Floor, I want to indicate to hon. Kopiyo that due to constraint of time, I have received your notice of amendment to the amended Motion, but I do not think I will avail you the opportunity because I do not have the time for it.

**Dr. Otieno-Kopiyo:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Wetangula): Order, hon. Kopiyo! I was not soliciting any point of order. I was just giving you guidance that I am not going to give you an opportunity to move an amendment to the amended Motion.

**Dr. Otieno-Kopiyo:** Mr. Temporary Deputy Speaker, Sir, I am standing on a point of order according to Standing Order No.46. It is within my right as an hon. Member of this House, I propose this amendment before the House---

**The Temporary Deputy Speaker** (Mr. Wetangula): Order, hon. Kopiyo! I have not in any way said that you have no right to propose an amendment. I have simply told you that due to the time constraint, this is a timed Motion, I do not have the time to give you an opportunity to move your amendment to the amendment, to be seconded, to propose the question, to put the question and go back to the original Motion. That is all I am saying.

**Mr. Wamalwa:** Mr. Temporary Deputy Speaker, Sir, I do thank you for giving me the opportunity to make a few observations on this very, very important Motion.

I support this Motion as amended very reluctantly because we have just seen what the prima faciel rule of democracy means and that is that, those who have the numbers can carry the day. We saw this happen last week when the Motion on the Electoral Commission was truncated by very severe amendment and now we have seen this Motion also, to a very large extent truncated by an amendment which purports to support it. Such is our position in this Parliament today, that because of numerical superiority by the party opposite, they can take over our Motion, amend it, make it their own Motion and carry it on the Floor of the House.

Be that as it may, we on this side of the House have had to learn to be thankful for little mercies. When the Government moves a little, we must welcome that move in that direction. What I have observed on the part of the Government is very reminiscent of *George Orwell's Book, Animal Farm*. When the animals decided to revolt against their human masters, they hated everything that was human. They hated the way the animals were treated, the rules that governed Mr. Jones' farm and they repealed all of them. When they took over power themselves, first, they espoused the principle of equality. As time went, the leaders saw that they needed to be more equal than others and so they introduced the rule: "All animals are equal but some animals are more equal, than others."

(Laughter)

Mr. Temporary Deputy Speaker, Sir, under the one party rule, we had gone beyond animal farm and we were living the truth of *George Orwell's Second Novel, 1984*, where there was ever present, ever-watching "Big brother" who saw everything you did, even everything you thought.

From that position to the present position, represents a major shift and a major change for the better and that is why I conclude that we must be thankful for little mercies.

When section 2(A) was introduced in this House by the then Minister for Constitutional Affairs, Mr. Charles Njonjo, I had occasion to talk to him before the Motion was introduced and I told him that when you establish a one-party-state by legislation, the party and the state become one and the same. They become synonymous, and so we run the risk that if you were thrown out of the party, by extension, you become an outlaw or you become a diminished citizen. Some of these arguments were too esoteric for the determined Mr. Njonjo at that time and poetic justice visited upon him a few months later when he became the first victim of that amendment himself when he was thrown out of KANU and reduced to the status of a sub-standard citizen in this country.

(Applause)

Mr. Temporary Deputy Speaker, Sir, when we speak of change, we are not thinking about now, we are

not thinking about ourselves, but we are thinking about Kenyan society now, tomorrow and forever. That is what change means.

In law, there is a guiding principle that before you say in the Law of Tots that before you remove a fence which was put there before, say, you acquired that property, you must try and find out why that fence was put there. In this case, I think it behoves us to find out why these laws were enacted in the first place. Why was the Chiefs Authority Act enacted? Why was the Public Order Act enacted? And if you look at the prepartorial or the background to those rules and why they were enacted, you will find that those reasons do not obtain today. And, therefore, the rationale for the existence of these archaic laws on our statute books defies any reasonable understanding.

When the Chiefs' Act was enacted, it was enacted in the days when chiefs were chiefs, leaders of their people, almost natural leaders of their people. Some chiefs were "born." At the moment, we have chiefs who are elected or appointed for political reasons and continue to act to justify their appointment. I can say this without the fear of contradiction that the chiefs appointed in the 70s and 80s were purely political chiefs and you will find that they sell KANU receipt books, preside over KANU functions and so on. They are not chiefs acting as leaders of their people, the way they used to be. For that reason, the ancient chiefs were given this authority so that they could contain their citizens to make sure that they were loyal to the colonial Government. Although, some great chiefs, in fact, used the act to help their people.

Mr. Temporary Deputy Speaker, Sir, I remember one case when money was being raised by the then North Nyanza County Council or ADC to send the late Masinde Muliro to South Africa. The PC then went to Kimilili and he said to the people: "How can you collect money to send Masinde Muliro to South Africa? This is the son of Elijah Masinde of the *Dini ya Msambwa* and he should not be sent there." It is only then that the late Paramount Chief Amtala stood up and said: "That is not true, this is a different Masinde. As a matter of fact, he is the son of my sister." And he saved the day. I doubt whether a current chief could dare to tell the PC something like that today. He would just agree with the PC 100 per cent.

It bothers me to hear the Leader of Government Business venture his own definition of democracy. Democracy cannot afford to be a relative term. It must be absolute. What the Leader of Government Business has said fortifies my belief that to most people, democracy is just a long word beginning with a capital letter. Democracy is about the basic civil rights of an individual to be represented and to be consulted - the right that he should not pay taxes until his representative has had a chance to debate the proposed measures of taxation and yet we see taxation through the back door - the so-called Harambee movement where people are heavily taxed before their representatives have even discussed the proposed taxation.

Democracy cannot be relative. It has to be absolute. The moment we begin to say that there is African democracy and guided democracy as we had in the 1980s, that is when we begin to depart from democracy, pure and simple.

If we wanted to remain original African societies---

*(Hon. Akumu stood up in his place)*

**Mr. Temporary Deputy Speaker** (Mr. Wetangula): Hon. Akumu, it is against the rules of the House for you to keep on standing when your colleague is contributing to the Motion.

**Mr. Wamalwa:** If we wanted to remain peasant societies that do not adhere to things like civil rights, then we should not have come this far. Having come this far and having embraced a certain culture we must belabour those rules and the West Minster model of Constitution that we have does dictate that certain rules be obeyed. I find it difficult in this day and age, to understand why we should have in our Statute books the Vagrancy laws. The hon. Leader of Government Business said that the Vagrancy laws were introduced to make sure that Africans did not wander into the European areas and that is true. But does that situation still obtain? Do we want to make sure that hon. Shikuku cannot go to Muthaiga? I think these are laws that have outlived their time; they are archaic and they must be got rid of.

We are told that there are no detainees in this country today. It is a great thing and I must congratulate the Government for that. Since the Government stopped detaining people, we have not seen any deterioration in the public order. People have obeyed laws and carried on.

With those few words, I support the Motion reluctantly as amended.

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Thank you very much Mr. Temporary Deputy Speaker, Sir for giving me an opportunity to contribute on this Motion after the Leader of the Opposition has eloquently done his part. I would like to also state that all of us are here because of a democratic process. We are believers in democracy. The best we can say is that the multi-party democracy which I believe in, which

came out as a result of the repeal of Section 2(A), and therefore, the subsequent creation of alternative parties in this country means that the extended freedom that we now perhaps have, in terms of political activities must be protected by several laws of this country. The Government has already stated its position very clearly that some parts of our laws do in fact, need to be amended in order to conform with the time. It is part of the shading of the scheme.

I will begin by saying, having been a magistrate and having had the opportunity to implement the Vagrancy Act, I would say that we have tended to exaggerate a little bit the punitive elements of the Vagrancy Act. I think some of the parts of the Vagrancy Act do need to be amended. We cannot say that the Vagrancy Act in total needs to be thrown away. For instance, there are some parts of the Vagrancy Act which if we do not get alternative regulations or alternative laws then, in fact, we are not going to do justice to this country. For example, Section 10 of the Vagrancy Act states that:

"Any beggar, residing in a centre may be required by the warden to perform any work which the warden considers suitable for that beggar and which he considers will be likely to feed that beggar for any employment or occupation outside the centre, will contribute to the maintenance of that beggar in the centre."

It goes on to actually create provisions for beggars to reside in certain centres and for them to be given meaningful employment. In a country that is in fact, faced by unemployment, in cities where beggars have become a common feature, this country needs to get centres in order to accommodate our beggars. The Vagrancy Act does in fact, have a positive element and I cannot say that the whole Vagrancy Act needs to be thrown away. It needs to be looked into; we need to emphasize less the punitive aspects of this Act and to emphasize more on the positive aspects of it.

The famous Act which my learned friends from the Opposition have tended to emphasize on is the Chiefs Authority Act. I must say, especially to hon. Ndicho that he should look at Section 10 of the Chiefs Authority Act. I do not think that really most hon. Members from the Opposition have looked at Section 10. When you look at Section 10, the Chief is given limited powers to do certain things like: Prohibiting the manufacture or sale of illicit drinks, to prohibit or restrict drinking bouts, to prohibit the cultivation of poisonous or noxious plants, to prohibit or restrict the carrying of arms, to prohibit any contact which in the opinion of the chief might cause a disturbance or the breach of the peace, to prevent pollution of water of any stream, to regulate the cutting of timber, to prevent the spread of diseases, whether human or animal, to prohibit any acts which might cause the damage of a public road and to prevent the construction of game pits and rendering the game pits already constructed harmless and to prohibit and restrict excessive dancing and so on.

Those are the rules under Section 10 of the Chiefs Authority Act. I do not think that any hon. Member could say here that those things should go. Those are the things that the chief ought to lawfully be given powers to do.

I think what many people complaint about are the powers given to a chief under Section 11 of the Chiefs Authority Act and I think that some of those should actually be looked into and I would like to say--- Although the Attorney-General says it is not his duty, it is of course, his duty to give us draughtsmen to amend some of the parts like requiring persons to report within his jurisdiction when--- and so on and so forth. I think Section 11 of the Chiefs Authority Act needs to be amended. What we are saying here is that it is true that some of the laws do need to be amended but it was in 1960, many years after the American society had become Independent that the Americans still found it necessary to say that they still needed a more perfect society

Mr. Temporary Deputy Speaker, Sir, in 1960 when President J. F. Kennedy came to power and took over from his predecessor, the Americans still thought that their society was not perfect enough and no society ever becomes perfect enough at any stage of its development. Even today, President Bill Clinton came to power on the back of reforms and saying I will reform. We must say that all of us are interested in a changing society. All of us do require to see our society changed. But I must say that democracy means, first and foremost, the wishes of our people. That is what democracy means first and foremost, that we must govern this country according to the wishes of our people.

I want to say one thing and I do not want it to sound outrageous. It is a fact today that the people of this country do, in fact, like the institution of a Chief. Every time I have had to answer Questions in this House, I have had to answer several questions from Members of Parliament asking that their locations be sub-divided further. Why a chief has not been appointed for a long time and so on. And every time I have visited different parts of this country, the people have requested to be given Chiefs. The people of this country do, in fact, trust the Provincial Administration. I think the problem is just on an individual holding a particular office and he does not have to be called a Chief. If you gave the same powers to a councillor today, and if the councillor is not a conscientious man, that man would still not be liked by the people. So the question of saying let us have elected

persons to occupy the office of an administrator does not, in fact, go a long way. What is required is that we tell those who are occupying the office of the Chief, to exercise that office in accordance with wishes of the subjects under him or the citizens whom he is governing.

Mr. Temporary Deputy Speaker, Sir, it is not the law that makes men good, men must be good by themselves. I must reiterate what the hon. Kones said here that even if, or is it the hon. Osogo? Even if the Opposition, some of them came to the Government side mostly by defecting, not the other way; they would still require many of these laws that today they are saying should be repealed. What they might not require are the same sections that we are saying we need to amend. I would like to believe, because it is true, that a Member of Parliament must be above a Chief and that he must be respected by the Chief. I have said so in the past, that it is very crucial that the Provincial Commissioner, District Commissioner, District Officer and the chiefs must respect hon. MPs. They must give them the honour that has been bestowed upon them by the Constitution and the people of this country. Also the hon. MPs must endeavour at all times to reciprocate and not to contribute to the lowering of their own dignity. We have said that because what the hon. Members in the Opposition and Government side in the Back Bench require is dialogue with the Government, we are here as the Ministers and if you have a problem, we would dialogue together like we have been doing across this Table and we are prepared to receive you in our offices. Please, let the hon. MPs not lower their own dignity by going around and chasing themselves with those whom they rightfully know are not their equals. A lot of problems have arisen because an hon. Member goes and starts abusing and humiliating a Chief, and in return, he is also humiliated. In return the hon. Member's dignity is lowered. I think it is very crucial to re-emphasise that respect is both ways. You cannot expect a Chief to respect an hon. Member who does not respect a Chief. An old man like hon. Shikuku needs to be respected because if it was in the old days, he would have been the Nabongo of the Marama. But today, even hon. Shikuku needs to respect me. I am his junior in terms of age and he is older than me, but respect must flow both ways.

So the concept that respect is only owing from the chiefs to the hon. MPs should not hold.

Mr. Temporary Deputy Speaker, Sir, with those few remarks,

I support.

**The Temporary Deputy Speaker** (Mr. Wetangula): It is now time for the Mover to reply.

**Mr. Shikuku:** Mr. Temporary Deputy Speaker, Sir, I must first of all, thank the hon. Members who have contributed to this Motion and also state here quite categorically that the Motion's intentions were very clear and as the Official Leader of the Opposition said in this House, we reluctantly accept the amendment because we have no alternative.

**The Temporary Deputy Speaker** (Mr. Wetangula): Mr. Shikuku, you had an alternative and you could have opposed it.

**Mr. Shikuku:** Mr. Temporary Deputy Speaker, Sir, half a bread is better than nothing. But time will go on because I have history where we had only eight African Members of Parliament, and every time they were being defeated. They came to 14, 31 and now, today, I can see that 99 per cent of the Members in this House are all black. But it started from somewhere and we have started that same struggle all over again.

Mr. Temporary Deputy Speaker, Sir, I must also remind the hon. Members that the intentions of this Motion, even the Motion which was moved by the hon. Wamalwa last week, is to try and create a level playing ground. I hope the amendments that are being made are genuine and that they are going to be implemented, at least, before the next General Elections. It is one thing to promise this House that we are going to review and repeal, and then you sit back and nothing happens. This is also because we had Standing Order No 161, which required the Implementation Committee be established. This Standing Order was deleted from the Standing Orders of this House. If we had that Implementation Committee, we would follow up all the Motions that have been amended by this Government and which have never been implemented. It is only my hope that these amendments, the Attorney-General and those in the Government side have promised would come into vision but not as the hon. Member, hon. Kones said. It may not come in my lifetime. If these things cannot be corrected, repealed or reviewed in my lifetime, then we can imagine the intentions of this Government. They are not intending to do anything, even in my lifetime or even during the remaining few years I have before I die. I will never see those reviews or repeals! If hon. Kones himself can say that he will not see it in his lifetime, and he was not born in 1937, then you can imagine how long it will take.

But nevertheless, we are going to put more pressure on this Government, both from within and outside this country, to bring about these amendments.

May I take on the first hon. Member who spoke on this Motion and that is hon. Osogo, when he said that this Motion should have sought to establish a Select Committee of this House to look at all the laws I referred to in this Motion. That is quite alright as far as his views are concerned, but I am glad that the Government, which he

supports has come out with an amendment better than what he was suggesting. But that is not very, very peculiar with my friend because I do remember one day in this House, he said, when we were debating about the murderers of the late J.M. Kariuki and what action should be taken against them; he stood and moved an amendment to the effect that the report should only be noted. I am glad, again, the House rejected it.

*(Laughter)*

Now, I would like to go to the remarks made by hon. Kones, where he talked about the licences. The licences, during the colonial days, were issued so that the colonial masters could know where you were going to hold the meeting and what you were going to say. As a matter of fact, they used to bring tape recorders at the public rally. You speak while there is a white police officer standing next to you and pointing to you to speak straight into the microphone, so that it is recorded. Later they would go and listen to the tape and if they found something that was not palatable to them, you end up in court. That was the meaning, to know and monitor where the black man was holding a meeting, what he is and what he was saying. Now, this Government wants us to go on having licences to know what we are supposed to do and you have employed so many Special Branch officers, that so many of them do nothing, apart from drinking and some of them have become drunkards in the pretext that they are looking for information.

Why should we contribute to this thing. We have those in Government who have no room for democracy but they are quiet dictators. This Chief's Act came into operation in 1937 before hon. Kones was born yet he still wants it there. We want it out because we believe that we are independent and we do not need it at all.

There is this Public Order Act on which the Attorney-General talks about a Task Force being formed to look into it. These laws which I have mentioned in my Motion are oppressive to me and many others but let me take this one of Detention without trial. Some of the hon. Members who speak in this House, including hon. Osogo, have not had the misfortune of tasting detention. They have had it easy but some of them like hon. Osogo are too late to go into detention but I hope that one day he will taste it.

Mr. Speaker, Sir, it is really obnoxious to have this law on our statutes; picking up somebody even from Parliament and throw him into detention and that person is supposed to stay there at the pleasure of the President. You are suffering at the pleasure of the President and until he dies, you have no hope of coming out and when you come out, you are completely destroyed. What have they done to my own Chairman of my Party? He was not what he is today. Who destroyed him? This very Government, through detention.

Mr. Speaker, Sir, we know from experience that Governments change and it only my hope one day that some of those Members who still want this law to remain in our statutes will live to taste it. I am glad that the Leader of the Opposition reminded us of hon. Charles Njonjo when he brought this infamous Section 2(A) He was warned that he may end up the victim and indeed he paid for it and he is still alive and he has to pay for it in this world and not in Heaven because God is too busy celebrating to listen to people like Charles Njonjo. In Heaven there are always big parties and singing going and they have no time for fools.

Mr. Speaker, Sir, the question of Vagrancy Act, which is actually obnoxious, was really intended to punish the African. I remember one of the hon. Members having said that during Colonial days you would never dare go to Muthaiga because if you were found there and you were not a mpishi or "toto jikoni" or a shamba boy, then you ended up in prison and as a matter of fact during those days a Mzungu would say "Peleka yeye ndani" and you are actually picked up, not through the courts, straight into jail for three months. Are we going back to that state of affairs? What is wrong with this Government of ours? I would like to tell the hon. Vice-President that when he talks of democracies going according to the beliefs of that country, these are despots that we have in front of us and they use the Floor of this House to propagate their ill intentions. Democracy, we all know what it means and there is no question of asking that are we going to have African, Indian or Chinese democracy and he goes as far as mentioning the Chinese on the Floor of this House. That shows you how illiterate, as far as the word democracy is concerned, the hon. Vice-President is. We do not need to invent a wheel because it has already been invented. Now, when we talk of democracy, how do you say that we are going to device a new democracy according to Luhya or the Maasai style. The wheel of democracy has already been invented and we do not need to invent another wheel. Let us improve on this wheel by either making it bigger or larger but we cannot start sitting back and trying to invent another democracy.

Mr. Speaker, Sir, on the Chief's Authority Act, this is one of our laws which is outdated and I will not entertain the remarks made by those in the opposite side in connection with this Act. The Chiefs can almost do anything. They can even force you to go and work and you will work and nothing will happen. The chiefs can even ban things that are of importance to the people. These Chief's Act must go since we have elected representatives of the people right from the locational level right up to the National Assembly. I think the Chief's

Act is completely obsolete and should be removed from our Statutes.

With these few remarks, and since I cannot say all I want, I beg to move.

**The Temporary Deputy Speaker** (Mr. Wetangula): Order! Order, hon. Maore.

*(Question of the Motion as amended  
put and agreed to)*

*Resolved accordingly:*

Noting that the repeal of Section 2A of the Constitution has contributed to a democratic and civil society in Kenya, this House resolves that the Government reviews the following laws to enable Parliament to repeal or amend where necessary The Public Order Act, The Chief's Authority Act, The Vagrancy Act, The Preservation of Public Security Act, sedition laws and other colonial enactments.

Next Order.

#### ESTABLISHMENT OF CONSTITUTIONAL CONVENTION

**Mr. Orengo:** Mr. Speaker, Sir, I beg to move the following

Motion:-

THAT this House resolves that a national constitutional Convention involving the participation of the Government, political parties, spiritual bodies, the Trade Union Movement, professional organisations and all civic groups and presided over by a Chairman elected by the participants be established immediately to set the terms and principles of a new Constitution for Kenya to be written and brought to Parliament for debate and enactment well before the next General Election.

Mr. Speaker, Sir, in moving this Motion I wish to echo the sentiments of the Leader of the Opposition when he moved the Motion on the need for an Independent Electoral Commission. That this is truly a non-partisan Motion and I hope that the Attorney-General and the Government, will understand the spirit in which this motion has been brought. It is not a Motion that is being moved to advance the cause of any party or any individual but to advance the cause of this country in its commitment to achieve democracy and justice.

Mr. Speaker, Sir, I remember in 1982 when Section 2 (A) was being enacted and at that time I was a Member of this House, that Constitutional Bill was brought and debated in this House but unfortunately there was only a Mover and a Seconder. The Bill was never debated and I remember I tried to stand when the hon. Charles Njonjo, the then Attorney-General, was moving the Bill and I was shouted down. So that Bill brought very grave consequences in so far as the Constitution and the governance of this country is concerned. It was passed or enacted by this Government without debate and there was only a Mover and a Seconder and a member stood up and moved that the Mover be called upon to reply. That was how Section 2 (A) was enacted by Parliament. There was no debate, the country was not involved at all and we saw the consequences. Within 10 years, the struggle of the people of this country to try and restore democracy in this country and by the nation, and very soon and very quickly, a new Attorney-General who was still a fresh man at that time in this House, moved a Bill that repealed Section 2 (a), but there were no consequential amendments to guarantee that democracy took root in this country.

Mr. Temporary Deputy Speaker, Sir, recently the Chinese President was here. A lot of words of wisdom have come from China, and I remember that there was a great Chinese leader who once said that, "countries want independence, nations want liberation, but the people want freedom." If you look at the Constitution of Kenya, unlike the great constitutions of the world like the American Constitution, even the emerging democracies in Asia, there is no word mentioned about the people of Kenya expressing their sovereign will in the Constitution. This Constitution has its genesis from the discussions between the Colonial Government, the nationalist parties and the interest that took part in the Lancaster Conference. That is why this document in its wording, is very pedestrian. It is not a great document because it does not express the sovereign will of the people in this Constitution like other great constitutions have done.

Mr. Temporary Deputy Speaker, Sir, since we do not have a lot of time and there is a lot to be said about the Constitution, I wish to address a few areas concerning the Constitution which need to be looked at. But before I do that, I want to say, that the process of democratization and bringing about political reform has stalled. Since the repeal of Section 2 (a) the Attorney-General of the Government has not taken any steps to enhance the gains made, or to make democracy take root by making amendments to the Constitution or bringing about a major constitutional reform or overhaul to ensure that what the Constitution guarantees can be achieved by the citizens

of this country. We need an overhaul of the Constitution, we need a convention to talk about this Constitution in an open platform so that this country can say what they want to see in a new democratic constitution. Instead of the Attorney-General taking steps to ensure that there is discussion on reform process, the signals that have come from his Office and the Government have been very, very negative and meant to reverse the gains that we made in 1992 and before 1992. For example, there was an attempt to bring the Political Parties Bill, and because of public outcry, that Bill was withdrawn. The purpose of that Bill was quite evident, it was supposed to suppress and abridge the rights of the people of this country to form political parties. Then, there was the Press Council of Kenya Bill and the Kenya Mass Media Commission Bill, which again were not published and I think, the Attorney-General and the Government were quite aware that the whole thing was unpopular.

Mr. Temporary Deputy Speaker, Sir, both in the West and even in the old communist countries, the recognition that the state was an instrument of cohesion was always there. Even Karl Marx predicted that society at its best, when communism was achieved, the state should wither away. The conservatives in the West are emphasising the need to respect the role of the state to ensure that people enjoy freedom.

Mr. Temporary Deputy Speaker, Sir, in the present Constitution, there is no statement or provision which requires the Government to respect and protect the freedoms and rights as spelt out in the Constitution, it is just assumed. But in many constitutions you will find that the responsibility of the Government to respect, and its duty to respect freedoms and rights protected in the constitution, is specifically stated in the constitution and that is missing in this Constitution. This Constitution does not mention anything about the rights of children, the right to safe and secure environment, right to health and education and even right to access to information held by the State. All that, and others, is missing from this Constitution.

Mr. Temporary Deputy Speaker, Sir, the Constitution of Kenya is not based on any known legal or philosophical framework upon which one can try and categorize the nature of our Constitution, because both the Westminster Model and the American system are found in our Constitution. A bit of the French system is found in our Constitution and this creates a lot of anomaly. For example, our heritage from the Westminster Model should make Parliament supreme and in fact, many of us do state time and again that Parliament is the supreme organ of the nation. It is the one which makes the laws upon which this country operates. Parliament can even repeal or amend the Constitution and therefore, we assume that Parliament is supreme. But is it supreme? It is not, in fact, supreme, because even after the election of a Parliament, like this Parliament was elected in 1992, but it cannot have a Session until the President if this country summons Parliament. It is not even the Speaker, it is the President who summons Parliament and if he refuses to summon Parliament, we have no alternative. The Constitution does not say, that in a situation where the President of the country refuses to summon Parliament to sit, what recourse do we have? This Constitution is silent on that. The President by virtue of Section 59, can prorogue Parliament. In 1993, when this Parliament sat for the first time, we met here only for one day, elected the Speaker and the next day the President prorogued Parliament at his will and that is what the Constitution says. This Parliament is not supreme. The President can also dissolve Parliament at any time. Section 59 of the Constitution says that, "The President may at any time, dissolve Parliament." So, that means that tomorrow, the day after or next month, it is the President who holds its destiny in his hands. This shows quite clearly that our Parliament is not at all supreme.

Although by virtue of Sections 59 and 58 of the Constitution, the President can get rid of this Parliament, but Parliament cannot get rid of the President. All that we can do is, pass a vote of no confidence in the Government but not in the President. The British Parliament is different, where there is supremacy of Parliament. A vote of no confidence in Parliament is automatically a vote of no confidence in the Prime Minister and the country goes for election. So, the President of this country has not only executive powers, but even legislative powers. Because, as I have indicated from the Constitution, a lot of businesses of this House depend on the whims and wishes of the President. On the other hand if you look at the powers of the President and the Executive, they are quite enormous and I think this is a matter that needs urgent recognition and action. For example, under Section 14 of the Constitution - and this should not be taken personally - when somebody is President of this country, no criminal proceedings can be brought against him. So, what it means, is that the President of this country can even shoot somebody in Parliament and there is nothing you can do.

There is nothing that this nation or Parliament can do. This shows quite clearly that the Executive and the President has enormous powers which need to be looked into. No civil proceedings can be brought against the President of this country while he is in office. In America, the powers impeachment, are there in the constitution and we know that President Nixon had to choose between impeachment and resignation over the Watergate Scandal. In this country, the President can commit any crime and still sit in that high office. You cannot prosecute him and you cannot impeach him. A month ago, President Clinton whom my colleague, hon. Sunkuli was referring to, was forced to go and give evidence in a criminal trial that is going on in which a lot of



aspersions has been cast on his leadership and on his presidency. He had to go, he was summoned and he had to give evidence. So, these are things that we need to look into and see how positive changes can be made. In this House, the President can create a majority for his party even when there is none by nominating Members of Parliament. In the last elections, the Opposition got 88 seats, KANU as a party got 100 seats. Now, if the reverse had been the case, all that the President needed to do, if he fell short of the majority by 12 Members of Parliament, was to appoint or nominate 12 Members of Parliament and we have seen that Nominated Members are more useful here when it comes to voting than anything else, to create a majority where there is none. This is something that was amended after the first Constitution because initially, after Lancaster Nominated Members were elected by the House, sitting as an electoral college. All that power was given to the President.

Mr. Temporary Deputy Speaker, Sir, last week, the Leader of the Opposition talked about the Electoral Commission and there is a lot that can be said about the Electoral Commission which I do not wish to address today. I have seen in the newspapers that the Electoral Commission has already sent out a tender for the printing of Electors Cards. What that means, I really do not know. The Electoral Commission should conduct its affairs more transparently and I remember that I had something about gerrymandering which showed how somebody in America, in order to make sure that he was elected, he curved out a constituency which looked like a salamander to make sure that he was voted in Parliament. It is in this spirit that we want the affairs of the Electoral Commission to be looked into and right now I understand it is the Clerk of the National Assembly who is the Accounting Officer of the Electoral Commission. That type of situation needs to be looked into and addressed.

Mr. Temporary Deputy Speaker, Sir, I am beseeching this House to pass this Motion so that the people of this country can sit together as a nation and decide for themselves which type of Constitution they wish to have. The only way we can do it is through a national convention. The first document which came out of the original FORD, demanded amongst other things, a national convention for all political parties, for all civic groups and all organisations to sit together and decide the Constitutional reforms that we need to bring about in this country.

Mr. Temporary Deputy Speaker, Sir, if the Government side out-votes us in this Motion, they should realise that we shall out-argue them because the strength for the demands of the Convention are quite serious, justified and reasonable. Mr. Njonjo the former Attorney-General is not only one who is crying because of the mistakes he made at the time when the going was good, but in this African continent, in Zambia, we can see that the laws that President Kaunda put in place are the very laws that are being used against him to restrict everything that he wants. When he is refused a public meeting, he says that, that Government is being oppressive. When he was being asked, more than five years ago, to change those sections of the law, he was adamant and he refused.

I can tell my colleagues sitting on the other side that time is a great healer. Although you may want to sit and pretend that we should have no changes, in another five years or 10 years, you will be eating your words. You will be crying for mercy, and it will be too late because the offences that you have committed against this nation, in violation of the Constitution, in the violation of the sanctity of property owned by this country, is so tremendous that I think, even the people of this country will not want any mercy shown upon this Government because they created corruption, murder to the extent that even now, there are many people who are suffering in our prisons on false and trumped up charges. The case of Koigi Wamwere amongst others is a great shame to this nation and I beg the House to take this Motion seriously so that we have a national convention presided over by an independent person or body.

With those remarks, Mr. Temporary Deputy Speaker, Sir, I beg to move. And, I ask hon. Kibaki to come and second the Motion. Thank you very much.

**Mr. Kibaki:** Mr. Temporary Deputy Speaker, Sir, I beg to second this Motion. I want to emphasise this point from the very beginning, the need to amend the Constitution of Kenya so that it can serve a multi-party nation. The need is recognised by everybody in Kenya, by KANU, by the Government, by Opposition, by citizens of this nation, everybody is totally agreed that we need to amend the Constitution. There is no dispute on that matter, the reason why I say that there is no dispute on that matter, is to pre-empt what I can see hon. Members on the other side are going to attempt and say; "there is no need", because we know that the need was recognised by the President of the Republic of Kenya, His Excellency Daniel arap Moi, in December, 1995, in his New Year Message ushering in the New Year. He said that he was going to set up a proper international structure, to look into our Constitution and he was going to get help from all nations of the world, to bring experts. He was going to provide a new draft of the Constitution. So, a long time ago the President of the Republic of Kenya, and the party called KANU, accepted that there is need for a new Constitution which should be worked out carefully to serve the new needs of the new nation of Kenya which is multi-party.

That point is agreed. It is only when it came to implementation that the President had second thoughts and for whatever reasons, he did not call that convention which he said and neither did he invite the experts he was going to invite. He did not take the actions he had promised to take. There is no one here on the Government

side or Opposition side who is in any way in a position to say why the President did not take action. So whatever one is going to say here, they are going to be pretending that they have discovered some new reasons which they did not have that time. We know that there are no such new reasons for not having an amendment to the Constitution. So let us stop this pretence. Let us be honest with ourselves. This nation requires an amendment to the Constitution. There need not be people who are scared about the amendments. The amendment would be by Kenyans, proposed by Kenyans who live in Kenya and who want a Constitution which is suitable for them and their children. There is no one who would want amendments which would bring new problems to Kenya. So as regards the intentions of Kenyans, we can all trust Kenyans. We must have faith in the people of this Republic. This is why we are being asked to accept the proposition. A Constitution should be amended by the people who will be affected by it. This is why all these bodies which are mentioned here are being proposed that they be asked to participate and to propose the Constitution they want.

Thirdly, Mr. Temporary Deputy Speaker, Sir, the bodies mentioned here whether we are talking about churches, trade union movement, civic groups and everybody else, they have already done a lot of homework and everybody in this House knows this. In fact, there has been proposals from National Council of Churches of Kenya (NCCCK), churches, strict coalition for Constitutional change, proposals by the Opposition, lawyers and everybody else and the intentions are very clear. No one has proposed anything atrocious and, therefore, we have no reason for postponing this action. We should take action now. Some of the proposed changes are obviously needed. Let me give one example. In a democratic structure the Head of Government should sit here in this Parliament. He should be accountable in this Parliament. He should be questioned in this Parliament but because the Head of Government is also Head of State, Head of KANU and everything else, he cannot be questioned in this Parliament even when the Government itself has condoned corruption and he has shielded those who are looting this nation. Even when people have been named by names in the Public Accounts Committee and Public Investments Committee Reports, regarding the crimes they have committed, the Head of Government cannot be questioned in this Parliament. This is not acceptable in a democratic structure. The Head of Government must be accountable to the nation through Parliament and at the moment, this is one of the aspects of our Constitution which requires to be looked into and urgently also. That can be done if we could remove the pretence of KANU. When the Opposition in public meetings ask for accountability for what is being looted, they stand up and say, "You are demeaning the President". No. We speak about the President in those meetings as the Head of Government. So the way to deal with that problem in a democratic system, since we shall never stop talking and criticising, is to actually face that issue and separate the two matters. We need to have a Head of State who is away from Parliament and a Head of Government who is accountable at Parliament, questionable in Parliament and answerable for his misdeeds which are going on now. That is one thing which should be dealt with in the Constitution.

A second aspect which should be dealt with in our new Constitution is to accept for instance that people themselves have parties which they have elected to this Parliament who may choose to work together. Now, the wording in the present Constitution is clearly a provision which only serves a one-party structure and we cannot have a one-party structure in a multiparty situation. So this particular provision requires to be removed quickly and that is obvious and it should become obvious fairly soon.

The other point I want to discuss does not concern the Constitution itself but in the process of discussing the Constitution, we shall agree on the types of laws which should be removed from the Statute books for the reason that they are inhibiting the democratisation process. Such laws are Chief's Authority Act, Public Order Act, laws where a person can be detained without trial and so on. All these laws require to be looked into. They are not part of the Constitution but in a discussion on the Constitution, we shall arrive at a consensus on what we should do to make sure democracy thrives in our nation. What we should do is to remove those laws and once we arrive at an agreement on how some of the essential aspects of those laws would be retained, then they can be retained in some other laws but not in the present structure of those present particular laws. So we would reach a consensus on that matter. It is important that we do not go on pretending that a Bill will be brought here by the Attorney-General. You can be sure that it will only have been debated by the Cabinet and then it shall be presented to us here. That is not adequate because as you know, we as ordinary Members will not be allowed to amend a Constitutional Bill once it is brought here and that will be a crisis which will be created by KANU for no reason. It is much better for them to accept that we discuss these issues in a convention. The drafting can be done by a Committee. Let the Committee be headed by the Attorney-General and let us also have other experts in the constitutional matters.

Finally, what we are discussing is not a drafting matter. We are discussing about the principles which shall guide the Constitution. Drafting can be done by any of the numerous experts who are available everywhere. We laymen will discuss the principles. After all, those of us who participated in the original Constitution drafted

the principles before going to Lancaster House. When we went to the Lancaster House, for the information of this House, we already had a draft which we carried there and it had been done by Kenyans because they know what we need. Therefore, we are talking about principles not technical jobs which the Attorney-General is talking about. I do not see him here but he needs to be here.

With those few remarks, I beg to second.

*(Question proposed)*

**The Assistant Minister for Finance** (Mr. Keah): Thank you, Mr. Temporary Deputy Speaker, Sir, for the opportunity you have given me to contribute to this Motion. This Motion neither surprises me nor this House. Indeed, this Motion primarily carries what has been the agenda of our colleagues in the Opposition from day one; the issue of a national constitutional convention. Yes, I agree, and we all agree, that there is, indeed, need for the Constitution of Kenya to be looked into. It needs to be revised, as, indeed, it has been from time to time. But the methodology for doing this which is proposed by the Mover and Seconder of this Motion, and by the hon. Members of the Opposition all along, is what I am opposed to. That methodology involves convening a National Constitutional Convention. I am opposed to this Motion for the following reasons.

Mr. Temporary Deputy Speaker, Sir, indeed, we have a Constitution which may have shortcomings and whose certain aspects may be wanting. I do agree that we have a Constitution that may need to be looked into. Since Independence we have, indeed, made changes to this Constitution. So, we need to look into it and make more changes. Indeed, the President said we should do that. But I am opposed to the methodology for changing the Constitution that is being proposed here because Section 47 of our Constitution provides for a way of altering it. We are not living in a country that does not have a Constitution: We do have a Constitution whose Section 47 clearly provides the method of altering it. To, therefore, propose that we abandon this Section 47 method is, in my view, similar to abdicating the powers vested in us by our electors. The electors in Kaloleni Constituency, and those in every other constituency, have elected us to come and represent them in this House. I am not prepared to transfer the responsibilities given to me by my electors to anybody else.

Certainly there is every opportunity for every group of individuals in this country, be they churchmen, spiritual bodies, political parties, trade unions, professional organisations and so on to meet and make recommendations on constitutional change. Indeed, such an exercise has been going on, and such groups are at liberty to make their recommendations and pass them on to this House for use in the necessary amendment of the Constitution. But that amendment of the Constitution has to be done by the House.

To do otherwise will certainly be undemocratic. To convene a national constitutional convention would be undemocratic. Why would it be undemocratic? In my view it would be undemocratic because we do not know the methodology---

**Prof. Mzee:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Assistant Minister is misleading this House by making it believe that it is the national convention which will eventually enact a new constitution.

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

**Prof. Mzee:** Is he in order to mislead this House by making people to believe that a National Convention will come up with a constitution to replace the current Constitution?

**The Assistant Minister for Finance** (Mr. Keah): Mr. Temporary Deputy Speaker, Sir, he will have his 10 minutes to speak. Let me use my 10 minutes to air my views. I am saying that to adopt the method of changing the Constitution proposed by this Motion is, in my view, very undemocratic. That is what I am saying. Who is going to elect or appoint the people to attend the National Constitutional Convention? That is the undemocratic element I am talking about. Who will select the spiritual bodies, trade unions and professional organisations? I do not subscribe to this Motion. Instead, I am opposing it in totality.

**Mr. Shikuku:** On a point of information, Mr. Temporary Deputy Speaker, Sir.

**Mr. Temporary Deputy Speaker** (Mr. Wetangula): Mr. Keah, do you want information from hon. Shikuku?

**The Assistant Minister for Finance** (Mr. Keah): I do not want any information because I do not have much time.

*(Mr. Shikuku murmured something)*

**The Temporary Deputy Speaker** (Mr. Wetangula): Order, hon. Shikuku! You are now heckling!

**The Minister for Finance** (Mr. Keah): Thank you, Mr. Temporary Deputy Speaker, Sir, for protecting me from heckling in the House.

**Mr. Munyasia:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Keah in order to say that hon. Members in the Opposition were heckling? Is it parliamentary to say that hon. Members were heckling?

**The Temporary Deputy Speaker** (Mr. Wetangula): Hon. Munyasia, what actually happened is that hon. Shikuku degenerated from an intervention to heckling, and I cautioned him against it.

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

**The Temporary Deputy Speaker** (Mr. Wetangula): Order, hon. Shikuku! Carry on, Mr. Keah.

**The Assistant Minister for Finance** (Mr. Keah): Thank you, Mr. Temporary Deputy Speaker. I want to make a comment on the hon. Mover's assertion that there is no provision in the present Constitution for the protection of the rights of the individual. If I misheard the hon. Mover, let me emphasise the fact that Section 70 of the Constitution--

**Mr. Orengo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Hon. Keah did not understand what I said. What I said is that in our Constitution, there is no requirement for the state to respect the individual's rights, which are spelt out in the Constitution. That is what I said!

**The Assistant Minister for Finance** (Mr. Keah): Mr. Temporary Deputy Speaker, Sir, I have heard what he has said, but I want to emphasise that Section 70 of our Constitution does provide for the fundamental rights and freedoms of the individual. I want to make this point quite categorically, so that nobody in the country misunderstands it. From time to time, some people have been saying that there is no provision for the protection of human rights in this country. Therefore, I am saying that Section 70 of the Constitution quite clearly provides for the protection of the fundamental rights and freedoms of the individual. As far as this country is concerned, these are provided for and entrenched in our Constitution.

It was also alluded here earlier that when Section 2A of the Constitution was repealed there was no debate on the repeal. It was said that there was only a Mover and a Seconder and that was all. I was here when that section was repealed and I can say that we debated the issue. The HANSARD can bear me witness on this point.

**Hon. Members:** You did not!

**The Assistant Minister for Finance** (Mr. Keah): Mr. Temporary Deputy Speaker, Sir, once again I would ask for your protection from what you earlier on ruled against. It is my right to speak. It is the right of every hon. Member to be heard!

**The Temporary Deputy Speaker** (Mr. Wetangula): Hon. Keah, ignore them!

**The Assistant Minister for Finance** (Mr. Keah): Mr. Temporary Deputy Speaker, Sir, what I am, therefore, saying here is that this Motion must be opposed in its entirety. It must be opposed because it is fundamentally undemocratic in what it is proposing. It must be opposed because our Constitution provides for the method of changing it. The methodology of changing the Constitution, which is being sung by the Opposition, is, in fact, unacceptable. I will not accept to abdicate my responsibility as a Member of Parliament.

I beg to oppose the Motion.

**Mr. Kiliku:** Nataka kusahihisha kwamba kugeuzwa kwa Kifungu cha 2 (A) kulifanyika huko Kasarani. Wale waliokuwa wakisema wanataka vyama vingi, walikuwa wanaambiwa ni Wapinzani wa Serikali ya Nyayo. Hayo ndiyo yalikuwa majina yetu. Baadaye, Rais akasema Kifungu hicho kitaondolewa. Tulipokuja Bungeni, bila majadiliano yoyote, Mswada wa kuondoa Kifungu cha 2 (A) uliletwa, mwingine akaunga mkono, na aliyeleta akaitwa kujibu. Mambo yaliishia hapo. Wakati huo, mimi nilikuwa katika Bunge hili.

**An hon. Member:** Unasema uongo!

**Mr. Kiliku:** Ni vizuri wale ambao wako katika Bunge hili waseme ukweli. Tunafahamu mambo ya KANU sana. Ikiwa Wabunge hawa walio upande mwingine hawajaambiwa waunge mkono Miswada hii, hawawezi kuunga mkono hata kama wanakubaliana nayo. Mpaka waambiwe waunge mkono, ndiyo watafanya hivyo. Hata tukisema namna gani, hawawezi kuunga mkono hata ikiwa tunazungumza ukweli. Hiyo ndiyo shinda ya nchi hii. Mbunge ameletwa hapa na wananchi lakini uhuru wa kuzungumza mambo mazuri ya nje, hana. Uhuru huo wake unachukuliwa na mtu mwingine.

**Hon. Members:** Robots! Robots!

**The Minister for Labour and Manpower Development** (Mr. Masinde): On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to insinuate that hon. Members on the KANU side have no minds of their own and they are not representing their people here?

**Mr. Kiliku:** Bw. Naibu Spika wa Muda, Katiba ambayo tunayo sasa, ikiwa haitageuzwa, demokrasia haiwezi kufaulu kabisa. Hii ni kwa sababu, kama ninavyozungumza, kwa sababu ya uwezo---

**The Assistant Minister, Office of the President (Mr. Sunkuli):** Jambo la nidhamu, Bw. Naibu Spika wa Muda. Mhe. Kiliku ameulizwa aseme ni nani anasema. Hii ni kwa sababu, yeye mwenyewe hawezi kupinga wenzake katika upande wa Upinzani. Hakuna hata siku moja amewahi kwenda kinyume na wenzake katika Upinzani. Anatakiwa kutuambia ni nani anatuambia tuseme hivi. Sisi tuko katika chama cha KANU na kila mtu aliingia kwa hiari yake mwenyewe.

**Mr. Kiliku:** Bw. Naibu Spika wa Muda, kufuatana na Katiba, Afisi ya Rais imeamua kwamba, katika mji wa Mombasa, hakuna Mwafrika anaruhusiwa kufanya biashara. Wameondolewa wote katika barabara za mjini na wamekubalia Wahindi peke yake wakati huu ninavyozungumza. Hii ni Katiba gani na ni ya nchi gani?

**The Minister for Labour and Manpower Development (Mr. Masinde):** On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member is making very uncalled for allegations here. Can he specifically tell us which circular from the Government has stopped Africans from operating on Mombasa Island?

**Mr. Kiliku:** Bw. Naibu Spika wa Muda, wiki iliyopita, askari wa polisi ambao wako chini ya Afisi ya Rais, walikwenda kisiwa cha Mombasa na wakatoa Waafrika na mtu yeyote mwenye ngozi nyeusi na wakabakia Wahindi watupu. Ninavyosema ni ukweli.

**The Temporary Deputy Speaker (Mr. Wetangula):** Order! Hon. Kiliku, it is all very sensational, but I do not see its relevance to the Motion.

**An hon. Member:** Hana la kusema huyu!

**Mr. Kiliku:** Bw. Naibu Spika wa Muda, kusema kwamba tutaita watu kutoka nje wazungumze, siyo ati ni kusema tutatoa uwezo wa Bunge hili kugeza Katiba. Hata ukisoma Hoja sawasawa, utaona kwamba mambo yote yakizungumzwa huko nje, yataletwa katika Bunge hili ili yajadiliwe iwezekanavyo. Lakini shida ni kwamba, uwezo hamna. Juzi, Rais Museveni alishinda huko Uganda. Lakini huyo huyo Bw. Museveni alikuja hapa, na nchi hii ikapendelea Bw. Okello. Ndipo Bw. Museveni akaingia msituni.

Bw. Naibu Spika wa Muda, nataka kukueleza kwamba nchi yoyote inapoharibika, inaharibika kwa sababu ya kutumia Katiba vibaya. Ikiwa Katiba siyo nzuri, bila shaka mtakuwa na shida katika nchi hii. Hii ni kwa sababu, nchi ni huru lakini wazungu wamewacha ule ukoloni wao kupitia kwa Katiba na machifu. Hauwezi kufanya chochote ukiwa Mbunge.

Bw. Naibu Spika wa Muda, sisi tunapoteza wakati hapa kuzungumza. Mimi nawauliza Wabunge wa Upinzani tuungane pamoja. Ikiwa hatuungani, hawa watu watamaliza nchi. Wamechukuwa vioo, barabara, vyumba vya kuhifadhia maiti na kila sehemu. Lazima tuungana, la sivyo, watamaliza nchi. Mimi nazungumza kwa uchungu sana.

**An hon. Member:** Huo ni ukweli kabisa! Endelea!

**Mr. Kiliku:** Bw. Naibu Spika wa Muda, unaona haya? Mimi nawauliza ndugu zangu kwa heshima, tuungane. Ni mtu mmoja tu anaweza kuwa Rais siku moja. Hatuwezi kuwa Rais sisi wote mara moja. Tusipoungana ndugu zangu, wananchi wanamalizwa. Hivi sasa, wanachukua pesa huku wakisema wanataka kuwasaidia vijana. Vijana hawana kazi---

**The Assistant Minister for Agriculture, Livestock Development and Marketing (Dr. Misoi):** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for hon. colleague, Keah, to allege that hon. Kiliku has grabbed a plot in Tudor in Mombasa? Is he in order to do so without substantiation?

**Mr. Kiliku:** Hiyo ni shida yake. Mimi sijanyakua ploti mahali popote. Nilinunua ploti ya Tudor kwa Kshs1.3 million kutoka kwa Mhindi. Niko na hiyo tu. Mimi sijanyakua ploti yoyote. Mimi ninazungumza mambo ya Katiba. Hakuna ploti ambayo nimechukua.

**Prof. Mzee:** Jambo la ufahamisho, Bw. Naibu Spika wa Muda. Mimi natoka Tudor na nataka kuhakikishia Bunge hili kwamba Mhe. Kiliku hakunyakua ploti yoyote katika eneo la Tudor.

**Mr. Kiliku:** Bw. Naibu Spika wa Muda, hivi sasa tunavyozungumza, vile Mwenyekiti wa chama cha DP alivyosema, katika Bunge hili, sehemu ya uwakilishi Bungeni ya Baringo Central haiwakilishwi. Kiongozi wa Serikali hakuna. Ukienda Bunge zingine, na wewe Bw. Naibu Spika wa Muda umetembea katika Bunge zingine, umeona kwa mfano, katika House of Commons na Bunge zingine, Kiongozi wa Serikali ndiye anaulizwa maswali ya kitaifa na lazima awe Bungeni ili ajibu maswali kwa niaba ya Serikali. Lakini hapa jambo hilo halitendeki. Ndiyo unaona Mawaziri wanapokuja hapa na kuulizwa maswali, wanazungumza mambo ya Mzee Kenyatta. Sisi tunazungumza mambo ya watu waliyo hai na ambao tunawaona. Watazungumza mambo ya wafu namna gani?

Hiyo ndiyo shida moja inayotufanya kwamba, hata tukileta nini hapa kama vile Hoja, bora tu kuwe hakuna Kiongozi wa Serikali katika Bunge hili, hatuwezi kujua ikiwa Waziri atatekeleza vile anasema, maanake, ule Waziri lazima aende mahali pengine akaulize kama atatekeleza. Na ikiwa hata kubaliwa, basi hakuna chochote kitafanyika. Lazima tuwe na Kiongozi wa Serikali katika Bunge hili. Na ikiwa hakuna Kiongozi wa

Serikali katika Bunge hili, hakuna haja ya kuwa katika Bunge hili.

Ndugu zangu tukiungana, ni afadhali tutoke Bunge hili sasa tukafanye siasa na uchaguzi ili tuje hapa, ili tuweze kugeuza maneno.

**The Temporary Deputy Speaker** (Mr. Wetangula): Hon. Kiliku, do you want a convention or Opposition unity? I am at a loss as to what you are talking about.

**Hon. Members:** Both!

**The Temporary Deputy Speaker** (Mr. Wetangula): The Motion is about a national constitutional convention.

**Mr. Kiliku:** Bw. Naibu Spika wa Muda, mimi nataka yote. Mimi najua Wabunge wa upande huu mwingine wanaogopa convention kwa sababu watu wa dini watakuwapo na watasema ukweli wa nchi. Mwakili pia watakuwapo. Tena, hakuna haja ya kuleta watu kutoka nje ya nchi hii, ati waje kuzungumza mambo ya Katiba yetu. Wale wanasema tulate watu kutoka nje, ndiyo pia wanasema Dr. Leakey si mzuri. Lakini wanasema mwakili wazungu wa kutoka nje ni wazuri. Hakuna haja ya kuleta mwakili kutoka nje na hali sisi tuna mwakili wa kutosha. Hata hapa katika Bunge hili, tuna mwakili wa kutosha. Mhe. Sunkuli ni wakili, na katika upande huu wa Bunge kuna watu walio na akili bora kabisa. Hawa wote wanatosha. Kwa nini tuletewe wazungu? Kule kutishwa wakati tunapozungumza juu ya Katiba si kuzuri. Dr. Misoi aliambiwa atutishe kwamba wanataka majimbo. Anaweza kututisha tena lakini tutageuza hii Katiba. Niliona Katiba ilipogezwa tu, wee! Kule Molo na sehemu zingine ambako kulikuwa na vita vya kikabila, mtu akiinua vidole viwili kwa kuonyesha maoni yake, matokeo ilikuwa ni kwamba anauliwa na mali yake inaharibiwa. Kwa sababu ya vidole viwili na ni vyake!

*(Laughter)*

Bw. Naibu Spika wa Muda, kwa hayo machache, naunga mkono.

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, the reason why Parliament---

**Mr. Shikuku:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I will not rest until I get justice. There was an allegation to the effect that there was a Motion moved here, seconded and the Mover was called upon to reply, but hon. Keah said that was not the case. Could we get confirmation from you that this matter will be checked up and if we find that hon. Keah was misleading this House, he should be named?

*(Applause)*

**The Temporary Deputy Speaker** (Mr. Wetangula): Hon. Shikuku, the HANSARD is open to anybody to go and read in the Library.

**An hon. Member:** Go and read it!

**The Temporary Deputy Speaker** (Mr. Wetangula): In any event it is a question of perception. If he did not see it that way, why should we name him? Carry on, hon. Sunkuli.

**Mr. Orengo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. As a Member of this House, I need protection for statements that I make here. If the records of the House are there to determine who is speaking the truth as hon. Members, the Chair should insist that those who are misleading the House, especially when there are official records, should be named. I remember, when I tried to stand up there to say something, I was shouted down by Charles Njonjo, you did not know him yourself. Those days you did not. So, I think those records should be brought here in the House and we find out who is lying and who is telling the truth.

**Mr. Shikuku:** Yes!

**Mr. Orengo:** An hon. Member of this House, who is an Assistant Minister, should not be allowed to get away with such a statement.

**Mr. Shikuku:** That is quite in order!

**The Temporary Deputy Speaker** (Mr. Wetangula): A misapprehension of facts cannot be called an untruth. If hon. Keah saw things differently, I do not see the quarrel. What is the debate? The matter was brought here.

*(Loud consultations)*

Order! I believe all that you hon. Members are trying to tell the House is how long you have been in this

House. I do not think that is material.

**Hon. Members:** No! You are juniors!

**The Temporary Deputy Speaker** (Mr. Wetangula): Carry on, hon. Sunkuli!

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, the principle on which this Parliament convenes is---

**Mr. Mak'Onyango:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I think hon. Keah did say, in no uncertain terms, that this issue was exhaustively debated. We say that this is not true. So, it is important that you rule on this matter so that, at least, the House gets its records right.

**The Temporary Deputy Speaker** (Mr. Wetangula): Order, Mr. Mak'Onyango! Anyone of you who wants to read the HANSARD, go to the Library.

**An hon. Member:** He has the right!

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, as I was saying, there is a principle on which any Parliament is elected. I was saying that hon. Members of Parliament in this country are elected after a very vigorous exercise that involves a lot of money, a lot of patience and a lot of time.

Today, what we see in this Motion, which I totally oppose, is another concept of another representative body outside Parliament. There cannot be possible justification or reasons why hon. Members of Parliament properly elected by citizens of this country can delegate or abdicate their duties to another body or cede part of their territory to a body that is also representative. The only thing that the citizens of this country do expect from hon. Members who cannot handle their briefs is for the matter to be taken to the entire 25 million Kenyans. You cannot take the duty that is given to a representative to another representative body which is not elected by anybody. I think we must be firm in this House that the reason why the Government is not going to accept a convention is because it considers Parliament to be the supreme organ of this country and that Parliament is competent enough to handle constitutional matters in this House. I was saying---

**Mr. Kiliku:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Do you agree with the hon. Assistant Minister when he says that we are giving another body the responsibility of this House of Constitutional amendment when the Motion is very clear that the convention will only be for proposals and then those proposals would be brought in this House for debate and enactment? That is all what the Motion is all about.

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, indeed, conventions have always been recipes of revolution. Conventions have always come into situations where there is a vacuum, conventions have always come in situations which necessarily lead to lawlessness. One successful aspect of convention was the Boston Tea Party and we do not have a situation in our country today that justifies the convention at all. We have had a stable government in the country for the last 32 years. Our constitution has served us well---

**Mr. Wamalwa:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member contributing in order to mislead the House about conventions when he knows very well that the Boston Tea Party that he is talking about and the Constitution convention in the United States actually did the drafting of the USA constitution and was only brought to Congress for enactment? The USA Constitution was never written by Congress, it was written in a convention and only brought to Congress for enactment.

*(Applause)*

**The Assistant Minister, office of the President** (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, at that particular time there was no United States of America and the constitution of USA was drafted by 59 persons under the Chairmanship of Thomas Jefferson. The convention did not draft the USA constitution. That is perfectly in the history and there was no USA. The Republic of Kenya was constituted by our Constitution. We are not creating a new constitution. And hon. Wamalwa, being a lawyer, should know that the groomed norm on which all our laws are based was created at Independence. And we cannot create a new Republic---

**Prof. Mzee:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The Assistant Minister is still misleading this House. When this Constitution was formed, there was no such thing as the Republic of Kenya. So, the two situations were exactly the same! Now, there is a Republic of Kenya, we have the right to make our own Constitution.

*(Applause)*

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, the first constitution of USA created USA. The first Constitution of Kenya created Kenya, and now we cannot create another Kenya by creating a new Constitution. What we must say is that we want to amend the constitution, as it is today, and that can be done under section 47 of the present Constitution, in this House, by this House and by nobody else---

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

**The Temporary Deputy Speaker** (Mr. Wetangula): Order, hon. Orengo! Hon. Orengo, you have just brought me the HANSARD. I am looking at it and you are busy restraining your hon. colleague from speaking. That is out of order!

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Temporary Deputy Speaker, Sir, the priests of this country are not the representatives of this country. The lawyers of this country are, perhaps, not the representative of this country. The representatives of the citizens of this country are here in this House today!

**The Temporary Deputy Speaker** (Mr. Wetangula): Order! Order! I promise to make a ruling on the Keah-Orengo issue next Wednesday.

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Wetangula): Order! Hon. Members, the House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 12.35 p.m.

**End of V.**