

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 23rd October, 1997

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

NOTICE OF MOTION

REVERSAL OF DECISION OF THE HOUSE

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, under the provisions of Standing Order No.42, this House rescinds the decision of the House of yesterday afternoon, to the question of the Mover of The Constitution of Kenya (Amendment) Bill, being called upon to reply.

ORAL ANSWERS TO QUESTIONS

Question No.694

PAYMENT TO SIDES AND SOUND CORPORATION

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

- (a) for what services the Ministry paid Kshs300 million to Sides and Sound Corporation of Deventry, United Kingdom, in July, 1997;
- (b) whether the provisions of the law governing tender procedures were followed, given that the Government regulations prohibit single sourcing; and,
- (c) what urgent measures he will take to equip the police with transport and fuel in order to facilitate their operations.

Mr. Speaker: Is anybody here from the Office of the President? We will leave that Question until the end. Let us move on to the next Question.

Question No.695

MEASURES TO CURB THUGGERY IN CENTRAL KABUOCHI LOCATION

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

- (a) whether he was aware that Messrs Oyoo Kanyangi; Samson Liech; Odira Ogutu and Shelemiah Nyangi were robbed at Magina, Opapo, Sikwadhi and Anyuongi Bridge markets within Central Kabuocho Location in Ndhiwa Division in the month of September and the same was reported to the Chief of the Location; and,
- (b) if the answer to "a" is in the affirmative, the action he will take to ensure that there are enough administration policemen stationed permanently at the Chief's office at Magina Market in order to curb thuggery in this location.

Mr. Speaker: Is anybody here from the Office of the President? We will leave that Question until the end. Let us move on to the next Question.

Question No.655

ELECTRICITY SUPPLY TO NYATIKE

Mr. Speaker: Is Mr. Onyango not here? We will leave his Question until the end.

Question No.679

UNDER-STAFFING OF NDUNGIRI PRIMARY SCHOOL

Bishop Kimani asked the Minister for Education:-

- (a) whether he was aware that Ndungiri Primary School is understaffed and that already, five teachers have been transferred and one has retired; and,
- (b) if the answer to "a" is in the affirmative, when the school would be provided with adequate teachers as per its establishment.

Mr. Speaker: Is anybody here from the Ministry of Education? We will leave that Question until the end. Let us move on to the next Question.

*Question No.682*HANDLING OF MEDICAL EQUIPMENT
BY UNAUTHORISED PERSONS

Mr. Mutani asked the Minister for Health:-

- (a) whether he was aware that unauthorised handlers of medical equipment, especially syringes and needles, are doing business in kiosks/shops adjacent to most Government hospitals and health centres; and,
- (b) if the answer to "a" is in the affirmative, what action he would take to ensure that this practice is stopped forthwith.

The Minister for Health (Gen. Mulinge): Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that unauthorised handlers of medical equipment, especially syringes and needles, are doing business in kiosks/shops adjacent to most Government hospitals and health centres. However, if there are any cases, they should be reported to the Ministry or the police.

(b) If there are any cases, severe deterrent action will be taken. The public are advised to buy syringes and needles from authorised dealers such as pharmacies and chemists.

Mr. Mutani: I am surprised to hear the Minister saying that he is not aware of these people who are selling medical equipment. This is because we have witnessed them selling needles and syringes in kiosks adjacent to hospitals in Nithi and other places, yet the Minister is saying that he is not aware. The people are very worried because these syringes and needles might have been used, and then washed to be sold again. If he says that he is not aware, and I have seen some people going to buy them from kiosks, what action will he take to stop this action? I am telling him that they are being sold, and I can show him where they are being sold.

Gen. Mulinge: Mr. Speaker, Sir, I can only take action if these people are reported to me. To sell such equipment by unauthorised persons is an offence. If the hon. Member knows anybody who is doing this, he should either report to the police or the Ministry. From there, action will be taken.

Mr. Kapten: Mr. Speaker, Sir, the Minister has been told of what is going on. We have AIDS in this country and the whole world. The use of syringes by people who are not medically qualified is dangerous. Now that the Minister has been told about what is happening, could he undertake to carry out investigations covering the whole country, to check whether what has been stated here is correct? If he finds that it is true, could he tell us what steps he will take to curb this menace?

Gen. Mulinge: Mr. Speaker, Sir, I agree with the hon. Member that it is wrong for medical equipment to be handled by unqualified people. I will ask my officers to investigate whether such practice exist. If it exists, then action will be taken.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, as far as I know, the sale of syringes is not against the law. It is the sale of drugs which is wrong. But in view of the fact that the hospitals cannot provide syringes, and that in the present circumstances where we have AIDS, one is supposed to use one needle and syringe per patient, could the Minister enact a law which bars everybody from selling syringes, unless they sell pharmaceutical drugs or part one

poisons? In that way, we might prevent the people from collecting the used syringes, put them in polythene bags and sell them. Could he undertake to do that?

Gen. Mulinge: Mr. Speaker, Sir, as far as I know, the used syringes should not be used again. If anybody tries to use them, it is illegal. Those who are allowed to sell syringes are licensed, and they should sell new syringes. Nobody is allowed to sell second-hand syringes and if anybody knows someone who sells second-hand syringes, he should report them to the police.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, I was just trying to alert the Minister that there is no law prohibiting somebody from selling a syringe. Therefore, I am asking him to enact a law or to issue a directive that nobody who is not a pharmacist or a doctor should be allowed to sell syringes.

Gen. Mulinge: Mr. Speaker, Sir, there is no need to issue that directive because all those who sell syringes are licensed to do so and anybody who wants to buy are free to do so.

Dr. Kituyi: Mr. Speaker, Sir, notwithstanding the interest the hon. Minister is showing towards proper use of syringes and needles; considering that the Kenya Government has accepted the international campaign to ease the availability of clean syringes and needles as a measure in controlling the re-use of syringes which threatens to increase the spread of AIDS, why does he now explain that they are controlling what they have been announcing they are de-controlling? Your Government is attempting to make it easy to access syringes. So, you should justify that what is happening is trying to reduce the threat of AIDS by making available syringes for drug users and other places. This is just consistent with what you have committed as a policy. Why do you now want to renege on your own policy?

Gen. Mulinge: Mr. Speaker, Sir, I do not know what the hon. Dr. Kituyi wants me to do because the syringes are available in hospitals.

Prof. Mzee: Mr. Speaker, Sir, I think the hon. Minister did not get the point Dr. Kituyi was explaining. All over the world, syringes and needles, like condoms, are not controlled items. They are available freely. Therefore, your policy should be to encourage kiosks to sell syringes and needles.

Gen. Mulinge: Mr. Speaker, Sir, those licensed to sell syringes and needles are free to do so.

Prof. Mzee: Control them!

Gen. Mulinge: How can I control them if the traders want to sell them? In any case, what do you want me to do?

(Laughter)

Mr. Speaker: Mr. Ndicho's Question!

Question No.689

SALE OF KPTC STAFF HOUSES AT THIKA

Mr. Ndicho asked the Minister for Transport and Communications:-

- (a) if he was aware of the sale of post office senior employees residential houses at Thika;
- (b) whether he was further aware that the person(s) intending to buy these houses have paid 50% down payment for the purchase of the same; and,
- (c) if the answers to "a" and "b" are in the affirmative, whether he could, as a matter of urgency, take immediate action and stop the impending sale of those houses as they will create housing problems to the employees.

The Minister for Transport and Communications (Mr. Ayah): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that some plots in Thika on which Kenya Posts and Telecommunications Corporation's senior staff houses have been built and have been living in have been illegally allocated to private individuals.

(b) I am not aware that anybody has paid 50% of the price. Anyway, we have not received any money because we were not selling those plots.

(c) The Commissioner of Lands has been asked to immediately cancel the allocations and to issue title deeds to the Corporation.

Mr. Ndicho: Mr. Speaker, Sir, I want to thank the Minister most sincerely for giving a very honest answer and authorising the Commissioner of Lands to cancel those allocations because the Corporation staff were very worried. I am very happy for his directive. But I would like to inform the Minister that the 50% which was paid at the time I asked this Question and the balance of another 50% has already been paid by the allottees. I

have got a photo copy of the green card from where the title deed was processed and the receipt for the search fee which I paid to get this information. With me here is also a copy of a letter which these people had written to the President through Mr. Mulu Mutisya. Now that the Minister has agreed that the allotment is going to be withdrawn, I will inform them that this letter is now not necessary.

Dr. Lwali-Oyondi: Lay them on the Table!

Mr. Ndicho: Mr. Speaker, Sir, I am going to lay these documents on the Table. But what can the Minister say about this title deed which was issued on 18th August, 1997? Can he now order that this title deed be cancelled by the Thika Lands Registrar forthwith? My other point is that the Kenya Posts and Telecommunications Corporation has got a title deed in the name of East African Posts and Telecommunications Administration, which was issued in 1950. Can he comment about this one?

Mr. Ayah: Mr. Speaker, Sir, I am grateful to the hon. Member for bringing these matters before the House. What happened is the fact that those plots whose numbers I have here, were as he says, issued to the East African Telecommunications Corporation way back in the 1950s. There was a delay in transferring these titles to the Kenya Posts and Telecommunications Corporation. Some dishonest people used that fact and got themselves allocated these plots. As I have said, the allocations were irregular because they were not available for allocation. We have, therefore, written to the Commissioner of Lands telling him to cancel whatever documents he has issued because they were based on illegality. Therefore, we are hoping that this is going to be done and that those titles would be cancelled on the basis that the allocation was based on illegality.

Mr. Icharia: Mr. Speaker, Sir, it would appear that up until the Member of Parliament for Juja, hon. Ndicho, asked this Question, the Minister was not aware that these plots had been illegally issued to other people. Now that he has been made aware of the illegality, what is he going to do to discipline his staff and other Government officials who were involved in this transaction to stop others doing the same thing? Land grabbing is a "cancer" in this country and unless we do something to stop it, it is going to continue. Is he going to do something to punish and discipline the officials who were involved in this matter?

Mr. Ayah: Mr. Speaker, Sir, it is almost impossible to legislate against dishonesty. But the policy we are following now is that all public land that comes under the Corporation cannot be alienated; it does not matter what source it comes from, until the Corporation concerned has written to the Minister requesting authority to surrender the land to the Commissioner of Lands so that it can be allocated. The Commissioner of Lands on his own cannot, and should not allocate land which belongs to any Corporation under my Ministry until that Corporation has written to the Minister, explaining why they want to surrender the land if they are not using it or if they want to sell it. But in this particular case, an illegality was done and we were not aware until very recently that certain things were going on with this land in Thika. Since we became aware, we have, as I said, written to the Commissioner of Lands to rescind those allocations. But as far as the staff are concerned, we have issued instructions by way of policy that no piece of land, no assets can be surrendered by the Corporation for anybody to re-allocate, including the Commissioner of Lands, until the Minister has given his authority.

Mr. Achieng'-Oneko: Mr. Speaker, Sir, we are grateful to the Minister for having made some instructions, but he should even go deeper, and find out who are behind this. Because a thing cannot exist before it can act. There must be a group of people who are responsible for this. Instead of sending a general letter, the Minister must be very specific.

Mr. Ayah: Mr. Speaker, Sir, I have nothing to add to what I said earlier.

Mr. Ndicho: Mr. Speaker, Sir, I would like to thank the Minister once again. The hon. Achieng'-Oneko and hon. Kapten have asked the Minister to find out who was behind this allocation. I would like to inform the Minister that there is a Mr. Theuri, the Property Manager of Kenya Posts and Telecommunications Corporation. I even tried to call him to ask him about this, and it was very difficult to talk to him. Then, I discovered that he was the person who was responsible for this allocation, together with a Mr. V.K. Lyai, a former Thika District Physical Planner, and who has been transferred from Thika and recalled to the Ministry headquarters, where he is doing this allocation. I would like to lay the papers on the Table and ask the Minister to discipline Mr. Theuri, because he is the one who is behind this allocation. Is the Minister going to do so?

Mr. Ayah: Mr. Speaker, Sir, it really does not matter who did the allocation. All I am saying is that, whether it was Theuri or any other person who did it, it was illegal and we have taken steps to ensure that these plots are repossessed by the Ministry. I am going to look at the papers laid on the Table by the hon. Member and, if after direct inquiry, I find that those are the facts, I do not want to tell the House what I am going to do about it.

Mr. Speaker: Next Question!

FARMERS' PARTICIPATION IN KOMOTHAI
COFFEE GROWERS SOCIETY

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

(a) whether he was aware of the stalemate between the coffee farmers from 134 factories on one hand, and officials of Komothai Coffee Growers Society regarding the control of the Society's affairs; and,

(b) if the answer to "a" is in the affirmative, what the Ministry would do to ensure that the farmers' interests are safeguarded by allowing their own elected representatives to take over the management and control of the Society.

Mr. Speaker: Nobody is there from the Ministry of Co-operative Development? Well, we will go over the Questions again for the second time! Mr. Maore's Question for the second time!

Question No.694

PAYMENT TO SIDES AND SOUND CORPORATION

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

(a) for what services the Ministry paid Kshs300 million to Sides and Sound Corporation of Deventry, United Kingdom, in July, 1997;

(b) whether the provisions of law governing tender procedures were followed, given that the Government regulations prohibit single sourcing; and,

(c) what urgent measures he will take to equip the police with transport and fuel in order to facilitate their operations.

The Minister of State, Office of the President (Mr. Kalweo): Mr. Speaker, Sir, I apologise for coming late and beg to reply.

(a) The Ministry paid Kshs157 million to Sides, and Kshs126 million to Sound Corporation, for the supply of security equipment.

Prof. Ouma: On a point of order, Mr. Speaker, Sir. We would certainly hear what the Minister is saying, if he could face the microphone. At the moment, we cannot hear what he is saying.

(Loud consultations)

Mr. Speaker: Order! Order, hon. Members! We cannot follow the proceedings of the House any more! Proceed, hon. Kalweo!

The Minister of State, Office of the President (Mr. Kalweo):

Thank you, Mr. Speaker, Sir. The payments were made in September, 1997, and not in July, 1997.

(b) Yes, the procedures were followed

(c) The Government is equipping the Police Department with transport, and has been allocating funds for the fuel as required.

Mr. Maore: Mr. Speaker, Sir, in the past, every citizen who got into trouble and needed help from the police was required to either seek for their own transport, or fuel the police car. So, I do not know whether when this goes public, the Minister would be dedicated.

The Minister says that they paid the money in September, but the payment vouchers that are in my possession, and which I will Table, state that the payments of Kshs157.7 million was paid as a direct debit from the Central Bank, even before the requisition was done to the Treasury, by the Permanent Secretary in charge of Internal Security. The payment voucher was done in August. Then the second voucher was done on 18th July, 1997. That was a month before the requisition. It was also a direct debit before the requisition was done on 18th August, 1997.

Mr. Speaker, Sir, single sourcing has been an irregular procedure where Accounting Officers have been using irregular processes to get over-invoiced tenders for the Government. For example, we have had such problems with the Department of Defence (DOD). What was so urgent about getting the anti-riot equipment by the Ministry, even before we passed the Appropriations Bill at that time?

Mr. Kalweo: Mr. Speaker, Sir, first, it is wrong for any person to pay for fuel for transport in order to be assisted by the police. I have also heard of the same occurrences elsewhere, but it is completely wrong for police officers to ask people to fuel their vehicles.

Secondly, the process of acquiring this equipment was done legally, and in view of the security incidences, we had to acquire this equipment fast enough.

Dr. Kituyi: Mr. Speaker, Sir, a Minister of Government has been asked what was so urgent that money was debited from the account at Central Bank, a month before the requisitioning is done formally by the PS, Internal Security. What was so urgent to acquire anti-riot gear? The Minister says that when there is an urgent reason, we do this.

Mr. Speaker, Sir, are you satisfied that he has answered the question put to him? He should explain the urgent purpose for acquiring anti-riot gear by paying money before the formal channels of requisitioning the money had been followed.

Mr. Kalweo: Mr. Speaker, Sir, I had forgotten to say that these payments were done in September and not in July or August. Anything related to security matters is urgent. We did rush, nor did we get that money directly from the Central Bank. I am not aware of such information.

Mr. Maore: On a point of Order, Mr. Speaker, Sir. The burning point is: The payment vouchers that the Minister paid to these companies, were first done on 6th August, 1997, and it is indicated on this document as a direct debit, given in French Francs as per that date. When the Minister says that it was in September, does he mean that this other money was not accounted for? Where is the other money then, if you paid them in September? What was so urgent about it?

Mr. Speaker: Mr. Maore, why do you not let him see the document?

Mr. Maore: Mr. Speaker, Sir, I am sure he has it.

Mr. Speaker: Could you Table that document?

(Mr. Maore laid the document on the Table)

Mr. Maore: Mr. Speaker, Sir, now that I have tabled the documents, can the Minister re-assure this country that we have received that specified equipment that cost nearly Kshs300 million that the Government had paid in advance for? Where are the riots that he is claiming will follow the importation of those machines?

Mr. Kalweo: Thank you Mr. Speaker, Sir. I will study the documents and I will come back on Tuesday with an answer.

Mr. Speaker: Very well. I will defer the Question. Mr. Ojode.

(Question deferred)

Question No.695

MEASURES TO CURB THUGGERY IN
CENTRAL KABUOCH LOCATION

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

(a) if he was aware that Messrs Oyoo Kanyangi; Samson Liech; Odira Ogutu and Shelemiah Nyangi were robbed at Magina, Opapo, Sikwadhi and Anyoungi bridge markets within Central Kabuocho Location in Ndhiwa Division in the month of September and the same was reported to the Chief of the same Location; and,

(b) if the answer to "a" is in the affirmative, what action he was taking to ensure that there are enough administration policemen stationed permanently at the Chief's office at Magina Market in order to curb thuggery in this location.

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

(a) Yes, I am aware.

(b) There is already an Administration Police Post at Magina and efforts are underway to enforce the post with more security personnel.

Mr. Ojode: Mr. Speaker, Sir, Mr. Oyoo Kanyangi and others were robbed at Opapo Trading Centre and the same thieves fled towards Magina Market. During the same month of September, Mr. Samson Liech's who is the chairman of Kabuocho Welfare Association in Nairobi, home was raided and robbed of goods worth thousands of shillings. Magina and Sikwadhi shops were broken into and the thieves slashed the shop owners. The same

thieves escaped with goods worth thousands of shillings. Mr. Odira Ogutu and Shelemiah Nyangi were also slashed and robbed. We used to have a chief's station at Magina where we had the administration policemen. Could the Assistant Minister explain how many people have so far been arrested and charged in a court of law in connection with these criminal activities in the constituency? In fact, I do not know whether the Assistant Minister is listening.

Mr. Sunkuli: Mr. Speaker, Sir, I do not know why the hon. Member is doubting whether I am listening. But so far, nobody has been arrested with respect to this offence. But the District Commissioner is making arrangements to make sure that security personnel are stationed at Magina. Indeed, there was a station and we want to make sure that there are enough APs there at Magina Post.

Mr. Ojode: Mr. Speaker, Sir, now that the Assistant Minister has accepted that the place is not very secure, how many administration policemen is he going to station at Magina permanently?

Mr. Sunkuli: Mr. Speaker, Sir, we are going to station adequate personnel there.

Mr. Speaker: Next Question.

Mr. Onyango: Mr. Speaker, Sir, I wish to apologise for coming late.

Question No.655

ELECTRICITY SUPPLY TO NYATIKE

Mr. Onyango asked the Minister for Energy:-

(a) when the residents of Karungu, Mihuru, and Lwanda Magwar would be supplied with electricity; and,

(b) what social benefits the Kenya Power and Lighting Company Limited provides to the Nyatike constituents from the Gogo Hydro-Electric Power Station.

The Assistant Minister for Energy (Mr. Nang'ole): Mr. Speaker, Sir, I beg to reply.

(a) The residents of Karungu, Mihuru and Lwanda Magwar will be supplied with electricity when enough funds are made available.

(b) The social benefits that KPLC provides to Nyatike Constituency from Gogo Hydro-Electric Power Station include the provision of electricity to Macalder Township and Kadem Leprosy Centre.

Mr. Onyango: Mr. Speaker, Sir, when this Question was deferred last week to this week, I expected to get a better answer than this one. It is very unfortunate to get such an answer from the Ministry. First, could the Assistant Minister tell this House when funds will be available? Secondly, as regards his answer to part "b" of my question, when there was a by-election in Nyatike Constituency in 1995, we had to use pressure lamps because there was no power in that particular area and that is the whole situation in Nyatike Town now. So, I am trying to tell the Assistant Minister that as far as I am concerned, there is no power in Nyatike. Could he tell us in which part of Nyatike there is power? He is also saying that there is power in Kadem Leprosy Centre. Could he tell this House in which part of Kadem is this Centre situated?

Mr. Nang'ole: Mr. Speaker, Sir, the hon. Member has asked about three to four questions. To begin with, I cannot inform the House when enough funds will be made available, but if the Treasury gives us the money, we will do the job with regard to the parts of Nyatike which have been electrified, I have said they are in Macalder and in Macalder we have 27 customers. In Gogo, we have 13 customers. The Kadem Leprosy Centre is situated within the Gogo Falls.

Mrs. Asiyu: Mr. Speaker, Sir, electricity is not a social service. It is a commercial service because people pay for it. Could the Assistant Minister tell this House what plans the Ministry has to provide electricity not only in these areas, but also in all the other areas that do not have electricity?

Mr. Nang'ole: Mr. Speaker, Sir, I agree with the hon. Member. But as soon as we get enough funds to electrify the whole country, we shall do the job. It should also be noted that the power which we generate at the moment is not enough to be supplied to all the needy areas.

Mr. Nyagah: Mr. Speaker, Sir, I want to ask a question that is broad based. South Africa generates 25,000 megawatts. They only utilise 22,000 megawatts and a balance of 13,000 megawatts is left and that is why they are industrialised. Now, we are being promised that by the year 2020 we will be an industrialised nation. That is not true because that is not achievable. This is just like the way we were told that by the year 2000 there will be water for all in this country. Now, with that background information, what is the Government policy to ensure that to attract local and foreign investments this country can move into that industrialisation process by the year 2020?

Mr. Nang'ole: Mr. Speaker, Sir, I want to thank the hon. Member for that supplementary information.

Yes, indeed, we have a serious concern that this country gets power and that is why we have Kipevu and Sondu-Miriu Hydro-electric Power projects which we expect to be completed in the next two to four years. Also, there is a Bill which might come to this House in the next week or so because we are looking forward to privatising the industry so that it can attract other investors.

Mr. Aluoch: Mr. Speaker, Sir, power supply to Nyatike is most inadequate and what happens in Nyatike is that we generate power at Macalder which is used elsewhere; in other areas of Migori District and maybe beyond. Why is the Ministry being so unfair to Nyatike Constituency since power is generated there and this same power is only used elsewhere?

Mr. Nang'ole: Mr. Speaker, Sir, I agree partly with the hon. Member. But the truth of the matter is that the Hydro-power generation in Nyatike is only about 1 megawatt and this project was started way back during the colonial era. But I do not agree with the hon. Member that the hydro-electricity in Gogo is adequate for Nyatike as a whole.

Mr. Onyango: Mr. Speaker, Sir, about three months ago, this House was told that Kshs45 million is going to be given to Kerio Valley Development Authority to develop that particular area because power is generated from that area. Now, Sony Sugar Company is spending a lot of money paying the Kenya Power and Lighting Company and the people of Nyatike are getting nothing from that. What percentage are we going to get from whatever Sony Sugar Company is paying to the Kenya Power and Lighting Company to develop Nyatike?

Mr. Nang'ole: Mr. Speaker, Sir, as I had said earlier, these falls produce only 1 megawatt which is very little and due to the fact that it is connected to a 33 KVA feeder from Chemosis, it is not true that this hydro-electricity plant is supplying the sugar factory as the hon. Member is alleging.

Question No.679

UNDERSTAFFING OF NDUNGIRI PRIMARY SCHOOL

Bishop Kimani asked the Minister for Education:-

- (a) whether he was aware that Ndungiri Primary School is under-staffed and that already five teachers have been transferred and one is retired; and
- (b) if the answer to "a" is in the affirmative, when the school will be provided with adequate teachers as per its establishment.

The Assistant Minister for Education (Mrs. Ndeti): Mr. Speaker, Sir, I beg to apologise for coming late and I beg to reply.

(a) I am not aware that Ndungiri Primary School is under-staffed and that five of its teachers were transferred. There has been no teacher transferred from that school for the last seven months.

(b) Having 15 teachers out of its required establishment of 16, Ndungiri Primary School is well staffed given that the 16th teacher retired only this year.

Bishop Kimani: Mr. Speaker, Sir, arising from the answer given by the Assistant Minister, the answer is misleading because recently, the headmaster, a Mr. Kimani, was transferred. Before he was transferred, there were four teachers who had been transferred earlier. This school has been having a lot of problems because this headmaster had problems with the parents because he had squandered approximately Kshs50,000 and accidentally impregnated a lady within the school. So, the parents had a lot of problems with the headmaster. This problem was serious and the District Education Officer (DEO) was protecting the headmaster. It was only recently that he was transferred. Right now, unless these teachers were posted there last week, there is still a shortage. Could the Assistant Minister tell us the truth, whether these teachers were posted there last week or when?

Mrs. Ndeti: Mr. Speaker, Sir, the information we have from the ground is that there was a Mr. John Kinyanjui who was the headmaster early in the year and he stepped down because he had a problem with the parents. He was replaced by a Mr. Kimani, who was also rejected by the two school committees and the Parents Teachers Association (PTA). So, in fact, the under-establishment is just for the headmaster and we are going to replace this headmaster with a new one as long as the school committee and the PTA co-operate with the Ministry of Education and the DEO.

Mr. Obure: Mr. Speaker, Sir, the Assistant Minister knows very well that a lot of schools are under-staffed in this country and probably that is why the final examinations are poorly performed. Is the Assistant Minister aware that despite this shortage, we have graduate teachers from private teachers colleges, like Nyabururu Teachers College, who have not been employed? Could the Assistant Minister consider employing these graduate teachers so that they can fill these vacancies?

Mrs. Ndetei: Mr. Speaker, Sir, that is a totally separate question from the substantive Question we have about this particular school.

Bishop Kimani: Mr. Speaker, Sir, the committee of this school has been asked by the DEO to write a letter of apology because of pursuing this case and the money that has been squandered by the headmaster. The condition is, if teachers have to be brought to this school, they have to write that letter. Could the Assistant Minister now order the DEO to withdraw the threat he has made against the school committee?

Mrs. Ndetei: Mr. Speaker, Sir, it looks like there is more than meets the eye in regard to this particular case and I promise that we are going to undertake more investigations. I guess I am getting information from the hon. Member.

Mr. Speaker: Very well. Next Question!

Question No.691

FARMERS' PARTICIPATION IN KOMOTHAI
DISTRICT CO-OPERATIVE UNION

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

(a) whether he was aware of the stalemate between the coffee farmers from 13 factories on one hand and officials of Komothai Coffee Growers Society regarding the control of the Society's affairs; and,

(b) if the answer to "a" is in the affirmative, what the Ministry was doing to ensure that the farmers' interests are safeguarded by allowing their own elected representatives to take over the management and control of the society.

The Minister for Co-operative Development (Mr. Munyi): Mr. Speaker, Sir, hon. Gatabaki knows what we discussed about this matter. However, I beg to reply.

(a) I am not aware of any stalemate between the coffee farmers from Komothai and the other areas.

(b) Given (a) above, the Ministry has been dealing with this matter because it was just recently when the elections were held and the hon. Member is aware. He is the one who was pushing for the elections to take place and in actual fact this is a very big co-operative society which is serving 13 coffee factories and the hon. Member is aware of what is going on.

Mr. Gatabaki: Mr. Speaker, Sir, I really do not want to be very critical of the Minister, given our long friendship. But I am shocked by the answer he has given. I have talked to the Minister himself about what is going on in my constituency regarding the situation. I have spoken to the Commissioner of Co-operatives and I have also spoken to the Kiambu DC. This is an issue which has been going on for the last five years, yet my friend, the Minister, has the audacity to tell this House that he is not aware. I am putting it to the Minister that he is aware and he is deliberately misleading this House. I am putting it to the Minister that henceforth we are no longer friends. Having said that, what is this Government---

Mr. Speaker: Order! Order hon. Gatabaki! I think you can put questions to the Minister relating to public affairs. Your private affairs have nothing to do with this House. Mr. Minister, would you like to reply to the public affairs?

An hon. Member: But the hon. Member has not asked the question! Let him ask the question first.

Mr. Gatabaki: Mr. Speaker, Sir, what I want to tell the Minister is that if he is not--- I am telling him that he must be aware because the Commissioner of Co-operatives knows about it and he also knows about. Both of us have talked about it. What is he going to do, because as we talk now, there is a war going on in my constituency regarding this particular co-operative society?

Mr. Munyi: Mr. Speaker, Sir, he has given me his views, I will follow it up and see what can be done.

Mr. Speaker: Are you happy with that hon. Gatabaki?

Mr. Gatabaki: I am happy, Mr. Speaker, Sir. The former Minister for Finance for many years, hon. Magugu, is the one who started the process. The Minister knows about the situation. So, I am not satisfied about it.

Mr. Munyi: Mr. Speaker, Sir, he has told me about a former Minister, hon. Magugu. So, I will also take that into consideration. That is a very good opinion which he has given.

Mr. Wamae: Mr. Speaker, Sir, we have all been aware of the problem of this society. We have been reading about it in the Press. It is very disappointing that the Minister comes here and says that he is not aware. So, I do not think that he is being honest. Could the Minister be serious and investigate this matter and find a solution, instead of saying that he is not aware.

Mr. Munyi: Mr. Speaker, Sir, as I did with Mathira, I will take that into consideration.

QUESTIONS BY PRIVATE NOTICE

MURDER OF MASTER OLE MAMULA

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

(a) Could the Minister explain the circumstances under which Master Babaa ole Mamula, a Form IV student at Kipsigis Secondary School, was brutally murdered?

(b) Has anybody been arrested in connection with this murder?

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

First, I would wish to correct the name of the boy. It is not "Babaa," but "Bataa."

The late Master Bataa ole Mamula, a Form IV student at Kilgoris Secondary School, and not Kipisgis Secondary School, was abducted by unknown persons from a hotel in Nyangusu Market and his body was found beheaded about 500 metres away from the hotel. After that, five people who were at the hotel during the incident have been picked up by the police and are assisting in the investigations.

Mr. Sankori: Mr. Speaker, Sir, I would like the Minister to deny or confirm that this boy was killed after one of the Members of Parliament from Kisii talked a lot against the Maasais. Could he confirm or deny that this was politically motivated?

Mr. Kalweo: Mr. Speaker, Sir, I am not aware of that.

Mr. Speaker: Mr. Njenga Mungai's Question.

REHABILITATION OF MOLO DISTRICT HOSPITAL FEMALE WARD

(Mr. J.N. Mungai) to ask the Minister for Health:-

(a) Is the Minister aware that the Female Ward in Molo District Hospital cannot be used due to leaking roof, thereby causing congestion in other wards which has extended to children's ward?

(b) If the answer to part "a" above is in the affirmative, what measures is the Minister taking to repair the leaking roof in order to ensure that the Ward is operational?

Mr. Speaker: Mr. N.J. Mungai not here? The Question is dropped.

(Question dropped)

DELAY IN COMPLETION OF CONTAINER FERRY SERVICES

(Mr. Rotino) to ask the Minister for Transport and Communications:-

(a) Why did the Kenya Ports Authority pay Kshs524 million for Container Ferry Services (CFS) project which was not completed?

(b) What steps are being undertaken to recover the money from the Contractor for breach of contract?

(c) What steps is the Authority taking to have this project completed in order to improve efficiency at the Port?

Mr. Speaker: Mr. Rotino's Question is deferred.

(Question deferred)

COLLAPSE OF MACHAKOS DISTRICT CO-OPERATIVE UNION

Mr. Musyoki: Mr. Speaker, Sir, I beg to ask the Minister for Co-operative Development the following Question by Private Notice.

(a) Is the Minister aware that the Machakos District Co-operative Union is insolvent and the members

who belong to its ancillary banking sector are owed thousands of shillings by the said bank?

(b) If the answer to part "a" above is in the affirmative, what action is the Ministry taking to ensure that all members who have not yet been paid their dues are paid promptly?

The Minister for Co-operative Development (Mr. Munyi): Mr. Speaker, Sir, there is some information which I am waiting for relating to this Question. This is because the Question is by Private Notice. I would like, therefore, the Question to be put on the Order Paper, on Wednesday next week.

Mr. Speaker: Are you happy, Mr. Musyoki?

Mr. Musyoki: Mr. Speaker, Sir, I have no objection if the Question is put on the Order Paper, on Wednesday.

Mr. Speaker: The Question is deferred.

Next Order!

(Question deferred)

POINTS OF ORDER

NON-PAYMENT OF MONEY OWED TO GARISSA LIVESTOCK TRADERS BY ADC

Mr. Farah: Mr. Speaker, Sir, my point of order is directed to the Office of the President and hon. Kalweo should listen very well. On 27th August, 1997, in the afternoon, hon. Salat asked a Question by Private Notice here on the Floor of the House.

The Questioner wanted to know whether the Minister was aware that Agricultural Development Corporation owes livestock traders in Garissa District over Kshs90 million, since the beginning of this year for cattle bought by the Corporation. When the Minister was replying, he said that all the said cattle were delivered in March, 1997, and that payment was not due until the end of September, 1997. According to the Minister, this money should have been paid by the end of September. But the Minister goes ahead and says that "according to the agreement, the Corporation has got to pay all the amount of money outstanding by the end of next month," which is the end of September. We are now going towards the end of October and those poor livestock farmers from Garissa District have not been paid their dues. Could the Minister tell us why this has happened? What steps is he taking to ensure that those poor farmers who have nothing to depend on, except livestock, are paid their money?

Mr. Speaker: Very well. Is Mr. Koech here?

Mr. Farah: No! Mr. Kalweo is going to respond to this one.

Mr. Speaker: Mr. Kalweo, do you want to say something?

The Minister of State, Office of the President (Mr. Kalweo): No, Mr. Speaker, Sir. I will respond to that next week, on Tuesday.

Mr. Farah: Mr. Speaker, Sir, there is collective responsibility. The Vice-President and Minister for Planning and National Development must be in, the Deputy Leader of Government Business must be in here. The Minister of State, Office of President, Mr. Kalweo is here.

The Minister of State, Office of President (Mr. Kalweo): I have said---

Mr. Farah: What did you say?

Mr. Speaker: He will give an answer, next week on Tuesday.

The Minister of State, Office of President (Mr. Kalweo): I have said that I will give the answer on Tuesday next week.

Mr. Farah: If it is Tuesday next week, thank you very much.

SECURITY SITUATION IN USIGU DIVISION

Dr. Oburu: On a point of order, Mr. Speaker, Sir. I rise on a point to pose a question to the Office of the President about the security situation in Bondo Constituency, particularly, in Usigu Division. Usigu Division borders Uganda and it also borders hon. Osogo's Constituency, Bunyala. For the last one and half months, there have been gangs consisting more than 50 people raiding people's homes, maiming and robbing them of their property and nobody has been apprehended in these raids. In one of such raids, the home of Professor William Ochieng, the Principal of Maseno University College, was raided and property worth hundreds of thousands of

shillings was stolen.

Mr. Speaker, Sir, in another incident, a councillor's shop was raided, the councillor was murdered and he was buried last month. Up to today, nobody has been arrested and more than ten incidents have happened. Because of the sensitivity of this particular area which borders Uganda and Bunyala Constituency, where hon. Osogo had threatened to maim Luos there--- We are quite worried that either these people are coming from Osogo's place or they might be coming from Uganda. But the Government should investigate and give us a Ministerial Statement concerning the security situation in Bond, particularly at a time when we are facing elections and we would like to have peaceful elections in Bond Constituency.

Mr. Sankori: On point of order, Mr. Speaker, Sir. I am rising on a point of order in connection with---

Mr. Speaker: Order! Could I get an indication from the Minister of State, Office of the President whether he would like to respond to Dr. Oburu?

The Minister of State, Office of the President (Mr. Kalweo): Mr. Speaker, Sir, he demanded a Ministerial Statement and I stood and bowed to show that I will bring a Statement next week.

Hon. Members: Next week, where?

INADEQUATE COVERAGE OF PARLIAMENTARY PROCEEDINGS BY KBC

Mr. Sankori: On a point of order, Mr. Speaker, Sir. I rise on a point of order in connection with the coverage of Parliament by the Kenya Broadcasting Corporations (KBC) last time. First of all, they made so many mistakes. One, they said that hon. Ndotto was on the Chair when hon. Achola was sent out of the House. They also repeated several times an answer that was given by hon. Angatia to the Member of Parliament for Githunguri. I am shocked to learn that the KBC is not serious about the coverage of the proceedings of this House and, they should either become serious or they stop broadcasting whatever is happening here.

REHABILITATION OF BOREHOLES IN MACHAKOS TOWN

Mr. Musyoki: On a point of order, Mr. Speaker, Sir. I rise on a point of order in connection with Question No.497 where I asked about boreholes in my constituency and in response to a supplementary question, the Assistant Minister, Mr. Mokku, agreed to bring an answer to this House, on 19th August, 1997 regarding how much money the Government is intending to use to rehabilitate 17 boreholes in my constituency. Since the Assistant Minister has not given the answer, and given that he is here, could he tell us how much money the Government is intending to spend on these boreholes during this Financial Year, 1997/98, to alleviate water shortage in my constituency?

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Mokku): Mr. Speaker, Sir, I promise to bring the answer by Wednesday next week. Again, through the Chair, may I request the hon. Member to submit the names of the 17 boreholes which he wanted to know how much money has been allocated for them in this financial year.

Mr. Speaker: Last time you did make a promise that you would come to the House. Are you sure you are going to keep your promise this time round?

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Mokku): Mr. Speaker, Sir, I have not got the names of the boreholes up to now and so I cannot just respond to that question.

Mr. Speaker: Very well. You can get in touch with each other.

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. I wish to refer to a ruling that you have made severally, that when you are seated in the Chair, you cannot see what is happening at the back. The hon. Sankori has just accused the KBC for a mistake which is not of their own making. The KBC is not an angel and can make mistakes. It is wrong for the hon. Member to suggest that the KBC reporters should be barred from covering parliamentary proceedings. They are very important in informing his constituents about what has been deliberated here. Is he in order to suggest that a section of the Press should be barred from covering parliamentary proceedings?

Mr. Speaker: Order! Order! Mr. Ndicho, actually, your point is frivolous. You know the Standing Orders. First, if this House is unhappy about any stranger, it can send out that stranger or strangers. Second, indeed, if the House is unhappy about the conduct of any hon. Member here present, it can send such an hon. Member out. Third, I do not understand how Mr. Ndicho can generally police other hon. Members on their complaints. Fourth, I do not know when he became the Minister for Information and Broadcasting!

(Laughter)

Mr. Ndicho: Mr. Speaker, Sir, I was the shadow Minister for Information and Broadcasting!

The Assistant Minister for Home Affairs and National Heritage (Mr. Mutiso): On a point of order, Mr. Speaker, Sir. Did you notice that hon. Ogeka kept on walking here when hon. Ndicho was speaking thereby blocking the Chair and the Member on the Floor? Is this not out of order? It is very frivolous.

Mr. Speaker: Order! Order!

Next Order!

FLOODS AT THE COAST PROVINCE

Mr. Mumba: Mr. Speaker, Sir, I am rising on a point of order to request for a very urgent Ministerial Statement from the Minister of State, Office of the President on the prevailing situation at the Coast Province. For the last five days, the entire Coast Province has been flooded. Rains have poured continuously to the extent that bridges, roads and other infrastructures have broken down. We have been treated to piecemeal reports from the Provincial Administration. I think the situation has now reached disaster levels and it needs the Government to come out very clearly and issue a Ministerial Statement.

I am sure everybody is aware of the seriousness of the situation. Even the Minister for Lands and Settlement was marooned in his constituency for three days and had to be airlifted by a helicopter. I personally was also nearly marooned. It is impossible right now for wananchi at the Coast Province, particularly Kilifi, Kwale, Mombasa and Malindi to move about. The entire area is at a standstill and our food granaries have been swept away by the heavy rains. It is likely that very soon there will be a very serious famine in the area. If KANU decides to call for party elections, I do not know how this will be done because it is impossible right now to move from one area to another. So, I would like the Minister of State, Office of the President, as a matter of urgency, to issue a Ministerial Statement, preferably by next Tuesday. To avert the crisis, if need be, the Government should declare the Coast Province a disaster zone.

Mr. Speaker: Very well, next order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

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

THE STATUTE LAW (REPEALS AND MISCELLANEOUS AMENDMENTS) BILL

(Clauses 2, 3, 4 and 5 agreed to)

FIRST SCHEDULE

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I propose that the First Schedule, which appears on the published Bill, be amended as set out in the Order Paper of today.

SCHEDULE

THAT, the Schedule be amended by inserting the following new amendments immediately after the amendments relating to the Law Society of Kenya Act -

The Civil Procedure Act (Cap.21)	s.81	In subsection (1) delete the words "a judge" and insert the words "two judges"
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In subsection (1A), delete the words "as one of the judges so referred to".

THAT, the amendments specified in the Schedule in relation to the Public Order Act be amended -

(a) in the proposed amendments to section 2 -

(i) by inserting the following new paragraphs in the definition of "excluded meeting" -

(e) any meeting of the organs of a political party, convened in accordance with the constitution of the party and held exclusively to discuss the affairs of the party;

(f) impromptu "meet-the-people" tours by Members of Parliament;

(ii) by inserting the following new amendment immediately after the definition of "meeting" -

Delete the definition of "public meeting" and insert the following new definition -

"public meeting" means any meeting, not being an excluded meeting, held or to be held in a public place;

(iii) by inserting the following new definition in proper alphabetical sequence -

"regulating officer" means the officer in-charge of the police station in the area in which a proposed public meeting is proposed to be held, or in the case of a public procession, the police officer in-charge of the police station in the area in which the procession is proposed to start and to end;

(b) in the amendments relating to section 5 -

(i) delete the proposed subsection (1) and insert the following new subsection -

(1) No person shall hold a public meeting or a public procession except in accordance with the provisions of this section.

(ii) delete the proposed subsection (2) and insert the following new subsection -

(2) Any person intending to convene a public meeting or a public procession shall notify the regulating officer of such intent at least three days but not more than fourteen days before the proposed date of the public meeting or procession.

(iii) delete the proposed paragraph (b) of subsection (3) and insert the following new paragraph -

(b) the proposed date of the meeting or procession and the time thereof which shall be between six o'clock in the morning and six o'clock in the afternoon;

(iv)delete the word "police" wherever it occurs in the proposed subsections (4), (5) and (6) and insert the words "regulating officer";

(v)delete the proposed subsection (7) and insert the following new subsection -

(7) The organizer of every public meeting or public procession or his authorized agent shall be present throughout the meeting or procession and shall assist the police in the maintenance of peace and order at the meeting or procession.

(vi)delete the words "Any administrative officer or police officer" in the proposed subsection (8) and insert "The regulating officer or any police officer of or above the rank of inspector";

(vii)delete the words "if in the opinion of such officer and" in the proposed paragraph (8) (b) and insert the word "which";

(viii)delete the expression "(1) or subsection (8)" in the proposed subsection (9) and insert the expression "(7)";

(ix)delete subsection (10) and insert the following new subsection -

(10) Any public meeting or public procession held contrary to the provisions of subsections (1) and (5) shall be deemed to be an unlawful assembly.

(x)delete subsection (11) and insert the following new subsection -

(11) Any person who takes part in any public meeting or public procession deemed to be an unlawful assembly under subsection (10), or holds, convenes or organizes or is concerned in the holding, convening or organizing of any such meeting or procession shall be guilty of the offence of taking part in an unlawful assembly

Cap.63 under Chapter IX of the Penal Code and liable to imprisonment for one year.

(xi)delete the proposed subsection (12) and insert the following new subsections -

(12) The organizer of any excluded meeting may request the regulating officer that the police be present at such meeting to ensure the maintenance of peace and order.

(13) A request under subsection (2) shall be in writing and shall be delivered to the regulating officer at least three days before the proposed date of the meeting.

(14) The regulating officer shall keep a public register of all notices received under subsection (2).

(15) Any person may, during working hours, inspect the register kept under subsection (14).

THAT, the Schedule be amended by inserting the following new amendments immediately after the amendments specified in relation to the Public Order Act -

The Preservation s.4(2)Delete paragraph (a).

of Public Security
Act (Cap.57)

Insert the following proviso at the end of
paragraph (b) -

"Provided that no person shall be restricted on account of his political
beliefs or activities".

THAT, the amendments specified in relation to the Penal Code be deleted and replaced with the following
new amendments -

The Penal Code s.52 In subsection (1) -
(Cap.63)

delete the words "If it appears to the Minister" and insert "Where the Minister,
on reasonable grounds, considers";

delete the words "the administration of justice or the maintenance of the
authority and impartiality of the judiciary
so to do" and insert "and to be reasonably
justifiable in a democratic society";

delete the words "and subject to such exceptions and conditions, if any, as
may be specified in the order";

delete the words "or in the case of a periodical publication, any or all past or
future issues thereof, or any or all past or
future publications of any person
specified in the order".

In subsection (2) -

delete the words "If it appears to the Minister to be reasonably required" and
insert "Where the Minister, on reasonable
grounds, considers that it is necessary";

delete the words "public safety";

Insert the words "so to do" immediately after the words "public health";

delete the words "and subject to such exceptions and conditions, if any, as
may be specified in the order";

delete the words "or in the case of a periodical publication, declare any or all
past or future issues thereof to be
prohibited publications, and may declare
to be prohibited publications any or all
past or future publications of any person
specified in the order, not being a person
who ordinarily carries on for profit or
reward the trade or business of a
publisher and whose principal activities
consist of the carrying on of that trade or
business".

Insert the following new subsections immediately after subsection (2) -

(3) There is established a Board to be known as the Prohibited Publications

Review Board (hereinafter referred to as "the Board") which shall comprise -

- (a) the Attorney-General or his representative, who shall be the chairman;
 - (b) the Commissioner of Police or his representative;
 - (c) the Director of Medical Services or his representative;
 - (d) two persons from the religious community, to be appointed by the Minister; and
 - (e) two other persons of integrity, good character and good standing to be appointed by the Minister.
- (4) The members of the Board appointed under paragraphs (d) and (e) of subsection (3) shall hold office for terms of three years each, but shall be eligible for reappointment:

Provided that such members shall not hold office for more than two terms.

- (5) The purpose for which the Board is established shall be -
- (a) to review all publications prohibited under this section as at the commencement of this subsection and advise the Minister as to whether such prohibition should be lifted; and
 - (b) to advise the Minister generally on the exercise of his powers under this section.
- (6) The Minister shall, as soon as reasonably practicable after the commencement of this subsection, cause a copy of each of the publications referred to in paragraph (a) of subsection (5) to be considered by the Board pursuant to the provisions of that paragraph.
- (7) The Minister shall, within twenty-one days of the prohibition of any publication under this section, cause a copy thereof to be forwarded to the Board for consideration and appropriate advice.
- (8) The Minister shall be obliged to act in accordance with any advice given by the Board under this section.
- (9) The quorum for the conduct of a meeting of the Board shall be four members.
- (10) Subject to subsection (9), the Board may regulate its own procedure.
- (11) There shall be a secretary of the Board and such other staff as may be necessary for the proper functioning of the Board.
- (12) The secretary and other staff of the Board shall be public officers appointed by the Minister for that purpose.
- (13) The expenses of the Board shall be defrayed out of moneys provided by Parliament for that purpose.

s.56. Repeal.

s.57. Repeal.

s.58. Repeal.

THAT, the amendments specified in the Schedule in relation to the Election Offences Act be amended by inserting the following new amendments immediately after the proposed section 3A -

s.8 Repeal.

s.15(2) Repeal.

THAT, the Schedule be amended, by inserting the following new amendments immediately after the amendments relating to the Election Offences Act -

The Police Act (Cap.84) New Insert the following section immediately after section 14 -

Control and 14A(1) The Force shall perform its functions in conduct of Force under the overall direction, supervision and in executing control of the Commissioner of Police, and shall functions be impartial and objective in all matters and in particular in all political matters and shall not accord different treatment to different persons on the basis of their political opinions.

(2) No police officer shall subject any person to torture or to any other cruel, inhuman or degrading treatment.

(3) Any police officer who contravenes the provisions of this section shall be guilty of a felony.

THAT, the Schedule be amended by inserting the following new amendments immediately after the amendments relating to the Police Act -

The Public Collections Act (Cap.106) s.2(1) Delete the definitions of "licence" and "licensing authority".

Insert the following new definition in proper alphabetical sequence -

"regulating officer" means-

(a) the chief in charge of the location in which the collection is intended to be promoted; or

(b) in the case of a collection intended to be promoted -

(i) in two or more locations of the same division, the District Officer of the division;

(ii) in two or more divisions of the same district, the District Commissioner of the district;

(iii) in two or more districts of the same province, the Provincial Commissioner of the

province; or

- (iv) in two or more provinces or throughout the country, the Permanent Secretary of the Ministry responsible for provincial administration.

s.3 Repeal.

s.4 Repeal and replace with the following new section -

Notification4.(1) Subject to the provisions of public of this Act, no person shall promote any collection except in collections. accordance with the provisions of this section.

- (2) A person intending to promote a collection shall give notice of such intent to the regulating officer at least three days before commencing such promotion.
- (3) A notice under subsection (2) shall be in writing and shall specify -
- (a) the full names and address of the promoter of the proposed collection;
 - (b) the purpose of the collection;
 - (c) the area, place or occasion in, at or on which the collection is intended to be made; and
 - (d) such additional information as may be necessary.
- (4) Where upon receipt of a notice under sub-section (3), the regulating officer -
- (a) establishes that the promoter has been convicted of an offence involving fraud or dishonesty;
 - (b) has reasonable cause to believe that the collection is in aid of, or that the promoter or any of the collectors are members of an unlawful society, or that the purpose of the collection is unlawful or fictitious; or
 - (c) establishes that the promoter is an undischarged bankrupt or has entered a scheme of arrangement with his creditors,
- the regulating officer shall, without delay, serve a notice of objection to the proposed collection upon the promoter specifying the reasons therefor.
- (5) A notice under subsection (4) shall be in writing and shall be served upon the promoter at the address specified pursuant to the provisions of subsection (3).
- (6) Where the regulating officer objects to a proposed collection under subsection (4), such collection shall not be promoted.

(7) A person who promotes a collection contrary to the provisions of this section shall be guilty of an offence.

s.13 In subsection (2) -

delete the word "licensed" appearing in paragraph (a);

delete the word "licensees" appearing in paragraph (f) and insert the words "promoters and collectors"

THAT, the amendments specified in the Schedule in relation to the Societies Act be amended -

(a) by inserting the following new amendment immediately before the amendment relating to section 5 -

s.4 Insert the following new subsection immediately after subsection (1) -

(2) The Registrar shall consider every application for registration of a society or for exemption from registration and shall communicate his decision thereon to the society within one hundred and twenty days of receipt of the application.

Renumber subsections (2) and (3) as subsections (3) and (4) respectively.

(b) by deleting the amendment relating to section 5 and inserting the following new amendment -

s.5 Delete the words "fourteen years" and "fifty thousand" and insert the words "three years" and "ten thousand" respectively.

(c) by deleting the amendment specified in relation to section 6 and inserting the following new amendment -

s.6 Delete the words "seven years" and "fifty thousand" and insert the words "one year" and "five thousand" respectively.

(d) by inserting the following new amendment immediately after the amendment relating to section 6 -

s.11 Delete the words "it appears to him" appearing in paragraph (a) of subsection (2) and insert "he has reasonable cause to believe";

Delete the words "in the opinion of the Registrar" appearing in subparagraphs (ii) and (iii) of paragraph (f) of subsection (2).

(e) by deleting the amendment specified in relation to section 12 and inserting the following new amendments -

s.12 Delete the words "in his opinion" wherever they occur and insert "where he has reasonable cause to believe";

In paragraph (j) of subsection (1), delete the the words "the Registrar's consent" and insert "duly notifying the Registrar in the prescribed form"

Delete the words "may, in his discretion" appearing after paragraph (j) of subsection (1) and

insert the word "shall".

(j) by deleting the amendment specified in relation to section 15 and inserting the following new amendment -

s.15 Repeal and insert the following new section -

Appeal 15(1) Any society aggrieved by
from order the Registrar's refusal to register
of refusal, it, or by the cancellation or suspension of its registration
cancellation under section 12 may -
or suspension

(a) in the case of a political party, appeal to the High Court within thirty days of such refusal, cancellation or suspension; or

(b) in the case of any other society, appeal to the Minister within thirty days of such refusal, cancellation or suspension and the Minister shall consider, determine and communicate his decision on the appeal within ninety days of the appeal.

(2) A society aggrieved by the decision of the Minister under subsection (1)(b) may appeal to the High Court within thirty days of the decision.

(3) Notwithstanding the provisions of subsection (1) of section 4, where a society other than a society specified in paragraphs (i), (ii) or (iii) of the proviso to section 4(1), lodges an appeal under subsection (1) of this section, such society shall not, pending the decision on the appeal, be an unlawful society.

THAT, the following new amendments be inserted immediately after the amendments relating to the Societies Act -

The Public Holidays s.4 Insert a new subsection as follows -
Act (Cap.110)

(4) The day in any year during which a general election is held following the dissolution of Parliament shall be a public holiday.

The Traditional Liquor s.30(1) Delete the words "Any administrative officer".
Act (Cap.122)

THAT, the amendments specified in the Schedule in relation to the Chiefs Authority Act be amended -

(a) by inserting the following new amendments -

Short Delete the word "Authority".
title

s.3 Repeal.

(b) by inserting the following new amendments immediately after the amendment relating to section 7 -

s.8 In subsection (2), delete the words "unless he is released from arrest within twelve hours of his arrest, be taken before a court with jurisdiction in the matter" and insert -

"without delay, be taken to the nearest police station".

s.9 Repeal.

(c) by inserting the following additional amendment to section 10 -

s.10 Delete paragraph (a) and insert the following new paragraph -

(a) prohibiting or restricting the consumption or possession of intoxicating liquor by, and the supply of such liquor to young persons;

Delete paragraph (j).

(d) in the proposed amendments to section 11, by deleting the expression "(a) and (b)" and inserting the expression "(a), (b), (e), (g) and (l)";

(e) by inserting the following new amendment immediately

after the amendments relating to section 11 -

s.12 Delete the word "male" and insert the word "person".

s.15 In paragraph (a), delete the words "forty-five" and insert the words "fifty".

Delete paragraph (e) and insert the following new paragraph -

(e) any person certified unfit for such work on health grounds by a medical practitioner or a medical officer.

s.17 Delete subsections (1) and (2).

s.18 Repeal and replace with the following new section -

<p>disobeying order. exceeding five hundred shillings and in default of employment for</p>	<p>Penalty for order issued or given by a chief or assistant chief orders under this Act shall be guilty of an offence and liable to a fine not a period not exceeding fourteen days.</p>	<p>18. Any person who, without lawful excuse, disobeys or fails to comply with any lawful orders under this payment, to extra mural penal</p>
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s.19 Repeal.

s.20 Repeal and replace with the following new section-

Conduct of 20.(1) No chief shall -
chiefs.

- (a) engage in the activities of any political party or act as an agent of any such party; or
 - (b) in the performance of his functions or the exercise of his powers under this Act -
 - (i) subject any person to torture or to any other cruel, inhuman or degrading treatment;
 - (ii) enter or search any private premises save with a warrant duly issued by a magistrate; or
 - (iii) demand or solicit any donations or collections in a manner likely to suggest that such donations or collections are a pre-condition for any services; or
 - (e) maintain a cell or other place of confinement of persons.
- (2) Without prejudice to the provisions of subsection (1), the Minister may, in rules, prescribe a code of conduct to govern the conduct of chiefs in the exercise of their powers and the performance of their functions under this Act.
- (3) A chief who contravenes any of the provisions of this section or the provisions of any code of conduct prescribed under sub-section (2) shall, without prejudice to any other penalty prescribed by law, be guilty of an offence and liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding one month, or to both.

Part III Repeal.

THAT, the Schedule be amended by inserting the following new amendments immediately after the amendments relating to the Chiefs Authority Act -

The Kenya Broadcasting Corporation Act (Cap. 221) s.8(1) Insert the following new paragraph immediately after paragraph (i) -

- (j) keep a fair balance in all respects in the allocation of broadcasting hours as between different political viewpoints;
- (k) in consultation with the Electoral Commission, during the campaign period preceding any presidential, parliamentary or local government election, allocate free air time to registered political parties participating in the election to expound their policies.

NewInsert the following new subsection immediately after subsection (1) -

- (1A) In subsection (1)(j), the expression "campaign period" means the period between the initiation of an election under the provisions of the relevant law pertaining to the election and the eve of the polling day".

The Films and Stage Plays Act (Cap.222) Part IV Repeal. S.25

Repeal and replace it with the following new section -

Cinema licensing. 25. Any person who uses or causes or permits to be used, any premises for the public exhibition of any film shall, unless a cinema licence has been issued in respect of the premises by the licensing authority under this Act and is in force, be guilty of an offence.

S.26 Delete the words "and theatre" wherever they occur.

S.27 Delete the words "and theatre".

S.29 Delete the words "a stage plays licensing authority".

S.31 In subsection (1), delete the words "or performance of a stage play" and "or performance" wherever they occur.

In subsection (3), delete the words "or performance" wherever they occur.

In subsection (4), delete the words "or performance" and "or the stage play licence" wherever they occur.

THAT, the Schedule be amended by inserting the following amendments immediately after the amendments relating to the Pensions (Increase) Act -

The Local Government Act (Cap. 265) s.5 Repeal paragraph (j) of subsection (1).

s.9 Repeal paragraph (g) of subsection (1).

NewInsert a new section 10 immediately after section 9 as follows -

Electoral areas. 10(1) The Electoral Commission may, by order in the Gazette divide any municipality, county, township or county division into electoral areas having such boundaries and names as may be prescribed by the order.

- (2) The principles and matters set out in subsections (3) and (5) of section 42 of the Constitution relating to the division of Kenya

into constituencies shall, mutatis mutandis, guide the Electoral Commission in the exercise of its powers and the performance of its functions under this section.

s.12 In subsection (2), Insert immediately after the words "The Minister" the words "in consultation with the Electoral Commission".

s.26 Renumber the existing provision as subsection (1) and insert a new subsection as follows -

(2) The criteria and principles for appointment of nominated members of the National Assembly under section 33 of the Constitution shall mutatis mutandis apply to the nomination of councillors under this section.

s.28 In subsection (2), insert immediately after the words "The Minister", the words "in consultation with the Electoral Commission".

Insert the following new subsection immediately after subsection (2) -

(2A) The criteria and principles for appointment of nominated members of the National Assembly under section 33 of the Constitution shall mutatis mutandis apply to the nomination of councillors under this section.

s.41 In subsection (2), insert immediately after the words "The Minister" the words "in consultation with the Electoral Commission".

s.46 Insert a new subsection (2A) as follows immediately after subsection (2) -

(2A) The criteria and principles for appointment of nominated members of the National Assembly under section 33 of the Constitution shall mutatis mutandis apply to the nomination of councillors under this section.

s.53 Delete the word "Minister" wherever it occurs and insert the words "Electoral Commission".

In subsection (1), delete the expression "in consultation with the Minister".

In subsection (6), delete the word "regulation" and insert "section".

s.53A Delete the word "Minister" wherever it occurs and insert the words "Electoral Commission".

s.53B Delete the word "Minister" wherever it occurs and insert the words "Electoral Commission".

s. 53C Delete the words "by the Minister" wherever they occur and insert the words "by the Electoral Commission".

s.55A Repeal the section and insert-

Additional disqualification for candidates.

55A. A person who is convicted of an election offence or who is reported guilty of an election offence by the court trying an election petition shall not be qualified to be nominated as a candidate for re-election as a member of any local authority during the remainder of the life of the relevant local authority following the conviction or, as the case may be, following the report of the court:

Provided that a person disqualified as a result of a conviction or report for an election offence, other than under the provisions of this section, prior to the general elections held in the year 1997 shall cease to be so disqualified and shall, unless otherwise lawfully disqualified, be eligible for nomination as a candidate.

New Insert the following new section immediately after section 57 -

Election to coincide with parliamentary and Presidential election. required to be elected under this Act and for that purpose the Minister shall, forthwith upon the

58(1) Whenever there is a general election under the National Assembly and Presidential Elections Act, there shall simultaneously be held an election of all councillors required to be elected under this Act and for that purpose the Minister shall, forthwith upon the

Cap.7 dissolution of parliament, dissolve all local authority councils.

(2) The provisions of the National Assembly and Presidential Elections Act relating to the powers, responsibilities and duties of the Electoral Commission shall apply mutatis mutandis to the conduct of

elections under this
Act and section 42A of
the Constitution.

s.61 In subsection (1), delete the words "a Resident Magistrate" and insert the words "a Resident Magistrate's court within or nearest the area of the local authority".

Delete "Resident Magistrate" appearing in subsections (2) and (4) and insert "Resident Magistrate's court" wherever it occurs.

s.65 In subsection (3), delete the word "Minister" and insert the words "Electoral Commission".

s.66 Delete subsection (4) and insert the following new subsection -

(4) The Chief Justice may make rules regulating appeals under this section, and for matters incidental thereto and connected therewith.

s.72 In subsection (1), delete the expression "As soon as possible after the coming into operation of this Act, the Minister shall make rules" and insert, "The Electoral Commission shall make rules".

In subsection (1), repeal paragraph (h).

Insert the following new subsection immediately after subsection (2) -

(3) For the avoidance of doubt and notwithstanding section 31(c) of the Interpretation and General Provisions Act, the rules made by the Minister under this section shall, unless earlier revoked and replaced, continue in force and shall be deemed to have been made by the Electoral Commission.

New Insert the following section immediately after section 72 -

Electoral Code of Conduct and application of Cap 7. Section 34A and the Fourth Schedule to the National Assembly and Presidential Elections Act relating to the Electoral Code of Conduct shall apply to local government elections.

Fifth Schedule Delete the word "Minister" wherever it occurs and insert "Electoral Commission".

THAT, the amendments specified in the Schedule in relation to the National Assembly and Presidential Elections Act be amended -

(a)by inserting the following amendments before the proposed amendments to section 3 -

Long titleInsert after the words "National Assembly" the comma and words "
the conduct of the Electoral Commission
and of political parties participating in
elections in Kenya".

(b)in the proposed section 3 -

(i)by deleting the words "such electoral officers" and inserting the words "such officers
with such designations";

(ii)by renumbering the existing provision as subsection (1) and inserting the following
new subsections -

(2) The terms and conditions of service of the officers appointed under this section
shall be determined by the Commission in consultation with
the Treasury.

(3) Notwithstanding the provisions of the Police Act, a police officer assigned duties
during the conduct of an election shall be deemed to be an
election official for the purposes of this Act and subject to
direction and instruction of the Commission.

(c)by inserting the following new amendments immediately after the proposed section 3A -

NewInsert the following new section immediately after section 3A -

Code of 3B For the better discharge of
conduct the responsibilities and functions
and of the Electoral Commission
procedure under the Constitution and any
of the other law, the code of conduct for
Commission. the members and staff of the Commission,
and the rules of procedure of the Commission
specified in the Second and Third Schedules
respectively shall apply.

s.12Delete subsection (1) and insert the following new subsection-

(1) Where a presidential election is to be held, the Electoral Commission
shall forthwith cause notice of the
holding of the election to be published in
the Gazette and shall thereafter exercise
the powers conferred by subsection (3).

In paragraph (a) of subsection (3), delete the phrase "the day for the nomination of
candidates" and insert "the days for the nomination of
candidates".

s.13In subsection (2) -

(a) in paragraph (c) delete the words "four months" and insert the words "two months"
and

(b) delete the proviso and insert the following new proviso -

"Provided that the Speaker may, after consultation with the Electoral Commission, by notice in the Gazette, extend the periods specified in paragraphs (b) and (c) to facilitate the proper organization and holding of the ensuing elections, except that such extension shall not exceed two months."

s.16(2)Delete the words "for five years" and insert the phrase "during the remainder of the life of that Parliament".

Insert the following provision to subsection (2)-

"Provided that a person disqualified as a result of a conviction or a report for an election offence prior to the dissolution of Parliament and the ensuing elections in the year 1997 shall cease to be so disqualified and shall, unless otherwise lawfully disqualified, be entitled to have the Electoral Commission enter his name in the appropriate register of electors."

s.17.In subsection (1), delete the full-stop at the end of the subsection immediately after the words "parliamentary elections" and insert the following -

"and, subject to subsection (4), the party certifies the selection to the Electoral Commission."

Delete the full-stop at the end of subsection (3) and insert immediately after the words "Parliamentary elections", the following-

" and a political party may, at its own expense and on such terms as may be agreed between the party and the Commission, request the Electoral Commission to supervise any such party nomination of candidates".

Insert the following new subsection (5)-

(4) Every political party shall notify the Electoral Commission of the name of the person authorised by the party to certify to the Commission that any person has been selected by the party under subsection (1) and the person so named shall deposit his or her specimen signature with the Commission in such manner as the Commission may require.

(5) No person who is elected or nominated as a member of the National Assembly with the support of or as a supporter of a political party (other than the party whose candidate has been elected President at an election) shall be appointed a Minister of the Government of Kenya under section 16 of the Constitution without the concurrence of the party which supported him for election or nominated him for appointment as a member of the National Assembly.

Insert the following new sections immediately after section 17 -

New	Overall	17A	The Electoral
	conduct		Commission shall have

of elections. shall give general directions the overall conduct of elections under this Act and and exercise supervision and control thereof and take the necessary measures to ensure that the elections are transparent, free and fair.

Participation in elections by public officers or act as an agent of any such 17B (1) No public officer shall- (a) engage in the activities of any political party party; or

(b) publicly indicate support for or opposition against any party or candidate participating in an election under this Act or under the Local Government Act.

(2) A public officer who contravenes any of the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one month, or to both.

s 19.Renumber the existing provision as subsection (1) and delete at the end thereof, the comma and phrase ", and shall be tried by an election court consisting of three judges"

Insert the following new subsections -

(2) A petition to determine the question whether a person has been validly nominated for election as President, or was validly elected as President, or, being a person elected President, was validly elected as a member of the National Assembly, shall be heard by a court consisting of three judges.

(3) A petition other than a petition under subsection (2) shall be heard by an election court consisting of one judge.

(4) A petition under this Act shall be heard and determined on a priority basis.

s.20In subsection (1)-

(a)in paragraphs (a) and (b), insert the words "and served" immediately after the phrase "shall be presented" wherever it occurs.

(b)repeal paragraph (iii) of the proviso.

s. 21In subsection (2) delete the word "fifty thousand" and insert the words "two hundred and fifty thousand."

s.23.Insert the following new subsections (4), (5) and (6) as follows-

- (4) Subject to subsection (5), an appeal shall lie to the Court of Appeal from any decision of an election court, whether the decision be interlocutory or final, within thirty days of the decision.
- (5) An appeal from a petition under section 19(2) shall be heard by a bench of five judges of appeal.
- (6) An appeal from a petition under this Act, shall be heard and determined on a priority basis.

s.24 Repeal the section.

s.30 In subsection (2), delete the phrase "and shall issue any writs, which, in pursuance of this Act, may be necessary" and insert the phrase "and shall take such action thereon, pursuant to section 18, as shall be necessary".

s. 31 In subsection (3), delete "every registration officer" and insert "the Electoral Commission".

s. 33 Repeal and replace with the following new section-

33. (1) There shall be defrayed out of moneys provided by Parliament any expenses properly incurred by the Electoral Commission in the performance of its duties under or by virtue of this Act.

Cap. 412. (2) There shall be an accounting officer of the Commission appointed under the Exchequer and Audit Act.

s. 34 In subsection (1) delete the words "The Minister may" and insert the words "The Electoral Commission may".

New Insert the following new section

s. 34A immediately after subsection (2) of section 34-

Electoral Code of Conduct set out in

34A (1) The Electoral Code of Conduct shall be

subscribed to in such manner as the Electoral Commission may, subject to paragraph 6 of that Schedule, from time to time determine, and shall be subscribed to and observed by every political party and every person that participates in any election under the Constitution and this Act.

(2) No political party shall be eligible to nominate candidates under section 17 and no person nominated as a candidate under that section shall be eligible to contest any election unless such party and the candidate have under subsection (1) subscribed to the Electoral Code of Conduct.

(3) Every officer of a political party which, and every person nominated as a candidate who, attempts to participate in or participates in any election without subscribing to the Electoral Code of

Conduct shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three years or both.

(4) For the avoidance of doubt, the trial of an offence under this section shall be without prejudice to any proceedings in or consequent upon a petition.

(5) Subject to the provisions of the Criminal Procedure Code, the Commission may designate any of its officers to conduct any prosecution for an offence under this section and the Electoral Code of Conduct, and such officer shall for that purpose have all the powers conferred upon a public prosecutor by the Criminal Procedure Code.

SCHEDULE Renumber as "FIRST SCHEDULE"

New Insert the following Schedules immediately after the First Schedule-

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, I stand under the provisions of Standing Order No.106 to move an amendment to the proposed amendment to the First Schedule on page 910. I have duly given notice of my intention to move that amendment. I beg to move:-

THAT, Section 17B(2) be amended by changing liability from Kshs10,000 to Kshs50,000, and the phrase "jailed from a term not exceeding one month" to "six months".

Mr. Temporary Deputy Chairman, Sir, you notice that if the penalty for participation in political activity by a public officer is a mere Kshs10,000, a politician can give any public officer Kshs10,000 to participate in the elections on his behalf knowing very well that it is very easy for him to pay if he is found to be guilty of an offence. That is why I am moving that this be amended to make it a bit stiffer to reduce the temptations of public officers from actively and directly being involved in politics.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I do agree to that amendment.

(Question of the amendment to the amendment proposed)

Mr. Michuki: Mr. Temporary Deputy Chairman, Sir, you have placed this amendment together with the others. We must deal with each amendment as it comes.

The Temporary Deputy Chairman (Mr. Wetangula): May I dispose of Dr. Kituyi's amendment so that I can give you an opportunity to comment on whatever you want.

Mr. Michuki: Mr. Temporary Deputy Chairman, Sir, that is okay.

Mr. Mulusya: Mr. Temporary Deputy Chairman, Sir, I agree with what hon. Dr. Kituyi and the Attorney-General have said. These penalties should have been even stiffer. The Attorney-General should have proposed to this House that such an act would constitute a felony. The penalties should have acted as a deterrent measure, so that public servants could resist any temptation to get involved in political activities, as has been in the past. So, I support that amendment.

(Question of the amendment to the amendment put and agreed to)

Mr. Michuki: Mr. Temporary Deputy Chairman, Sir, I rise to re-trace the steps of this House with regard to amendment 14A(1) proposed by the Attorney-General. As I have stated here before, the Attorney-General was to interpret the resolutions of the IPPG. The relevant recommendation by the IPPG states that Section 14 be amended by inserting the following:

"The force shall exercise its functions under the direction, supervision and control of the Commissioner of Police and shall not be subject to the direction or control of any other person or authority."

Mr. Temporary Deputy Chairman, Sir, this is how this Clause should have read. All that the Attorney-General has said now is that the Commissioner supervises and directs. Of course, he has been directing. But what we wanted to impose by law is the possibility of a person, like we have witnessed, directing the Commissioner and the fact that this is omitted. So, I am proposing that Clause 14A(1) be amended as per the resolutions of the IPPG in order to reflect the meaning of the words. The wording is there in the Report.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, the wording that we have today is what was agreed on by the IPPG. To add the phrase "not to be subject to any other authority", that phrase should be put properly as part of the constitutional amendment. It is in the Constitution that various constitutional offices are set out and those which are not subject to any other control are clearly stated out there. But now, we have a situation where the Executive authority is vested on the President of this country under the Constitution. Therefore, a mere legislation cannot say "the Commissioner of Police will not be subject to any other authority." He will definitely be subject to the Executive authority of this country which is headed by the President. So, unless that is put in the Constitution, it will be redundant to include it here.

Mr. Michuki: Mr. Temporary Deputy Chairman, Sir, if the situation as described by the Attorney-General is true, he was part and parcel of the discussions that took place at County Hall. He could have pointed it out then. Alternatively, the issue has been dealt with by the same Committee by recommending an amendment to the Constitution which, in any case, is being amended. Therefore, I find this issue not really based on facts but regard it as intellectual dishonesty.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Michuki, you ought to have done what hon. Muite and hon. Dr. Kituyi have done. If you want to move an amendment to any of the proposed amendments, you have to give us a formal notice in writing. By so doing, you can move your amendment and we can put it to the vote.

Mr. Obwocha: Mr. Temporary Deputy Chairman, Sir, I think all that hon. Michuki is trying to arrive at is that the resolutions of the IPPG clearly say: "The Force shall exercise its functions under the direction, supervision and control of the Commissioner of Police and shall not be subject to the direction or control of any other person or authority." In this case, what we had in mind is the Commander-in-Chief of the Armed Forces of Kenya. The Constitution gives him definitely that authority to direct but not any other person. So, that Clause should be there. The other one is provided for in the Constitution. So, the hon. Attorney-General should not mix the two. That is what we are really saying. No other person should direct the Force if he is not authorised by law to do that.

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Temporary Deputy Chairman, Sir, I thought that hon. Obwocha joined us in the Office of the Attorney-General when we were going through the draft Bills. When we examined the draft Bills together with the recommendations of the IPPG, it was agreed that the interpretation given in Clause 14A(1) of the Bill is what is contained in the IPPG recommendations. In the IPPG recommendations, it is stated that: "The Commissioner of Police shall not be subject to any direction as far as the Force is concerned and the Force shall exercise its functions under the direction, supervision and control of the Commissioner." The Attorney-General explained it to us in legal terms when we were in his office and we were satisfied.

In the legal form, the resolution reads as follows: "The Force shall perform its functions under the overall direction, supervision and control of the Commissioner." But the Commissioner works under the Executive. That is where the difference comes in. But otherwise, the interpretation which the Attorney-General gave us for removing the layman's language and substituting it with the legal language satisfied us when we were there.

Dr. Lwali-Oyondi: Mr. Temporary Deputy Chairman, Sir, I am also concerned---

The Temporary Deputy Chairman (Mr. Wetangula): Order, Dr. Lwali-Oyondi. We are dealing with the Schedule from pages 884 to 914. So, we should not be limited to the issue that hon. Michuki raised because we are not going to put separate questions on this unless we have a notice on a different amendment. So, you are not impeded from raising any issues on any other matter. We are dealing with the Schedule as set out from pages 884 to 914. So, if you have any issue to raise, you can do so, because I will put the question at the end, covering everything therein before we move to hon. Muite's proposal.

Mr. Anyona: On a point of order, Mr. Temporary Deputy Chairman, Sir. I think that process will be very confusing. If an issue has been raised like the one hon. Michuki has raised, we should dispose of that issue before we move on to another. We might have ten issues raised at the same time and we shall be moving from one to the other. I think it is only fair that we systematically go through the issue raised by hon. Michuki, finish dealing with it and then we can raise another issue.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, under the under Standing Orders, there is no way I can put a question on the issue raised by hon. Michuki, unless, he has done what hon. Kituyi did, that is, give notice that he will move an amendment to the Attorney-General's amendment. We are dealing with amendments already. All you need to do is to make your comments; the Attorney-General can comment back or concede and bring an amendment if he wishes. At the end of the day, I am going to put a question on the entire block of the Schedule.

Dr. Otieno-Kopiyo: Mr. Temporary Deputy Chairman, Sir, the point as explained by hon. Osogo is precisely the worry that my colleagues on this side are raising. We have the Commander-in-Chief of the Armed Forces who is the President. Under him are the Provincial Commissioners, District Commissioners, District Officers and chiefs. Often, we find that the police, in their operations, take directives from the chief, DO or DC. I think the intention of the resolution of the IPPG was to prevent this duplicity from taking place.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Attorney-General, do you want to respond to each issue as it comes or you will respond to several issues at the same time?

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I will respond to several.

Mr. Michuki: Mr. Temporary Deputy Chairman, Sir, in raising this issue here, I must admit that I did not have time to submit an amendment. But I am saying that if we want to be honest and truthful in order to enhance the work that has been done, we must introduce honesty. Hon. Osogo is trying to justify something which is entirely different. I have seen a politician order a contingent of policemen to beat up a Rev. father, nuns and sisters

in a church without even reference to the OCPD, leave alone the Commissioner of Police. This was in Kangema. So, the purpose of introducing this non-control of the Police Commissioner by other people was not directed at the Commander-in-Chief of the Armed Forces because, under other Acts, he has that authority to command the Armed Forces. But this was to prevent what has become very common, and wananchi have suffered because of directives which do not emanate from the proper authority.

Therefore, Mr. Temporary Deputy Chairman, Sir, I may not have given notice for an amendment, but is this an honest interpretation of what the committee and, consequently, this House intended because this is part and parcel of the resolutions of this House? Is this what was intended? Of course, the Commissioner has always supervised and given general direction, but in doing so, he has been interfered with and this is what we wanted to prevent. Therefore, I regard this as a very dishonest approach to a very important public matter.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, I would like to assist the House because, I believe that those of us who were involved in the committee and who were also involved in the drafting of these amendments have a duty. The main duty we have really, is not to get these amendments passed. Our main duty is to explain to the House and, particularly, to those who were not there, what actually happened. I was a member of the committee that made this recommendation in the IPPG recommendations which hon. Michuki is reading. This recommendation was done in two stages: We met as hon. Members of Parliament; there were lawyers among us, including the Chair. We met as laymen in legal terms, just to hammer out what recommendations we thought would be useful in this reform process. As you remember, at some stage, we requested the Office of the Attorney-General to give us some officers to assist in translating them into some legal language and format. But they did not even advise the committee. They only took notes. So, our secretariat who are officers of the National Assembly, read the minutes and made recommendations in the normal manner that committees of Parliament do. But when that process was finished, we knew one thing: We had come up with recommendations conveying elements of policy which would have to be translated into legal Bills, but we had to get the approval of the IPPG that these could be transformed from a policy nature to a legal nature. When we were again given the mandate to go to the Attorney-General and get this translated, we found that the Attorney-General had taken the notes which his officers took and had come up with some drafts. We went through those drafts with the IPPG recommendations on one side and the draft they had prepared---

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, what are you trying to explain?

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, what I am explaining is important because hon. Michuki said that this is dishonest and I think he is entitled to his opinion. Since he was not there, this may sound very dishonest to him. Therefore, it is our duty to explain the facts to him. In fact, I can understand the position taken by hon. Obwocha because, if I remember right, he attended one session of the consultation with the Attorney-General. Maybe, he missed this particular one, I do not know. All I am saying is that, at that stage, we changed a lot of things. There were a lot of things in the drafts which we changed because we felt that they did not properly convey the spirit of the recommendations of the IPPG. We also did change certain things in our recommendations because we found that they did not now conform to the legal format required. In this particular case, for example, the Office of the Commissioner of Police is not a constitutional office. I am sure I am right. The only provision is that the Commissioner of Police is appointed by the President but that does not make it a constitutional office. It is still subject to Executive Authority under section 24 of the Constitution. Therefore, although we had said so in our layman format in the IPPG Committee, that this office should not be subject to any authority, we then, in relation to the Constitution, found that we could not do it.

Mr. Temporary Deputy Chairman, Sir, the difference is this: The Electoral Commission under subsection (9) is required not to be subject to any authority, including the President because that is a constitutional office. The Office of the Commissioner of Police is not constitutional. I hope that the Attorney-General can confirm that.

If I am wrong, I stand to be corrected. Therefore, we found that although the IPPG recommendation, in its layman's form, did talk about the office of the Commissioner of Police being subject to no authority, we could not do it without offending the Constitution. That is one issue.

Secondly, we were concerned about the Police Force, but not the Commissioner of Police. The Police Force is not very often under the control and supervision of the Commissioner himself. In most cases, it is under the control and supervision of DCs, DOs, PCs and some politicians. We categorically stated that from now on, if anything goes wrong with the Police Force, the person answerable to Parliament and the country is the Commissioner of Police. He can no longer claim that it was the DC, PC or in this case, the President. However, the President would tell him what do in his capacity as Commander-in-Chief of the Armed Forces.

Mr. Temporary Deputy Chairman, Sir, where this particular section talks about control, supervision and direction, it is the Commissioner in relation to other people who had usurped the powers of the Commissioner and were running the Police Force. This is very open; you have read in the press, where they say that the Commissioner

is not in "control" of the Force. In fact, one Commissioner of Police lost his job because, apparently, he was not in control of the Force and this is an honest explanation. That is what we are trying to avoid. I understand that hon. Michuki is concerned about this, but I can assure this House that, that was the spirit in which it was done.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, we thank you.

Mr. Shikuku: Bw. Naibu Mwenyekiti wa Muda, kuhusu jambo hili, ninafikiri yale ningesema yamesemwa tayari. Tunajua kwamba kuna wanasiasa wengine ambao walikuwa wanawatumia polisi kwa madhumuni yao binafsi hapo awali. Ningependa kuwafahamisha wanasiasa kama hao ya kwamba, hayo hayatawezekana sasa, kwa sababu mamlaka yote yamewekwa mikononi mwa Kamishna wa Polisi. Na makosa yakitokea, Kamishna wa Polisi hataweza kumlaumu DC, wala DO. Atajua kwamba yeye hasa, ndiye atachukuliwa hatua. Kwa hivyo, kama mimi niko katika chama cha KANU na ninataka kutumia OCS wa Butere anisaidie kutatua shida zangu za kisiasa, ninapaswa kujua kutoka leo kuwa jambo kama hilo halitawezekana, kwa sababu OCS ataitikia amri za Kamishna na si mambo yangu. Hiyo ndio nia tulikuwa nayo.

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, I would like to draw the attention of my colleagues, particularly, from this side and also that side of the House, to the very last sentence on page 884 which reads: "Excluded meetings." I would really like to plead here, because we are merely excluding impromptu meet-the-people tours by Members of Parliament. First, this Parliament could be dissolved on the 30th of this month and the period thereafter is when we shall be most in need of the meet-the-people tours. We cease to be Members of Parliament immediately Parliament is dissolved. And those meet-the-people tours by us, thereafter, will require authorization and notification. Therefore, I appeal to the Attorney-General to consider deleting the words "by Members of Parliament" and instead, just put a full stop. This will ensure that Kenyans, including our opponents, who want to go on a meet-the-people tour will be free to do so, without the requirement of any authorization or notification.

(Applause)

Mr. Obwocha: Mr. Temporary Deputy Chairman, Sir, I had also proposed that the Attorney-General considers amending, Section 2 (i) f of the Public Order Act by adding, after the words "Members of Parliament" and "councillors". But now that hon. Muite has advanced this argument about generally giving Kenyans freedom, I would like to hear the reaction of the Attorney-General. I am not abandoning my proposition, but I have been persuaded by the argument of Mr. Muite. I hope the Attorney-General is agreeable to it, but if he is not, then I will pursue mine.

The Temporary Deputy Chairman (Mr. Wetangula): As it is now, your notice is meaningless! You are not pursuing it.

Mr. Obwocha: It is not! I would like the reaction of the Attorney-General to Mr. Muite's proposition first.

The Temporary Deputy Chairman (Mr. Wetangula): There is no guarantee that I will give you an opportunity again! What is it Mr. Anyona!

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, I know that this Committee stage is not like the other Committee Stages. Unlike most other Committee Stages where you deal with Bills, Members have different ideas over this particular one. Their minds have not come to interact and reach an agreement. This is a package which was discussed. To be fair to Members who are asking these questions, like hon. Muite, I think you should explain what the position is, other than just asking the Attorney-General to respond. I think what hon. Muite is asking for is information and explanation on how it works. If we find that what is provided here is not adequate, then as a House, we shall ask the Attorney-General to do the necessary.

So, what I am proposing is that you should give a chance to the people who were involved in the process to assist, because we are sailing in the same boat with hon. Muite. If we reach some kind of consensus, we can ask the hon. Attorney-General to respond.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, you see, the problem is that the hon. Member for Kikuyu has not moved any formal amendment yet.

Mr. Anyona: I know. It can---

The Temporary Deputy Chairman (Mr. Wetangula): You do not move an amendment without a formal notice.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, that is precisely why I am saying what I am saying. This is not a normal Committee Stage, but a package which has been discussed at various stages and I think the first thing to do, even before we consider the amendment you are asking hon. Muite to move, is to see whether

there is an adequate explanation. I am suggesting that you give Members a chance to try and bring up some explanation, then we will see what we require from the Attorney-General. I would like to contribute.

The Temporary Deputy Chairman (Mr. Wetangula): Go on.

Mr. Anyona: Thank you, Mr. Temporary Deputy Chairman, Sir. The issues raised by hon. Muite are: One, that this only deals with Members of Parliament, which in a way also looks a bit discriminatory because freedom should be enjoyed by everybody. Two, he says that when this Parliament is no more, we shall be ordinary citizens. So, we will require some clearance from somebody to hold meetings. I would now like to provide the explanation as to why this section was worded this way. We had a lot of problems with this particular provision. As far as Members of Parliament are concerned, when this Parliament ceases to be, they will become, in that sense, ordinary citizens. In terms of election time, every candidate who wants to participate in the election, will be protected under the Electoral Law. The Electoral Law will provide equal opportunities for people to propagate their ideas. So, we thought that, in that sense, all of us, including those who will have become ex-Members of Parliament, will be covered by the other law which will be coming. But as far as ordinary people are concerned, the feeling was that you can only make a law for a leader who has been given mandate by the people and who must go round and meet the people, but who at the moment is not allowed to do so. It was felt that there must be a provision so that when he is doing so, a certain assistant chief does not stop him. Whether or not, in that context, that should be a provision for every Kenyan, I do not think so. I think every other Kenyan moves freely and nobody should stop him from doing so. It was only a Member of Parliament when the chief saw him as an enemy---

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, you have made your point.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, I was trying to provide an explanation for this particular provision.

Mr. Obwocha: Mr. Temporary Deputy Chairman, Sir, I would have liked the hon. Attorney-General to respond to my amendment which I submitted.

The Temporary Deputy Chairman (Mr. Wetangula): You have not moved it.

Mr. Obwocha: I have moved it. Okay, let me move it now.

The Temporary Deputy Chairman (Mr. Wetangula): You surrendered and associated yourself with Mr. Muite.

Mr. Obwocha: I did not, Mr. Temporary Deputy Chairman, Sir. Now, I wish to move the following amendment to the amendment on page 884, Section 2(i)(f), Public Order Act.

THAT, the words "and councillors" be added after the words "Members of Parliament".

So, the sentence will read, "the impromptu "meet-the-people" tours by Members of Parliament and councillors.

The Attorney-General (Mr. Amos Wako): I would like first of all, to say that I associate myself totally with what hon. George Anyona has stated about the entire process. So, I would not repeat those arguments. But on the issue of the formal amendments raised by hon. Obwocha, I think I agree to that. We can add the words, "and councillors" after the words, "Members of Parliament".

(Applause)

*(Question of the amendment to
the amendment proposed)*

*(Question that the words to be added
be added, put and agreed to)*

*(Question of the first schedule as
amended, put and agreed to)*

Mr. Muite: Are we finishing, Mr. Temporary Deputy Chairman, Sir. I would like to move that the first schedule be amended, and the amendments are set out on page 924. The first one is on the National Assembly and Presidential Elections Act, Chapter 7.

Mr. Temporary Deputy Chairman, Sir, it is proposed that we delete these words: "an affidavit of a village elder to that effect" from subsection 4(a), so that it can read as follows: "Any citizen who upon proof that he or she has attained the age of majority as evidenced by either a national identity card, birth certificate, and a driving licence to that effect, shall be registered as a voter upon application to that effect."

Mr. Temporary Deputy Chairman, Sir, the reason for that proposal is that, once one has attained the age of

majority, the right to participate in an election is a fundamental right. I think it is not right to confine the evidence of age of majority purely to a national identity card, particularly given the practical difficulties in obtaining this national identity card.

Mr. Temporary Deputy Chairman, we go through procedures in order to be registered and acquire a birth certificate. You have to prove that you are a Kenyan citizen. So, if we can agree that these documents for proving one's citizenship are acceptable, then we shall ease the outcry that has been there, of people being declared ineligible to register as voters.

Mr. Temporary Deputy Chairman, the second proposed amendment is on sub-section 8 of clause 5 in the Bill itself which is on page 501.

Mr. Temporary Deputy Chairman, Sir, it is Section 5(8). That is the one I had given notice for. My intention is to delete sub-section (8). The reasons for this are the following: The police have enough power under the Police Act and the Penal Code to prevent the commission of any offence. I would like to express fear that as long as we are leaving some form of discretion to the police to disperse meetings, that discretion or power is likely to be abused.

I am suggesting that the police have enough personnel, equipment and ability to control public meetings. If anybody attempts to disrupt these meetings, the police should be able to arrest him or her and allow the meeting to continue. But if there is any situation of riots, that one is perfectly provided for in the other laws and we do not need to continue giving the police the authority to disrupt public meetings. The people who will attend the meetings will not have committed any offence. The ones who will commit an offence are the ones who will try to disrupt the meetings. Those are the people that the police should deal with, and not members of the public who are peacefully attending a meeting.

The next amendment is to the Societies Act---

Mr. Anyona: On a point of order, Mr. Temporary Deputy Chairman, Sir. Once again, these are important proposals and yet, hon. Muite is going to the third one. We also want to contribute. Where shall we start from? We may not even remember them! Let us finish with the first amendment that hon. Muite is proposing in terms of debate, and then we can go to the next one in an orderly manner. When we complete debate on them, then you can put the questions consecutively.

The Temporary Deputy Chairman(Mr. Wetangula): If that is what the House wants I have no problem.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir. I would like to contribute to the first one.

The Temporary Deputy Chairman (Mr. Wetangula): Are you dealing with the one on the National Assembly?

Mr. Anyona: Yes, Mr. Temporary Deputy Chairman, Sir. I know that in general terms---

The Temporary Deputy Chairman (Mr. Wetangula): Order! Mr. Anyona. I will have to propose the question first.

*(Question of the amendment to
the amendment proposed)*

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, I know that this has been a very contentious issue. We felt that the national identity card as a form of identification---

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Anyona, we are not opening a full-fledged debate. As you noticed, hon. Muite was very brief, indeed, in moving his amendment, and I would like you to be similarly brief.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, I do not know how you determine brevity, but I am going to be brief. I have done some precis in school and so I know how to be brief. But I think we are having a problem with the Chair and if we are not careful, that spirit will wreck this IPPG spirit. I think the Chair has to be questioned. The Chair has to be accommodative.

The Temporary Deputy Chairman (Mr. Wetangula): Order! Mr. Anyona! I have just told you that this is debate. This is Committee Stage. You notice that when hon. Muite was moving his amendment, he was precise and concise and I am calling upon the House including you, to be similarly precise and concise. How does that amount to lack of co-operation from the Chair?

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, You cannot believe how conscious I am about the IPPG because my whole soul is in it. So, I need no lesson from anybody. I want to make an essential point. The essential point is that there has been a serious concern as to whether Kenyans should be subjected to only one form of identification when they want to register themselves. I want to tell you that when I first came to this Parliament

in 1974, there was no requirement of an Identity Card (ID) to register. This is something that was borrowed from Apartheid South Africa, to control Kenyans by people who held power that was unchallengeable at that time. Now, the first thing I would like to do is to combine the efforts to open up that requirement. An Identity Card (ID), Birth Certificate or Driving Licence, yes. In fact, if I had talked to hon. Muite earlier, I would have requested him to include the Baptism Certificate because a lot of our ordinary people who do not have driving licence at least, are members of the church and they have the certificates. Nevertheless, even this is an improvement. I would like to say that, that is a commendable effort. I would like to agree with hon. Muite that if that is as far as we want to go, then I think we had better stop there. Once you bring in affidavits by village elders, who are these village elders? There are no elders any more.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, he has withdrawn that.

Mr. Anyona: Has he?

(Applause)

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, the proposed amendment now excludes the words: "Or an affidavit of a village elder to that effect"

Mr. Anyona: But that is what I am saying.

The Temporary Deputy Chairman (Mr. Wetangula): He has plucked out those words.

Mr. Anyona: Yes! That is what I am saying! I am supporting what he is proposing and I am giving my own reasons. The reasons are that there are no elders in the villages. We only have conmen who can be given money to swear false affidavits, to have people registered.

The Temporary Deputy Chairman (Mr. Wetangula): Order, hon. Anyona! Now that the words are not there, is there any problem?

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, well, I said we are debating. Am I not required to give my views that I am supporting the amendment? What is wrong with that? I do not understand. I would like to support the amendment proposed by hon. Muite to strike out those words and I was only giving my reasons. You do not want me to do so, but my spirit is with the amendment.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, make no mistake, the Chair has the highest regard for you like any other Member in this House.

Mr. Shikuku: Bw. Naibu Mwenyekiti wa Muda, mimi ningependa kuunga mkono badiliko ambalo limeletwa na Bw. Mkuu wa Sheria. Hasa, kuhusu haya maneno anayosema yaondolewe. Ni wachache sana ambao wanaweza kupata---

The Temporary Deputy Chairman (Mr. Wetangula): We are dealing with hon. Muite's amendment as far as part 4(a) is concerned.

Mr. Shikuku: Bw. Naibu Mwenyekiti wa Muda, hiyo sehemu ndiyo nazungumzia.

The Temporary Deputy Chairman (Mr. Wetangula): On page No.924.

Mr. Shikuku: Yes, kwenye ukurasa wa 924 na amesema tuondoe maneno kadhaa. Na mimi nasema yasiondolewe kwa sababu ni watu wachache sana wana driving licences. Ni watu wachache sana ambao wanaweza kuwa na passport. Lakini kama nimezaliwa kwangu kule Regea, kuna wazee kule wanajua huyu ni mtoto---

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Temporary, you are flogging a dead horse. The mover of the amendment has already struck out those words himself.

Mr. Shikuku: Na mimi sitaki maneno haya yaondolewe.

The Temporary Deputy Chairman (Mr. Wetangula): You cannot! It is not your amendment. The words are not there any more. So, we either debate the amendment as hon. Muite moved it or we do not.

(Loud consultations)

The Temporary Deputy Chairman (Mr. Wetangula): Order! Those words are not there and are no longer part of that clause. So, if you want to comment, do that minus those words.

Mr. Murungi: Thank you, Mr. Temporary Deputy Chairman, Sir. I wish to support the amendment as proposed by hon. Paul Muite. I was one of the Commonwealth observers during the Sierra Leone elections in February 1996 and all the people who could prove that they were 18 years of age using birth certificates, driving licences and even tax forms, were issued with voters card. I think it is very important for us to create opportunities for as many people, as possible, who have attained the age of 18 to register as voters. So, I am very happy with the amendment as proposed and I would like to support it.

Mr. Otieno: Mr. Temporary Deputy Chairman, Sir, it seems to be taken here that all we need is evidence over age for somebody to be registered, but according to section 43(1) of the Constitution says to be registered, first, you must be a citizen of Kenya.

The Temporary Deputy Chairman (Mr. Wetangula): He has provided for that. He says "any citizen who upon proof that he or she has attained the age of majority as evidenced by production of either a national ID, birth certificate, driving licence, shall be registered as a voter upon application to that effect" I think hon. Muite should have the word "and" between certificate and driving.

Mr. Otieno: Mr. Temporary Deputy Chairman, Sir, as currently worded and, as currently proposed, it would mean that there has, first, to be proof of citizenship and that is what the national ID card does, because to be registered under the Act registration of Persons you must prove your citizenship. So, in my opinion, if we accept this amendment it means birth certificate is only, evidence that you were born here. It is not evidence of citizenship. As currently issued, the birth certificate, unless, that document is converted to be evidence of citizenship, it is not. So, among the documents available in the country as of now, it is only the national ID card that has the details through which can prove your citizenship before you can get one issued to you.

Similarly, even a passport, if it can be obtained without production of evidence of citizenship it is only given to somebody as a travel document, although I am not so sure what the Act provides. The point I am making is that we must clear that whatever document we accept to be used for registration, must be a document that is adequate proof and evidence of citizenship, in addition to being proof of age. So, a national ID; birth certificate cannot be used alone without the national ID. Similarly, we will give a birth certificate to a Ugandan who was born in Kenya. If he was born here, there must be evidence of his birth.

Mr. Nyagah: On a point of order, Mr. Temporary Deputy Chairman, Sir. When you get a birth certificate, yes, it is indeed a mere document, but it contains the names of your parents, where they were born and also you, where you were born and where you came from. It has all those details. So, is it in order for hon. Otieno to suggest that this document cannot be utilised whereas, it has all that information that pertains to a person? In fact, he should go on and include a passport.

Mr. Otieno: Mr. Temporary Deputy Chairman, Sir, we will have the same information even for a Ugandan born in Kenya.

The Temporary Deputy Chairman (Mr. Wetangula): Order! The Mover of these amendments has indicated to me that he wants to move a further amendment to this Clause, and I will give him the first opportunity.

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, what I want to do is to make it as easy as possible for as many Kenyans as possible, to register as voters, particularly those who may not be able to get an identity card, for one reason or the other. It will assist in developing a consensus. I am quite happy to move an amendment to include either a national identity card or a Kenyan passport. This is because one does not get a Kenyan passport unless he is a Kenyan citizen.

The Temporary Deputy Chairman (Mr. Wetangula): Are you moving the deletion of the words, "birth certificate" and "driving licence?"

Mr. Muite: I saw the Attorney-General nodding, and I do move the deletion of those words so that it will be a national identity card or a Kenyan passport.

Mr. Anyona: On a point of order, Mr. Temporary Deputy Chairman, Sir. I really like the sobriety with which we are addressing these issues, but we might lose ourselves in it. I think the intention is to open as many avenues as possible. We are now beginning to restrict ourselves, because of an issue raised by hon. Otieno. He is right in one sense that only one document appears to prove citizenship, which is the requirement of the Constitution.

Hon. Muite is proposing that a Kenyan passport should also be used. I would imagine that a driving licence, issued by the Ministry of Transport and Communications is also a Kenyan document.

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Anyona, this is hon. Muite's amendment. He has moved an amendment to it. I do not see any justification in you trying to impend him from amending his own amendment.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, let me say immediately, that with the deletion of the words, "birth certificate" and "driving licence", and with the substitution thereof of, "Kenyan passport", I agree with hon. Muite's proposed amendment. This is because really, a birth certificate and driving licence are not in themselves, evidence of citizenship, but the passport is. I would agree to that amendment.

The Temporary Deputy Chairman (Mr. Wetangula): I will now put the question---

Mr. Muluya: On a point of order---

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Mulusya, let me dispose of this amendment! Hon. Muite has proposed an amendment and the Attorney-General has accepted. Surely, why should we debate on something that has been accepted?

(Loud consultations)

Mr. Nyagah: On a point of order, Mr. Temporary Deputy Chairman, Sir. I have been a victim of this!

The Temporary Deputy Chairman (Mr. Wetangula): Order! I have not invited any hon. Member to give us his personal testimony on these issues!

Mr. Nyagah: That is okay! But notwithstanding whether I have been a victim of it or not, and being in agreement with the proposed amendment, one wonders why the Attorney-General, together with his officers, allowed the first wording to come through in the first place? Based on that, there have been no objections raised---

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Nyagah, again, you have not followed the arguments! These are not the Attorney-General's words, but hon. Muite's!

Mr. Nyagah: Mr. Temporary Deputy Chairman, Sir, I am a very ardent follower of debates in this House. When the Attorney-General stood, he said: "Yes, it is true that there is no much evidence in a birth certificate or driving licence, as proof that one is a Kenyan". That is the point that I am making. Besides that, why do you stop me from giving my own experience of the way I suffered on this issue?

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Nyagah, Parliament does not make laws for an individual, but it makes them for all the Kenyans.

Mr. Nyagah: That is okay! But as long as it is not making laws for one individual, I would like to appeal to the Commissioners that in future, as long as one can produce those documents - which I produced and suffered for three weeks - he should be registered as a voter. Otherwise, it will just be there in writing.

*(Question of the amendment
to the amendment, proposed)*

*(Question, that the words to be left out be
left out, put and agreed to)*

*(Question, that the words to be added be
added, put and agreed to)*

(Clause 4 as amended agreed to)

The Temporary Deputy Chairman (Mr. Wetangula): Hon. Muite, you can now present your next two amendments.

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, the first amendment is intended to protect citizens who attend public rallies, and not the leaders or anybody else. This is because when they attend these rallies, they are innocent. If anybody tries to disrupt those rallies, he should be the one to be arrested. I am saying that the police have got enough equipment, personnel and competence to ensure that public meetings are not disrupted by anyone. Anyone seeking to disrupt public meetings should be arrested and dealt with by the police. Under the Police Act and Penal Code, the police have got enough powers. We should not give them additional powers of disrupting and dispersing public meetings. So, I am suggesting that we delete Sub-Clause 8 in its entirety.

The next one, which is obviously controversial, is with regard to Section 80 of the Kenya Constitution. It is on page 924 on the Order Paper. Section 80 of the Constitution says:

"Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association".

So, the Constitution is conceptualising a situation where the freedom of association cannot be taken away, except with the consent of the person. So, until such time the Attorney-General brings to this House a properly worded Political Parties Bill, I am proposing that we add a new sub-section 4 to Section 18 of the Societies Act, saying that political parties are not societies, within the meaning of the Societies Act. That will facilitate any person, who wishes to form any political party, to do so without the necessity of having to apply for registration, as if a political party is a society, when it is not.

The next amendment which I propose relates to being fairly specific. It is not only in Kenya where these

specific provisions are put. We have similar provisions in Mozambique and Mexico. These amendments would require the Kenya Broadcasting Corporation (KBC), to specifically allocate time, not to political parties, but to Parliamentary parties. This is because there are so many political parties and there will be no time for all of them.

The Temporary Deputy Chairman (Mr. Wetangula): Are you deleting the word "registered?"

Mr. Muite: Yes, Mr. Temporary Deputy Chairman, Sir. In recognition of the fact that they could be too many. But anywhere you have Parliamentary party that had people being elected on its ticket, the Board shall ensure that it shall be allocated at least 15 minutes of national television and radio broadcasting every month.

(k) During the official election period, general or by-election, the Board shall ensure that all Parliamentary political parties sponsoring candidates for such elections shall be allotted at least ten minutes each day in the national television and radio broadcasting. Instead of leaving the matter at large in the discretion of the Board, we should be fairly specific, so that if there is any breach, there is---

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Muite, during the general election, there is no Parliamentary party.

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, I am suggesting that a party which is or has been a Parliamentary party. For example---

Mr. Mulusya: On a point of order, Mr. Temporary Deputy Chairman, Sir. The suggestion hon. Muite is trying to flout will be dangerous and is going to be discriminatory.

The Temporary Deputy Chairman (Mr. Wetangula): Then you do not need to raise a point of order. Let him finish, then you stand up and oppose him.

Mr. Mulusya: Mr. Temporary Deputy Chairman, Sir, he should be guided at this level. The amendment that he had proposed was proper---

The Temporary Deputy Chairman (Mr. Wetangula): Order, Mr. Mulusya! That is not a point of order. I will give you an opportunity to argue against him. Hon. Muite, have you finished?

Mr. Mulusya: Mr. Temporary Deputy Chairman, Sir, hon. Muite has heard my point!

The Temporary Deputy Chairman (Mr. Wetangula): Order! Hon. Muite, have you finished moving your amendment?

Mr. Muite: Yes, Mr. Temporary Deputy Chairman, Sir.

*(Question of the amendment to
the amendment, proposed)*

Mr. Mulusya: Mr. Temporary Deputy Speaker, Sir, I find the amendment which hon. Muite has just moved to be highly discriminatory, in that a political party will be formed for the purposes of fielding candidates during a general election or a by election so that eventually, it may have members of Parliament either from the Government or in the local authorities. If you exclude the allocation of time during the election time to parties which are not parliamentary parties--- A good example is SAFINA which is about to be registered by the hon. Attorney-General; it is not a parliamentary party and, therefore, hon. Muite will not benefit from his amendment if SAFINA is eventually registered. He is going to be the first victim. I would rather request hon. Muite agrees that this amendment is rescinded because it is discriminatory in the highest order and we should not make any law which is going to be discriminatory in nature. I would also request him to move---

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Mulusya, you either support or oppose him. Do not tell him what to do.

Mr. Mulusya: Mr. Temporary Deputy Chairman, Sir, I am telling hon. Muite--- Hon. Muite has already accepted that he is in the wrong.

Dr. Lwali-Oyondi: Mr. Temporary Deputy Chairman, Sir, I would like to rise in support of the deletion of Section 8, after suffering rather enthusiastic intervention by the provincial administration---

There is a loophole here, and we thank hon. Member for Kikuyu for having noticed it in that it is possible for the provincial administration to make use of the police to interrupt a meeting. The meeting may have been convened by somebody who the provincial administration does not favour and they would use the police who, according to this Section---

The Temporary Deputy Chairman (Mr. Wetangula): Dr. Lwali-Oyondi, are you talking about hon. Muite' amendment?

Dr. Lwali-Oyondi: Yes, Mr. Temporary Deputy Chairman, Sir. I am talking about hon. Muite's amendment to Section 8.

The Temporary Deputy Chairman (Mr. Wetangula): Yes. Okay, you are right.

Dr. Lwali-Oyondi: Mr. Temporary Deputy Chairman, Sir, it is possible for the provincial administration to make use of the police to come and interrupt or disperse a given meeting by a given politician because they do not like him. Therefore, the question should be that---

The Temporary Deputy Chairman (Mr. Wetangula): Dr. Lwali-Oyondi, that is too long. This is Committee Stage. Make your point.

Dr. Lwali-Oyondi: Mr. Temporary Deputy Chairman, Sir, I am making my point. The police should only arrest those people who are trying to interrupt the meeting. They should be given the authority to disperse the meeting.

With that I beg to support.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, I would like to find out from the Attorney-General and members of the IPPG, those who were in the Committees and those who were in the consultations when we were drawing up the amendments, whether in fact, we are on the same wavelength.

Mr. Temporary Deputy Chairman, Sir, my feeling is that there is a contradiction between the original Bill and what we were dealing with. I think that is why the problem is arising. I would like the Attorney-General to confirm that this is correct. In as far as I can remember, we did not at any point or time look at this Bill. We merely used this Bill as a basis to load on more amendments.

I want to use the first amendment that hon. Muite is proposing as an example. For instance, on Page 499, there is Clause 5(2) which reads as follows:

"Any person who is intending to hold a public meeting or a public procession, shall give notice of such intent:

(a) in the case of a public meeting, to the officer-in-charge in the police division in which the public meeting is supposed to be held; and
in the case of a public procession, to the officer-in-charge of the police division in which the procession is supposed to start and end."

Mr. Temporary Deputy Chairman, Sir, even without going further than that, my understanding is this: That we even changed the proposal of notifying the OCPD and we said that the reporting would be done to the OCS. This Bill talks of the OCPD, which clearly means that these provisions here are in some way, in conflict with what we are doing.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, the provisions in the blue booklet have further been amended by the long schedule which we have already approved. The only opportunity I have given you now is to comment on the amendment moved by hon. Muite. What you are talking about has, first of all, been taken care of and has already been passed by the House, including yourself.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, that is precisely what I am saying. We have passed a law, which this Bill is contradicting. I am saying that we should change it, and the Attorney-General is in agreement. Please give me time to explain.

Mr. Temporary Deputy Chairman, Sir, the amendments that we have taken on board no-longer talk about the OCPD, but the OCS. So, if this one is talking about the OCPD, it is wrong and should be changed.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, what you are saying has already been done and approved by the House.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, why do we not understand each other?

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, it is you who is not understanding the Chair!

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, I am explaining, but you do not want to understand me.

The Temporary Deputy Chairman (Mr. Wetangula): You are explaining what you ought not to explain!

Mr. Anyona: No! Mr. Temporary Deputy Chairman, Sir, this particular Section has not been amended by what we have passed! Has it?

Hon. Members: Yes!

The Temporary Deputy Chairman (Mr. Wetangula): Order, hon. Anyona!

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, there is no order, I am right!

The Temporary Deputy Chairman (Mr. Wetangula): Order, hon. Anyona! Can we hear it from the horse's mouth?

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, let me comment on the proposed amendments by hon. Muite.

The Temporary Deputy Chairman (Mr. Wetangula): That is the only matter open to you to comment about! There is nothing else!

You are only commenting on hon. Muite's amendment.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, on the issue of Section 8, I am glad that hon. Muite in his submission, corrected the wrong impression I had about the way it has been drafted, I went to the actual Public Order Act and found that Section 8, was referring to other things that I was not even aware of. So, it appears to be a printing error. He is referring to Sub-Clause 8 which appears at page 501. Mr. Temporary Deputy Chairman, Sir, to inform hon. Anyona, this was the initial Bill. When the IPPG made recommendations, we went even through the initial Bill. There were many matters in the initial Bill which were good, and which IPPG itself had recommended. Therefore, there was no need to carry out any amendments. But there were also some additional matters that needed to be added, and they were added. There were also some subsections which needed to be amended, and those were amended.

Now, the Sub-Clause 8 which hon. Muite referred to, was borrowed word by word. The drafting of the NCEC Statute laws Miscellaneous Amendments Bill, was that, any administrative officer or police officer may stop a public meeting where there was a clear present, threatened and imminent danger. This has been amended. If you look at page 886, part (vi), reads:-

"Delete the words: Any administrative officer or police officer in subsection 8 and insert the words, "regulating officer or any police officer may".

So, I hope it is clear. Whereas the NCEC draft and the Government initial Bill gave authority to the administrative officer, who is part of the Provincial Administration, and the police officer, to be able to intervene in a case where there is a clear threatened or imminent danger in a public meeting, after discussions were held, the IPPG amended that section, and confined those powers only to the regulating officer, who is the OCPD. I hope hon. Anyona has followed the wording in this Section. As far as this particular---

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Wako, the regulating officer ought to be the OCS.

The Attorney-General (Mr. Wako): Yes, Mr. Temporary Deputy Speaker, Sir. It is the OCS.

Mr. Anyona: First of all, Mr. Temporary Deputy Chairman, Sir, I do not know what procedure you are using. You stopped me when I was contributing and gave the Attorney-General the Floor! Yet, he did not rise on a point of order. What order is that?

The Temporary Deputy Chairman (Mr. Wetangula): Order, hon. Anyona! I cut you short because I considered your contributions irrelevant at the time, and I told you that.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, may I then conclude.

The Temporary Deputy Chairman (Mr. Wetangula): Let the Attorney-General finish and then you can contribute!

Mr. Anyona: Mr. Temporary Deputy Speaker, Sir, I would like to contribute to this particular aspect because he is going to the next one.

The Temporary Deputy Chairman (Mr. Wetangula): I will give you the opportunity after the Attorney-General. Proceed, Mr. Wako!

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, I am precisely in agreement with what he is saying. I started by saying---

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, I have not given you the Floor!

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, you are harassing me! We want hon. Members to understand why these things are like this.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Anyona, if you listen to me, you will not quarrel at all. I have told you that hon. Muite moved his amendment in relation to the remaining clauses. The Attorney-General is responding to all of them, after which I will give you an opportunity to comment on any one of them if you wish, after the Attorney-General has finished. I do not know why you are labouring under this delusion of harassment.

Mr. Anyona: Mr. Temporary Deputy Chairman, Sir, why should I comment after the Attorney-General has finished? What kind of logic is that? We are supposed to contribute, then he responds to what we are saying.

Mr. Temporary Deputy Chairman, Sir, please I want to make two points. I was merely laying the foundation by saying that, indeed, we have changed the provisions from the OCPD to the OCS. I was then going on to say what the Attorney-General has now correctly said. That, in fact, we have taken away the powers from DOs, chiefs, and assistant chiefs from stopping meetings. On that basis, therefore, I was going to agree with what the Attorney-General has said now; that no DO, chief or assistant chief should stop a meeting. They have no

powers under the amendments that we have proposed. That was the purpose of my contribution.

Raila: Mr. Temporary Deputy Chairman, Sir, I want to talk about hon. Muite's amendment, particularly Section 8 that deals with the Kenya Broadcasting Corporation Act. Whereas I support the amendment, I would go with the words: "That the Board shall ensure that each registered political party", without discriminating and saying, "parliamentary political parties". This is because when Parliament is dissolved, all parties are no-longer Parliamentary parties. The purpose of the elections---

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Raila if you looked at part "k" you would not be debating part "j".

Raila: Mr. Temporary Deputy Chairman, Sir, what I am talking of is in the amendments.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Muite has moved an amendment on part "j" and "k". What you are talking about in part "j" has been taken care of in "k". I, therefore, do not see what you are talking about.

Raila: Mr. Temporary Deputy Chairman, Sir, I am talking about all the registered political parties in both cases. There should be no need for discrimination either in part "j" or "k". That should apply to all registered political parties.

The Temporary Deputy Chairman (Mr. Wetangula): So, are you opposing that amendment?

Raila: Mr. Temporary Deputy Chairman, Sir, I am persuading him to withdraw the word: "Parliamentary".

Mr. Otieno: Mr. Temporary Deputy Speaker, Sir, the way we have taken the three amendments is even confusing. We should have disposed off this amendments one by one. If we delete subsection 8, then we will automatically have nullified any need for issuing a notification for a meeting. This is because that is the subsection that authorises the regulating officers to stop a meeting, that has not been convened in accordance with the provisions we have made. So, deletion automatically means that you do away with whatever provision we had made. So, it cannot be deleted. It is not the way hon. Muite explained it. The effect of it, is such that notification and so on is nullified. That is what makes it possible for an officer to stop a meeting convened, contrary to subsection 2 or 6.

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

Mr. Farah: Since we are coming more or less to the end of this Bill, I need a clarification from the Attorney-General as to when this Bill will come into force.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Farah, a point of order arises when the Member on the Floor breaches any of our Standing Orders. You cannot stand on a point of order and seek clarification. Under what Standing Order are you seeking clarification then?

Mr. Farah: Mr. Temporary Deputy Chairman Sir, we are concluding debate on this Bill and after the Attorney-General has responded then you are now going to put the question.

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

Mr. Farah: This Bill does not have a commencement date and yet we are coming to the end of it. So, we want the Attorney-General to give an undertaking. I am saying this because I have in my hand a Bill that was passed in 1974 and up to now it has not yet become law.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Farah, you ought to bring that up after we have moved to the Third Reading Stage because that is the stage where short commentaries are normally made. You have been here long enough to know that. Carry on, Mr. Attorney-General.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I can allay my friend hon. Farah's fears by assuring him that I am going to comment on that during the Third Reading as you said and not now. So, just be at rest. Be peaceful; be calm.

Mr. Temporary Deputy Chairman, Sir, so I am opposed to the proposed amendments to delete sub-clause 8. I am also opposed to the amendments to the Societies Act on the ground that if they go through, then it means that political parties really have no law to govern them. There is no registration of political parties and we need to have a law relating to political parties. I do remember when hon. Muite did contribute quite well during the debate on this Act, he did quote some legislations relating to political parties in Tanzania and in other countries and how they have dealt with these issues. IPPG did recommend that we must in the long term have a law relating to political parties. It may very well be that at that time we shall say that all the registration of political parties or whatever it is, should go to the Electoral Commission. But we do not have it now. So, it would be dangerous to exempt political parties from the Societies Act until we have put in place that other legislation.

Mr. Temporary Deputy Chairman, Sir, so I am opposed to the proposed amendment to Section 8. Also on the Kenya Broadcasting Corporation, I think it has been adequately dealt with in the proposed amendments which

are clearly set out in page 900. I have adequately dealt with that issue. The Kenya Broadcasting Corporation now is bound by statutes to allocate free air time to registered political parties participating in elections and that they will do this in consultations with the Electoral Commission. The Electoral Commission is duty bound to set up a liaison Committee between it and all the political parties participating in the elections and arising out of those consultations which will involve the political parties themselves which are participating in the elections, the allocation of free air time will be done. It is too much of a detail for it to be included in a legislation of this nature, and, therefore, I am opposed to the proposed amendment because it is adequately catered for under the proposed amendments.

The Temporary Deputy Chairman (Mr. Wetangula): I will now put the Question on each of the three items separately.

First Schedule

The National Assembly and Presidential Elections Act

*(Question, that the words to be inserted,
be inserted put and agreed to)*

The Public Order Act

*(Question, that the words to be left out,
be left out put and negated)*

The Societies Act

*(Question, that the words to be
inserted put and negated)*

The Kenya Broadcasting Corporation Act

*(Question, that the words to be inserted,
be inserted put and agreed to)*

The Temporary Deputy Chairman (Mr. Wetangula): The off-shot of that is that the proposed amendments by hon. Paul Muite have gone through only in relation to the National Assembly and Presidential Elections Act as amended by himself and agreed upon by the Attorney-General.

*(Question, that the new First Schedule as amended
and further amended put and agreed to)*

Second Schedule

The Attorney-General (Mr. Wako); Mr. Temporary Deputy Chairman, Sir, I propose that the Second Schedule be read a second time.

The Second Schedule is about the code of conduct for members and staff of the Electoral Commission, as was explained during the Second Reading of the entire Bill and I move that it be read a Second Time.

SECOND SCHEDULE

(s.3B)

CODE OF CONDUCT FOR MEMBERS AND STAFF OF THE ELECTORAL COMMISSION

Impartiality and Independence of Members

1.(1)Every member of the Commission shall serve impartially and independently and perform the functions of a member in good faith and without fear, favour or prejudice, and without influence from -

- (a) the Government; or

- (b) any public officer; or
- (c) any political party; or
- (d) any candidate participating in an election; or
- (e) any other person or authority.

(2)Every member of the Electoral Commission shall take or make and subscribe to an oath or affirmation in the following form prescribed in this Schedule.

OATH OF OFFICE/SOLEMN AFFIRMATION OF A MEMBER OF THE ELECTORAL COMMISSION

I, being appointed a member of the Electoral Commission of Kenya, do solemnly swear/do solemnly and sincerely declare and affirm that I will faithfully, fully, impartially and to the best of my ability discharge the trust and perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favour, bias, affection, ill-will or prejudice and to the end that in the exercise of the functions and powers of such member, I shall not be influenced by any political party, religious society or other organization.

(So help me God.)

.....
Member

.....
Chief Justice

2.(1) No member of the Commission shall, during tenure of office, be eligible for appointment or nomination to any political office.

(2) No member of the Commission may-

- (a)whether directly or indirectly, in any manner support or oppose any party or candidate participating in an election, or any of the issues in contention between parties or candidates;
- (b)by his or her membership, association, statement, conduct or in any other manner place in jeopardy the perceived independence of the member, or in any other manner harm the credibility, impartiality, independence or integrity of the Commission;
- (c)make private use of or profit from any confidential information gained as a result of being a member of the Commission;
- (d)divulge any information to any third party save in the course of any official duty.

Disclosure of Conflicting Interests

3.If a member is directly or indirectly interested in any contract, proposed contract or other

matter before the Commission and is present at a meeting of the Commission at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

4. This Code shall apply with necessary modifications to the staff of the Commission.

5. Any breach of the Code by a member or officer of the Commission shall be treated as misbehaviour for a member and gross misconduct for an officer.

(Question of the new Schedule proposed)

(The new Schedule read the first time)

(Question, that the new Schedule to be read a Second Time, proposed)

(Question, that the new Schedule to be read a Second Time, put and agreed to)

(The new Schedule was read a Second Time)

(Question, that the new Schedule be added to the Bill, put and agreed to)

Third Schedule

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I propose that the Third Schedule be read a Second Time.

The Third Schedule is about the proceedings of the Electoral Commission as was explained when I was moving the Third Reading of the entire Bill.

(Question proposed)

THIRD SCHEDULE

(s.3B)

PROCEEDINGS OF THE ELECTORAL COMMISSION

1. The Commission shall meet as often as may be necessary for the despatch of its business but there will be at least four meetings of the Commission in any financial year.
2. A meeting of the Commission shall be held on such date and at such time as the Commission shall decide.
3. The chairman shall, on the application of at least seven members, convene a special meeting of the Commission.
4. Unless the majority of the total membership of the Commission otherwise agree, at least fourteen days' written notice of every meeting of the Commission shall be given to every member of the Commission.
5. The quorum for the conduct of business at a meeting of the Commission shall be the majority of all the members of the Commission.

6. The chairman shall preside at every meeting of the Commission at which he is present and in the absence of the chairman at a meeting, the vice-chairman shall preside and in the absence of both the chairman and the vice-chairman the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.
7. Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by concurrence of a majority of all the members.
8. Subject to paragraph 5, no proceedings of the Commission shall be invalid by reason only of a vacancy among the members thereof.
- 9(1) The Commission shall designate one of its officers to be the secretary to the Commission.
- (2) The Commission may establish committees of its members for any purpose including a general purposes committee and a committee for liaison with political parties.
- (3) The committee for liaison with political parties shall be known as the Parties Liaison Committee and shall be established whenever an election is to be held, either at a general election or at any other time and shall consist of the designated members of the Commission and the representatives of every political party with one or more candidates validly nominated for the election; and the Commission shall consult with the committee on all matters relating to the election.
10. Unless otherwise provided by or under any law, all instruments made by and decisions of the Commission shall be signified under the hand of the chairman and the secretary.
11. The Commission shall cause minutes of all proceedings of meetings of the Commission to be entered in books for that purpose.
12. Except as provided by this Schedule, the Commission may regulate its own proceedings.

(Question of the new Schedule proposed)

(The new Schedule read the First Time)

(Question, that the new Schedule to be read a Second Time, put and agreed to)

(The new Schedule was read a Second Time)

(Question, that the new Schedule be added to the Bill put and agreed to)

Mr. Obure: Mr. Temporary Deputy Chairman, Sir, I beg to move an amendment that Clause 9 (2) of the Third Schedule which reads as follows:-

"The Commission may establish a Committee of its members for any purpose including a General Purpose Committee and a committee for liaising with political parties."

So, I want to move an amendment that after the word "and", we should insert the words "shall establish".

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Attorney-General, you do not oppose that. Do you?

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I just want to go on record that I do support that amendment.

(Question proposed)

(Third Schedule as amended and further amended agreed to)

Fourth Schedule

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move that the following Schedule be added to the Bill.

FOURTH SCHEDULE (s.34)

ELECTORAL CODE OF CONDUCT

1. (1) Subject to paragraph 6, this code shall be subscribed to by -

(a) every political party participating in the election of a President, a member of the National Assembly, and a member of a local authority; and

(b) every candidate nominated, as a condition of the candidate's respective rights to be so nominated.

(2) This code shall, in so far as it is applicable, bind the Government and every political party, its leader and every office-bearer, member, supporter and every candidate nominated under the electoral laws for any election.

2. In this code unless the context otherwise requires-

"electoral area" means a constituency under this Act or an electoral area under the Local Government Act and defined in the Local Government Election Rules.

"electoral court" means the High Court under this Act or, as the case may be, the Resident Magistrate's Court under the Local Government Act.

"electoral laws" means the Constitution, the National Assembly and Presidential Elections Act and the Local Government Act and subsidiary legislation thereunder as they relate to the Presidential, Parliamentary and local government elections.

3. The object of this Code is to promote conditions conducive to the conduct of free and fair elections and a climate of tolerance, in which political activity may take place without fear of coercion, intimidation or reprisals.

4. All registered political parties and other persons bound by this Code shall endeavour to promote the object of the code to enable free political campaigning and open public debate to take place in all parts of Kenya during any election period.

5. Registered political parties and candidates do, by subscribing to this Code, further commit themselves -

(a) to give wide publicity to this Code;

(b) to promote voter education campaigns which may be conducted in concert with the Electoral Commission;

(c) to condemn, avoid and take steps to prevent violence and intimidation;

(d) to instruct their candidates, office bearers, members and supporters of their

obligations under this Code; and

(e)generally, to affirm the rights of all participants in an election -

(i)to express divergent political opinions;

(ii)to debate and contest the policies and programmes of other parties;

(iii)to canvass freely for membership and support from voters;

(iv)subject to the Public Order Act, to hold public meetings;

(v)to distribute non-offensive electoral literature and campaign materials;

(vi)to publish and distribute non-offensive notices and advertisements;

(vii)to erect non-offensive banners, placards and posters;

(viii)to promote free electoral campaigns by all lawful means; and

(ix)to co-operate with the Electoral Commission and the relevant Government
and other authorities in the investigation
of issues and allegations arising during
the election period.

6.All those bound by this code shall, throughout any election period, have the duty -

(a)to publicly and repeatedly condemn violence and intimidation, and to avoid the use
of language or any kind of action which may lead to
violence or intimidation, whether to demonstrate party
strength, gain any kind of advantage or for any other
reason.

(b)to refrain from any action involving violence or intimidation;

(c)to ensure that no arms or weapons of any kind are carried or displayed at political
meetings or in the course of any march, demonstration or
other event of a political nature;

(d)to refrain from publishing or repeating false, defamatory or inflammatory allegations
concerning any person or party connected with the election;

(e)subject to the Public Order Act, to co-operate and liaise in good faith with other
parties to avoid, in so far as possible, arrangements
involving public meetings, demonstrations, rallies or
marches taking place at the same time and venue as similar
political events organised by other parties;

(f)to do nothing to impede the right of any party, through its candidates, canvassers and
representatives, to have reasonable access to voters for the
purposes of conducting voter education, fund raising,
canvassing membership and soliciting support;

(g)to avoid plagiarising the symbols, colours or acronyms of other parties; and to
discourage and, prevent the removal, disfigurement or
destruction of political campaign materials of any party;

- (h) to refrain from offering any inducement or reward to any person in consideration of such person either joining or not joining any party; attending or not attending any political event; voting or not voting (either at all, or in any particular manner); or accepting, refusing or withdrawing such person's nomination as a candidate in the election;
- (i) to refrain from any attempt to abuse a position of power, privilege or influence, including parental, patriarchal or traditional authority, for political purposes, including any offer of reward or threat of penalty;
- (j) to avoid any discrimination based on age, race, tribe, place of origin or residence or other local connexion, political opinions, colour, creed or sex in connection with the election and political activity;
- (k) in relation to the Electoral Commission-
- (i) to acknowledge the Commission's authority in the conduct of the election;
- (ii) to ensure the attendance and participation of representatives at meetings of any parties' liaison committee and other forums convened by or on behalf of the Electoral Commission;
- (iii) to implement the orders and directions of the Electoral Commission;
- (iv) to facilitate the Commission's right of access through official observers and other representatives to all public political meetings or other electoral activities;
- (v) to co-operate in the official investigation of issues and allegations arising during any election period;
- (vi) to take all reasonable steps to ensure the safety of observers and officers of the Electoral Commission from exposure to insult, hazard or threat in the course of their official duties; and
- (vii) to establish and maintain effective lines of communication with the Electoral Commission.
- (l) to reassure voters with regard to the secrecy and integrity of the ballot, and furthermore, to reaffirm the provisions of section 25 of this Act to the effect that no one should know how any other person has voted;
- (m) to take reasonable steps to discipline and restrain their party office-bearers, employees, candidates, members and supporters who-
- (i) infringe this Code;
- (ii) engage in activities of commission or omission which amount to offences

under the electoral laws or otherwise fail to observe this Code;

(iii) contravene or fail to comply with any provision of the electoral laws.

(n) without prejudice to the right to present a petition to an election court, to accept the final outcome of the election and the Commission's declaration and certification of the results thereof.

7. The registered political parties shall execute this Code of Conduct through the hand of their respective authorised leaders to signify their acceptance to be bound by the provisions of this code and as their committal to strive to ensure their members and supporters abide by the code at all stages of the elections for President, the National Assembly and local authorities.

8. Where, in the opinion of the Commission, any political party participating in any election or the leader or any office-bearer, member or supporter of such political party or any candidate at any election, in any way infringes any provisions of this Code, the Commission may-

(a) in the case of any political party and subject to subparagraph (b) also in the case of the leader or any office bearer, member or supporter of such political party or candidate impose upon that party one or more of the following penalties or sanctions of which any or all may be suspended on specific conditions:

(i) a formal warning;

(ii) a fine determined by the Commission;

(iii) notwithstanding the provisions of any other law, an order prohibiting such political party, whether permanently or for a specified period, from utilising any public media time, through the television or radio broadcasting services of such media as have been or may be allocated to the political party for electoral purposes;

(iv) an order prohibiting the political party-

(aa) from holding particular public meetings, demonstrations or marches, or any kind of such meetings, demonstrations or marches;

(bb) from entering any specified electoral area for purposes of canvassing for membership, or for any other electoral purpose;

(cc) from erecting placards or banners, or from publishing and distributing campaign literature;

(dd) from publishing or distributing campaign literature and electoral advertising;

or limiting the rights of the political party to do so and such prohibition or limitation shall be notified to the relevant regulating officers under the Public Order Act in the affected places or electoral areas for purposes of that Act.

- (b) in the case of the leader or candidate or any office-bearer, member or supporter of such political party impose any one or more of the penalties or sanctions referred to in sub-paragraph (a) (i) or (ii) of this paragraph.
- (9) Without prejudice to the provisions of paragraph 8, the Commission may either of its own motion or in consequence of any report made to it, institute proceedings in the High Court in its unlimited original civil jurisdiction as may be appropriate in the case of any alleged infringement of the Code by a political party or by the leader or any office-bearer, member or supporter of the political party or any candidate and where such Court finds the infringement of the provisions of this Code-
- (a) in the case of a political party, any act or omission involving violence or intimidation or a gross or systematic violation of the rights of any political party, candidate or voter, such Court may in addition to or in substitution for any other penalty or sanction specified in sub-paragraph (a) of paragraph 8 make an order cancelling the right of such party to participate in the election concerned; or
- (b) in the case of the leader or any office bearer, member or supporter of such political party or of any candidate, that any act or omission involving violence or intimidation or gross or systematic violation of the rights of any political party candidate or voter, such Court may in addition to or in substitution for any other penalty or sanction specified in paragraph 8(a) (i) and (ii) make an order disqualifying, in the case of a person who is a candidate, such person from being a candidate or deleting the name of such candidate from the list or lists of candidates concerned.
10. There shall be no appeal from an order of the Commission imposing a penalty or sanction under paragraph 8 (a) but a party aggrieved by the decision of the Commission shall have direct access to the High Court under Order 53 of the Civil Procedure Rules.
11. In making its decision regarding appropriate penalties or sanctions, the Commission or, as the case may be, the High Court shall have regard to any other legal consequences that may result from civil or criminal proceedings instituted by reason of the same occurrence.
12. The High Court shall ensure that any proceedings initiated under paragraph 9 are dealt with in priority to all other matters brought before it, and that the decision of that Court is given before the date of the election concerned.
13. The procedure of the High Court in cases falling within the provisions of this Code shall be in accordance with such Rules of Procedure as shall from time to time be promulgated by the Chief Justice in consultation with the Commission.

The Attorney-General (Mr. Wako): The Fourth Schedule is about the Electoral Code of Conduct, as I explained when I was moving the Second Reading of the Statute Law (Repeals and Miscellaneous Amendments) Bill.

(Question of the new Schedule proposed)

(New Schedule read the First Time)

(Question, that the new Schedule be read a Second Time, proposed)

Mr. Muite: Mr. Chairman, Sir, I would like to place it on the permanent records of this House that although the spirit and intention behind the Electoral Code of conduct cannot be disputed, the powers that have been given here to the Electoral Commission are far too draconian and history will bear testimony that many political parties are going to cry out if these powers are abused as I suspect they are going to be abused. These are sort of powers that should only

be given to a truly independent electoral commission whose integrity and standing is beyond question. I feel very unhappy that these powers have been given to the current Electoral Commission.

Mr. Anyona: Mr. Chairman, Sir, I have a lot of difficulty in understanding what an impartial Electoral Commission is, both in terms of what is written in the Constitution and also in terms of what you might regard as ethics. Would it not help this House if we pointed out whether the weakness is in the provisions of the Constitution, or on the part of the individuals who constitute the Electoral Commission or the practice of the Electoral Commission, so that we can do the right thing while we are here instead of playing around with words. I have never got to understand what exactly we are saying and if I do not understand, I wonder how many Kenyans do! Would I be in order--- I am not challenging him. I just want to learn. Would the hon. Muite please help us understand what an impartial Electoral Commission is? I will do anything to make sure we have one.

Hon. Members: Angels!

(Mr. Muite stood up in his place)

The Temporary Deputy Chairman (Mr. Wetangula): Order, hon. Muite! Unfortunately there is no provision under which I can allow you to answer hon. Anyona, under the Standing Orders.

(Question, that the new schedule be read a Second Time, put and agreed to)

(The new schedule was read a Second Time)

(Question, that the new schedule be added to the Bill, put and agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee do report to the House its consideration of The Statute Law (Repeals and Miscellaneous Amendments) Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Speaker in the Chair]

CONSIDERATION OF REPORT AND THIRD READING

THE STATUTE LAW (REPEALS AND MISCELLANEOUS AMENDMENTS) BILL

Mr. Wetangula: Mr. Speaker, Sir, I beg to report that the Committee of the whole House has considered The Statute Law (Repeals and Amendment) Bill and approved the same with major amendments.

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

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

(Question proposed)

(Question put and agreed to)

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to move that The Statute Law (Repeals and Amendments) Bill be now read a Third Time.

(Question proposed)

Mr. Shikuku: Ahsante sana Bw. Spika. Huu Mswada tumeupitisha sasa na ningependa iwe onyo kwa utawala wa mikoa, yaani PC, DC, DO, Chief, Assistant Chief na wengine. Waingereza wanasema that "the writing is on the wall", yaani maandishi sasa yako kwenye ukuta. Yafaa wafanye juhudi waokoke, na wazaliwe tena ndani ya Yesu. Wajisafishe ile dhuluma yote ambayo wamewafanyia wananchi; kuwanyanyasa usiku na mchana kwamba "fanya hii, fanya lile," usinywe hii, usinywe ile. Sasa hayo yote yamekwisha.

Bw. Spika, sasa mtu atakunywa na kulewa vile apendevyo.

An hon. Member: Hata *chang'aa!*

Mr. Shikuku: Bora awe ni mtu mzima wa maika 18 au zaidi. Atakunywa vile atakavyo na akitaka kufa kwa sababu ya kunywa, afe ili tuhudurie matanga yake. Tabia ya chifu kuingia katika nyumba ya mtu, mchana au usiku, na kuuliza kama kuna *chang'aa*, *kangara na busaa* lazima ikome. Sasa akithubutu, na Mswada huu unapitishwa na kuwa sheria, atajikuta kortini. Bw. Mkuu wa Sheria ambaye ni Wakili Mkuu wa Serikali, hatamtetea kwa sababu yeye ndiye ameuleta Mswada huu na tumeupitisha. Hawezi kwenda kuwatetea wale wanyanyasaji wa Serikali wanaowanyanyasa wananchi. Hayo mambo yamekwisha.

Askari wa utawala walikuwa wakiingia kwenye nyumba za watu, hawakuwa na kazi nyingine. Kazi ambayo inafanywa vizuri ni ile ya traffic, ambayo hatujangalia. Tutaingalia siku nyingine. Ukiwaita askari tawala na kuwaambia kwamba mtu amepigwa hapa, watakuambia kwamba hakuna petroli. Lakini ukiwaambia kwamba kuna *chang'aa* mahali, petroli na Land Rover itapatikana, na pia bunduki watabeba. Sasa hiyo kazi ya kusaka wapikaji na wanywaji *chang'aa* imekwisha. Watu watakunywa *chang'aa* hadi kufa. Hakuna ruhusa---

(Laughter)

Wabunge wengine wanacheka. Hakuna ruhusa kwa chifu, chifu naibu chifu hata askari tawala kuingia katika nyumba za watu bila search warrant ambayo imepigwa muhuri na hakimu. Ile tabia ya kuwasumbua wananchi wakiwa wamelala usiku, wanapiga mlango na kumlika tochi--- Mtu anaweza kuwa anazungumza na bibi yake na kwa ghafla mazungumzo yao yanakwisha, kwa sababu polisi wameingia. Hakuna hiyo sasa!

Bw. Spika, mambo ya chifu au DO kumnyanganya Mbunge kama vile wamekuwa wakiwanyanganya vinasau sasa yamekwisha. Maofisa wa Serikali, PC, DC, DO na chifu, wote ni wananchi wa Kenya. Tunawafahamisha ni kwamba, tukipitisha Mswada huu, hii itakuwa sheria. Yafaa wageuze nia zao na ikiwezekana, waende kanisani waungame dhambi ambazo wamewafanyia wananchi. Kuanzia leo, Serikali, Ofisi ya Rais--- Notoa shukrani kwa taarifa iliyotolewa na Rais kuhusu uhuru wa kufanya mikutano. Mimi pia nitaenda kanisani kumshukuru Mungu. Watu wa Upinzani wameona taabu ya kutosha tangu mwaka wa 1992. Tangu nichaguliwe na watu wa Butere, ni juzi tu ambapo nilifanya mkutano moja. Sasa sisi tutafanya mikutano na kuwahutubia wananchi.

Bw. Spika, ninataka IPPG ijulikane. Wakati umefika ambapo, baada ya kupitisha Mswada huu, yafaa tuende tuwaambie wananchi kwamba tumeupitisha Mswada huu. Wabunge sote wa IPPG, tuende tufanye mikutano Mombasa, Kaskazini, Nakuru, Nairobi na kila mahali, ili tuwaambie wananchi yale ambayo tumewatendea; sote pamoja.

(Applause)

Ninajua kwamba Mswada huu umeletwa kwa damu. Zaidi ya watu 14 walikufa. Wengine wamesahau kwa sababu watoto wao hawakufa. Lakini wale ambao watoto wao walikufa kutokana na hali ya kutoelewana kati ya Upinzani na Serikali, hawawezi kusahau. Tulipoteza maisha ya watu 15, tukiongeza yule aliyeuawa tarehe 6.11.91, Bw. Makhumba. Sisi tulio hapa tunaona kama huu ni mchezo. Mswada huu haukuja bure, damu ya wananchi 15 ilimwagika, na hawataonekana tena. Mfuasi wa KANU awe katika KANU na wa Upinzani awe katika Upinzani. Lakini tujue kwamba tuna wajibu wa kuleta amani katika Kenya hii. Kama kuna mtu ambaye hataki amani, tunataka kwenda kuonana naye uwanjani.

Mr. Speaker: Are you opening the debate, Mr. Shikuku.

Mr. Shikuku: Ninazungumza kuhusu hii sheria sasa.

Bw. Spika, ninauunga mkono Mswada huu, na wale wanaohusika waamke wasije wakaone cha mtema kuni.

Mr. Speaker: Prof. Saitoti, if you want to make a comment on the Bill, then do it very briefly.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Speaker, Sir, I also want to give my whole hearty support to this Bill. I would also like to assure this House that the Government will implement the package of this Bill to the letter and spirit.

(Applause)

Mr. Speaker, Sir, also I would like to say that, it should go down in record that this package which is a substantial Bill that is to promulgated into law, is as a result of co-operation between the Opposition and the Government side and we have all given our consent to this one wholeheartedly in the total belief that the implementation of this Bill will go along way to sensitise our society to get rid of quite a number of obsolete Acts.

Mr. Speaker, Sir, secondly, I believe that this one will give more freedom to our people as we move on to the 21st Century. Equally, it does place heavy responsibility on us leaders and all other politicians. There is now an opportunity for all of us to demonstrate our political maturity. That is the most important thing. With the gained freedom and liberty, we hope that our own management will be the management of responsible leadership.

Mr. Speaker, Sir, once again, I beg to support.

Mr. Anyona: Mr. Speaker, Sir, I think this is a historic day in the history of this Parliament and this Republic. This is because this National Assembly has agreed to translate, into law, some of the fundamental reforms that were necessary to set this nation on a course to future prosperity.

Mr. Speaker, Sir, I do not think that it will be right for any of us, or anybody anywhere else, to take special credit for what has happened today. We can only be thankful to our people and the Almighty God, that we have been able to do this today. I say this because I believe that the struggle for freedom, democracy and for justice did not start yesterday, nor did it start with the IPPG, it started from the very beginning when we waged the struggle for Independence. These have been jobs that had remained undone, there are many jobs that still remain undone. We merely set the ball rolling, as we said. We have merely commissioned the train of reforms. I am saying this particularly, because there are those of our brothers, I am very glad that there are very few sisters among them, who still insist that this National Assembly does not have the mandate and the authority to run the affairs of this nation, and yet they claim to believe in constitutionalism, democracy and freedom. I cannot believe them for one moment. This is not a day to apportion blame; it is a day for Kenyans to close ranks.

(Applause)

Mr. Speaker: Hon. Anyona, be very brief. As you can see, there are several interests and I wish to recognise a few.

Mr. Anyona: Mr. Speaker, Sir, the importance of what has happened today is not even the fact that we have so smoothly passed this Bill, but that we have proved to ourselves, to the country and to the world that, we are serious and committed to the process of reforms. From this day, and in this manner, we are going to pass the next Bill, the next Bill and the next Bill until this country is ready for free, fair and peaceful elections.

Mr. Speaker, Sir, I beg to support.

The Assistant Minister for Transport and Communications (Mr. Saina): Thank you, Mr. Speaker, Sir, for giving me this opportunity. When Africa and other countries in the developing world are facing a crisis, in Kenya, we are making history. We are making history in the sense that, we have unanimously agreed to effect these constitutional changes during this time. If our forefathers, who fought for Uhuru, were to wake up today and witness the history in the making, they would be grateful. So, I thank this joint effort from both sides of the House. Thank you very much, and I wish you good luck in the general elections.

Mr. Ndicho: Mr. Speaker, Sir, I am one of the happiest men in Kenya because since 1992, I have been arrested 10 times, jailed once, and detained in police stations seven times. I am very happy that this is now history and the police and the chief in Thika, who have been harassing me, will not do it again.

I am also proud that it is during my tenure as a Member of Parliament that these changes have been effected and that Kenyans are going to enjoy the fruits of these changes. I would also like to point out that what the IPPG did is commendable at this stage, but we should understand that the IPPG is a child of the NCEC. I have never seen a child who abuses his parents after he matures. Those hon. Members who are making such derogatory remarks against the NCEC should know that they are like a child who abuses his parents.

Mr. Speaker, Sir, with those few remarks, I am very happy. Thank you.

(Applause)

Mr. Sambu: Bw. Spika, ninawashukuru sana waheshimiwa Wabunge wa KANU na Upinzani kwa kushirikiana ili kuondoa janga hili ambalo lingetukumba kama mambo haya hayangerekebishwa. Ninaomba Serikali iwachukue maofisa wa utawala, machifu na manaibu wao katika warsha ili wafahamu kwamba mambo yamebadilika kwa sababu wataendelea kusema kwamba sheria bado haijabadilishwa.

Kwa hayo machache, Bw. Spika, ninaunga mkono.

Mr. Achieng'-Onoko: Mr. Speaker, Sir, I take this opportunity to thank my colleagues and the people we have worked with throughout this time. Today's historic achievement will go down in our memories as a great achievement. Let us not take pride in this one achievement because we have so many other things to do for Kenya. Those who claim that the NCEC has been forgotten are wrong. The NCEC should not claim to be the father because all of us are mothers and fathers of the achievement.

(Applause)

Mr. Speaker, Sir, one thing that has been bothering me all along in my constituency is chang'aa, but a solution has been found today. Well, we can say, drink it reasonably if you wish to live. From now onwards, I know that we are going to enjoy ourselves freely and drink freely. The first time I was invited by a Minister of this House for lunch, the IPPG met for the first time. I remember telling him that time had come for us to stop looking over our shoulders to see whether an officer in the special branch was coming to witness the meeting between KANU and FORD(K). We have created a workable and conducive situation for Kenya to take off properly in the construction and management of our affairs.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Order! Order, hon. Members! I think we have all expressed our gratitude. I will ask the Attorney-General--

Mr. Muite: Some of us have not expressed our gratitude.

Mr. Speaker: Order! Order, Mr. Muite! You should be the last to complain! If you complain, Mr. Speaker shall take judicial notice. Proceed, Mr. Attorney-General.

(Applause)

The Attorney-General (Mr. Wako): Mr. Speaker, Sir--

Mr. Shikuku: Jambo la nidhamu, Bw. Spika. Nimewahi kuona mara nyingi wakati Bw. Spika amesimama, waheshimiwa Wabunge wengine wanazungumza huko wameketi. Ingefaa umkumbushe mhe. Muite asithubutu kufanya hivyo tena!

(Laughter)

Mr. Speaker: Order! Ninamkumbusha mhe. Muite kwamba akithubutu tena, nitamwonyesha mlango ule! Endelea, Bw. Mkuu wa Sheria.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, this is a very historic moment in this House when this House is passing the most comprehensive legislation since Independence. First of all, I want to assure the House that I will move with due speed to get the presidential assent to this Bill and, thereafter, publish it. I can also assure the hon. Member for Lagdera that this Act will become effective as soon as it is published. We shall move with due speed on that.

The only thing I would want to state is that the spirit of reforms which pervaded both sides of the House in meeting, discussing and agreeing on these amendments, and in discussing this particular Bill, continues beyond this Bill. It is not so much the IPPG or the NCEC; it is very much to do with us Kenyans thinking about the future of our country. In thinking about the future of our country, we are talking about the reform process. By the passage of this Bill, the reform process is in on course and all of us should join hands to ensure that we continue with this reform process until that day that our Constitution is reviewed entirely.

By passing of this Bill, we will ensure that there is free and fair elections. We will also ensure that Kenyans' enjoyment of their human rights is enhanced. Further, we are going to ensure that as Kenyans, we will continue to put the interest of Kenya first and our own personal interest second.

Mr. Speaker, Sir, I beg to reply.

(Question put and agreed to)

*(The Bill was accordingly read the
Third Time and passed)*

Mr. Speaker: Hon. Members, before we go to the next Order, I will ask the Vice-President and Minister for Planning and National Development to move the Motion which he gave notice of this morning.

MOTION

REVERSAL OF DECISION OF THE HOUSE

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Speaker, Sir, I beg to move the following Motion under Standing Order No.42:-

"THAT, this House rescinds the decision of the House of yesterday afternoon, to the question of the Mover of the Constitution of Kenya (Amendment) Bill, to be called upon to reply."

Mr. Speaker, Sir, I have been prompted to move this Motion because of the following considerations:-

Yesterday, immediately, the decision of the House was made, for the question of the Mover of the Constitution of Kenya (Amendment) Bill to be called upon to reply, which was carried by this House, we had consultations on both sides of the House and what transpired was that it was the feeling of the majority of the Members that quite a number of hon. Members wished to air their views on this Constitution of Kenya (Amendment) Bill for two reasons: First, that it is the only Constitutional (Amendment) Bill that this House will have been called upon to discuss and to vote on during the tenure of the Seventh Parliament. The second reason was that, indeed, this Constitutional (Amendment) Bill was an integral part of the IPPG package. Therefore, it must be seen that it has not been rushed, and that it was fully accepted in good faith by both sides of the House.

Mr. Speaker, Sir, on my part, as the leader of Government Business, I did give an undertaking to the hon. Members that the Government side has no intentions whatsoever, to go back on its total commitment to the IPPG package, including its total implementation. We also have no intention whatsoever, to give the wrong signals to our colleagues on the other side of the House who we know, have worked tirelessly in the spirit of co-operation with hon. Members from this side of the House, for the sake of making sure that we do have a package intended to avert chaos in this country and for the betterment of the Kenyan society. So, that was fundamental.

Mr. Speaker, Sir, I also wish to exonerate from blame hon. Ndzai who rose to ask for the Question to be put. I say this because on Tuesday, we did have a Sessional Committee meeting. This is the reason why I say that, maybe, there was a misunderstanding and we want to clear it once and for all. We do not want to place the blame on either side. But when we did meet on Tuesday, at the Sessional Committee, which is a Committee of this House mandated to work out the programme of this House, this is what was agreed on. I have a draft Minute here and you will have to excuse me because I will have to read it out. It is important that I do read it out. By so doing, hon. Members will understand the spirit in which this side of the House accepted the closure of the debate. It was not out of malice.

Draft Minute 54/97 of the Parliamentary Programme states as follows:

"The Sessional Committee considered and approved the Parliamentary Programme for the week commencing on Tuesday, 21st October, 1997 after long deliberations. The Committee was informed that a lot of goodwill was required by the Government and the Opposition side in order to ensure smooth passage of the Statute Law (Repeals and Miscellaneous Amendments) Bill, the Constitution of Kenya Review Commission Bill and the Constitution of Kenya (Amendment) Bill brokered by the IPPG.

Following protracted deliberations, the Committee resolved to give the debate on the Statute Law (Repeals and Miscellaneous Amendments) Bill priority and ensure its immediate passage. The Committee wished the Committee Stage of the Bill to be taken on Wednesday, 22nd October, 1997 but was informed that the Attorney-General had drafted further amendments and were yet to be submitted to Parliament. The Committee then recommended that should the additional amendments be passed over to the Clerk of the National Assembly before noon, a Supplementary Order Paper was to be prepared to provide for the passage of the final stage of the Bill on Wednesday afternoon. In the event of this not being possible, the House will continue with the debate on the Constitution of Kenya (Amendment) Bill to be followed by the debate on the Constitution of Kenya Review Commission Bill. The debate on the Constitution of Kenya (Amendment) Bill would be terminated at the end of that day's sitting. However, it was agreed that on the receipt of the amendments to the Statute Law (Repeals and Miscellaneous Amendments) Bill, late Wednesday, the final stage of the said Bill was to be taken on Thursday, 23rd October, 1997. The Committee expressed its anxiety to

have the proposed legislation enacted into law as soon as possible with a view to giving the Government and also Members of Parliament adequate time to propagate the reform package to the public.

The Committee further recommended that the issue related to the Constitution of Kenya (Amendment) Bill had been widely discussed in the IPPG forum and also in the House. It would be appropriate to terminate debate on the Bill, latest by Thursday, 23rd October, 1997 and take vote in a division as per statutory requirements for the Second and Third Readings on Tuesday, 28th October and Wednesday, 29th October, 1997, respectively. The Committee was of the opinion that by taking a vote on this Bill, on Tuesday, 28th October, 1997, five days after the closure of the debate on the same, would give party Whips adequate time to marshal requisite majority required to pass amendments of the Constitution."

Mr. Speaker, Sir, those who attended the meeting were as follows:

The Hon. Prof. George Saitoti - Chairman

The Hon. Philip J.W. Masinde, MP

The Hon. Kipyator Nicholas Biwott, MP

The Hon. Joseph Kamotho, MP

The Hon. John K. Koech, MP

The Hon. Darius Mbela, MP

The Hon. Wilson Ndolo Ayah, MP

The Hon. Juma Boy, MP

The Hon. George M. Ndotto, MP

The Hon. George W. Nthenge, MP

The Hon. Dr. Mukhisa Kituyi, MP

The Hon. Joseph Martin Shikuku, MP

The Hon. Stephen Ndicho, MP

The Hon. Mwai Kibaki, MP

The Hon. Martha Karua, MP

Mr. Speaker, Sir, I have taken time to read out these names because I wanted to clear any speculation that the Government side moved quickly in order to take the other Members by surprise and cause a pre-mature closure of the debate. This was not the case at all. There was a misunderstanding and indeed, hon. Dr. Kituyi and I discussed it this morning and he told me that it had been agreed that yesterday, hopefully, a Supplementary Order Paper would have been supplied. That would have prescribed that the Statute Law (Repeals and Miscellaneous Amendments) Bill would have been the one to be taken first, and that today, the Constitution of Kenya (Amendment) Bill would be worked upon on that basis.

There was a misunderstanding and I want to make it clear that there was no mistake on both sides. There is no side whatsoever that wants to destroy the spirit of co-operation. Our spirit on this side remains intact. If, indeed, hon. Members want to discuss the Bill before we pass it, then let us discuss it exhaustively. We are ready here and we want to accommodate everybody in this House. The spirit of togetherness is what we need in order to pass this Bill.

Mr. Speaker, Sir, I beg to move.

Mr. Wamalwa: Mr. Speaker, Sir, I am glad to get the opportunity to second this Motion to re-open debate on the Constitution of Kenya (Amendment) Bill.

An amendment to the Constitution is a serious matter because the Constitution is the supreme law of the land, here in Kenya. Any amendment must be thought through thoroughly. It must be debated thoroughly and all the diverse shades of opinion be heard, so that, eventually, when we pass the amendment, we are sure beyond reasonable doubt that we are doing the right thing.

Mr. Speaker, Sir, democracy is all about the majority having their way, but it does not mean dictatorship of the majority. It has room and accommodation for the views of the minority. So, although it may appear that the House, by majority verdict, decided to end debate yesterday, the voices of the minority or the few who were opposed to the idea, have found accommodation in this new Motion. Debate will be re-opened and those views will now be heard.

The Constitution of Kenya (Amendment) Bill is part and parcel of the IPPG package. The IPPG package is probably the greatest thing that has happened to this country since Independence, only second to the achievement of Independence. I know what is contained in this package does not meet with 100 per cent approval of 100 per cent of the Members of this House. But I still maintain that it is a step in the right direction and what has not been done will be done next time.

Today, we stand on the threshold of the 21st century, I do believe that the agenda for the 21st century is going

to be greater freedom and more power for the individual. That is what we are talking about in these reforms; the right of an individual to move around his country freely; the power of the individual to choose a government of his choice and so on. These are momentous matters. I know that in the 21st century, the position of the individual, his rights and privileges and latitude of freedom are what will engage the minds of scholars and statesmen throughout the world.

Mr. Speaker, Sir, there is no doubt that not everybody has accepted the IPPG package gladly. There are some who have accepted it with a heavy heart. But the IPPG package has demonstrated to the whole country and the world that Kenyan legislators can come together on matters that are important to the nation and bury their partisan differences in order to do what is best for the Kenyan nation.

I would like to implore those on either side of the House who have not accepted this package that, as lacking in some respects as it is, nevertheless, it is the best thing that has ever happened now and it is a firm foundation upon which we can build in terms of more reforms in the future. The IPPG package also introduces, for the first time, the possibility of a government of national unity, should the situation require it. This possibility did not exist before and, I think it is something that must be welcomed. This Constitution of Kenya (Amendment) Bill should be debated thoroughly and those hon. Members who have not had a chance to speak on it should be afforded the opportunity to do so. I would also like to commend "the spirit of the IPPG" pervading the whole country today. Yesterday, I addressed a rally in Lurambi in Kakamega. I was very pleased to see the DO come to meet me, the chief come to salute the leaders who were there, and reassure us that they were only there for our security and not interfere with our rights to speak to our people. This is what we would like to see more often.

I would also like to add my voice to those who have congratulated His Excellency the President for assuring the nation that there will be no undue harassment of leaders in future and that these reforms shall be implemented in letter and spirit. I think this has done a lot to encourage people to realise that they are now entering the phase of an open society where ideas can be exchanged. The fact that we have changed our mind to re-open the debate just shows that this House is, indeed, an august House, a House of wise men, because the old adage goes that "a wise man changes his mind, only fools do not".

With those few words, Mr. Speaker, Sir, I beg to second.

Mr. Speaker: Order! I will propose the Question very quickly and then take the decision of the House so that we can go to the Business at hand.

(Question proposed, put and agreed to)

BILL

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

(The Attorney-General on 15.10.97)

*(Resumption of Debate interrupted
on 22.10.97)*

Mr. Speaker: Yesterday, hon. Osogo was on the Floor. The House will proceed with the debate on the Bill as if nothing happened! Proceed, Mr. Osogo.

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Speaker, Sir, I am glad that I have been enabled---

Mr. Speaker: Order! Order, Members! When the Chair says that nothing happened yesterday, it also means there was no loud consultation. So, everything reverts to order. Proceed!

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Speaker, Sir, I am glad that the House has enabled me to continue with my speech. I can assure hon. Members that I will not be very long. My advice to this House is that a Constitutional Amendments Bill has made people be brought from hospital beds in order to vote, both here and in the House of Commons. I remember, when we had a Constitutional Amendments Bill in this House and we ran short of the required number of Members of Parliament to vote, we brought our colleagues, like the late Omollo Agar, from hospital on a stretcher to vote in here. It has also happened in the House of Commons. We had also to urge one of us who had gone overseas on official duties to fly back in order to vote. So, this is an advice I am giving to my colleagues, particularly on this side of the House, who faltered a little yesterday by calling upon the Mover to reply.

I had advised that when the Mover replies and comes to the end of his speech, the Speaker has no alternative---, because he does not ask the question that "as many as are of the same opinion say 'aye'". He does not say that. They do not even read; even the clerk does not read. Immediately the speech is completed the Speaker directs Members to go to the voting lobby because he does not have any other alternative. So the Attorney-General could not have finished his speech. The Speaker kept quiet and we walked out. It was almost impossible. I had advised that we wait and marshal all voters to be present. In fact, we had lost even on this side of the House because some of us were already in the "bush", doing campaigns. We had not arranged to bring them back using even helicopters, so that they could vote. We had not mustered our colleagues on the other side who were party to the IPPG to help us pass the Constitutional Bill. Therefore, it was unfortunate that the hon. Ndzai, without any experience, stood up to call for the Mover to reply. He did this, despite the fact that I had given my considered opinion earlier, that we should not call for the Mover to reply. I had not known the Speaker will catch my eye.

Mr. Speaker: Order! Mr. Osogo, I think we have already sorted out that issue. There is no closure, now you are on the Floor, as if nothing has happened! So, can you now direct your sentiments to the Bill?

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Speaker, Sir, I think they needed the advice I had given earlier because the vote on this Bill is still to come. Unless we are prepared for that vote, we will actually be labouring for nothing here.

Mr. Speaker, Sir, yesterday, I had said a few things and I will not be long in my contribution today. We all know and we have been told the History of the NCEC. We were told by those who were party---

(Loud consultations)

Mr. Shikuku: Jambo la nidhamu, Bw. Spika. Ninajaribu kumsikia Mheshimiwa Osogo lakini siwezi. Inaonekana kwamba kuna mkutano katika upande ule mwingine. Unaweza kutusaidia?

Mr. Speaker: Order! Order! There will only be one meeting here, chaired by Mr. Speaker. Proceed, hon. Osogo!

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Speaker, Sir, the history of the NCEC was told to us by those who started it and are Members. It is the alliance of Opposition political parties which started the move that was eventually and unfortunately hijacked by those who were not elected by the people. Members of the Opposition parties who started the NCEC, some of whom we have spoken to, agreed that their efforts were being hijacked and led by people who think that they are more answerable to the Kenyan population than the elected Members. But we told them they cannot abdicate their duties; they were elected as Members of Parliament by *wananchi* and they should take their responsibilities right here. Some saw sense in that and agreed that we should talk. We talked and came to conclusions, which are now the subject of the debates that we are going on with.

When one Looks at the profiles of the people who are still insisting that they are the ones who matter in this country, one would doubt whether they really qualify to call themselves, what they are calling themselves. We do hope that in a few months' time, they might be here as elected Members and then we can see their capability in helping this country. But we know that insistence on mass action is tantamount to insistence on chaos. In Europe, before the World War I, there were people who were called anarchists. This term does not refer to a tribe; they were people who were agitating for war. They agitated until Hitler came out of them and caused the First World War.

We cannot say that the type of anarchists who are urging for mass action cannot cause war. We cannot be blind over that, because it has happened. Those of us who read History know very well that the anarchists in Europe at that time, and particularly those in Middle Europe, came up with Hitler as a leader who caused war. So, it is that type of thinking that made us come together, and I must express my thanks to *wananchi*. When *wananchi* learnt that elected Members of Parliament came together, they were told: "No, let us wait". I call these people the chaotic callers for mass action. Fortunately, the *wananchi* resisted the call and instead gave us a chance to do what we are doing. I would like to thank *wananchi* very much for having given us that chance. I would like to urge them not to listen to the NCEC until the completion of what we are doing. The doubt is that these Bills will be passed, but they may not be implemented. In fact, one very educated person called Wachira Maina is still misleading the public. He has written an article in one of our local newspapers saying that all the Bills we are talking about, including the one we are debating now, will be passed but the Minister in charge of constitutional affairs, who is the Attorney-General, will gazette that they will not be operative.

Mr. Speaker, Sir, for the life I have been in this House since Independence, I have never seen a Minister gazetting that an Act will not be operative when the President has signed it. This is stated in an article published in the *Sunday Nation*. I have never heard of that. I can see that hon. Members are being very inquisitive. The writer says in

part of his article:

" A Bill can become law yet fail to come into force. The reason for this is that the date of entry into force may be postponed. There is no magic to this. What it means is that the President may sign a law and then the Minister publishes a gazette notice that the law is not to come into force".

The writer might be a lawyer for what, probably, he is worth---

(Laughter)

I am not a lawyer myself, but that kind of thing has never happened. Immediately the President gives assent to a Bill passed by Parliament, it becomes law and it becomes operative. Hon. Farah was, in fact, raising a point here earlier on with the hon. Attorney-General that there is no indication as to when the Bill will become effective. If a Bill is to be effected on any day other than that on which the President gives assent, a clause is included to say that the Bill will start being operative on a particular day. There are also quite a number of Bills that have been passed in this House with such clauses embedded in the body of the Bills which state when the Bills will become effective. This means that the Minister responsible will be required to gazette when the Bills will become operative. But in the absence of this clause in any Bill, it becomes effective immediately the President gives assent. This information should reach this "clever" fellow who said this.

Mr. Speaker, Sir, I am glad to hear from the Leader of the official Opposition that when he held a meeting in Lurambi, all went well. We want it to be the way it happened in Lurambi. His Excellency the President has personally said that leaders should hold meetings freely, but those who do not want the President to succeed, will act differently. The Minister in charge of the Provincial Administration, the hon. Kalweo, must inform his officers that Members of Parliament with their party officials should be left alone to meet freely without harassment of any kind.

Mr. Speaker, Sir, the Leader of Government Business was forced to emphatically say here that the type of action that had taken place earlier on would not be repeated, but officers of the Provincial Administration do not listen to that. The Vice-President and Minister for Planning and National Development gave that promise in this House only to realise that a "small" DO and a "small" DC acted contrary to what had been said.

This makes me wonder whether we are in control or not. But I am made to believe that some of those civil servants outside there do not want this Government to succeed. So, they are doing these things without---

Mr. Mulusya: Mr. Speaker, Sir, I want to inform hon. Osogo that, indeed, what he is saying is true. There are some civil servants, especially DOs and DCs, who feel that they are in a special position to show disrespect to elected leaders, including Ministers. They even flout instructions given by the Vice-President, Professor George Saitoti in this House.

Mr. Speaker, Sir, I have a case in point where I issued a notice to the Kangunddo OCS to hold a meeting in Tala town on Sunday, 26th of this Month. He personally, on his initiative, called the DC Machakos to inform him of the scheduled meeting, and was told to inform me that I was to apply for a licence. When I called the OCS today, he told me that he does not know what to do because the DC has issued instructions that there must be an application for a licence for a public meeting. I am sure these are not instructions from the Government. They are the DC's personal instructions.

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Thank you very much for that piece of information. The employer of that DC said that Members of Parliament should be allowed to freely hold meetings and that appears in this morning's newspapers.

Mr. Speaker, Sir, I was surprised we are being told that the civil society matters a great deal as far as inputs into the IPPG package are concerned. Now that civil society has not been defined by those who have been mentioning it, though we have two honourable Members from the Opposition side who like talking about it.

Mr. Speaker, Sir, civil society, as far as I am concerned, are those who voted for us. Those are the civil society, and, therefore, they have throughout put some input in this Bill. Unless there are certain sections of the civil society who do not vote, and, therefore, are not eligible voters in this country.

*(Mr. Maundu and other hon. Members
consulted loudly)*

Mr. Speaker: Order! Order! Hon. Maundo and your group, you are entitled to stay here but consult quietly. Hon. Osogo is making very valid points. He is a senior Member of the House. Can you give him audience?

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Thank you, Mr. Speaker, Sir. Unless somebody defines for me what civil society is, I know members of the civil society are the voters in this country who brought us here to represent them. Mr. Speaker, Sir, before the launching of the

IPPG, we met religious leaders at Serena hotel. When a prominent religious leader stood up, and told those of us in KANU that the NCEC is a legal entity which must be recognised, we were taken by surprise. I was forced to ask: What legal entity does the NCEC have visa-vis a Parliament with elected Members and bestowed with a legal entity by the country's statutes? I am of the opinion that this is the kind of information these church leaders were giving to the NCEC. They were telling the NCEC that they had legal authority to challenge this Government and even have a parallel assembly. They have invited another party to another parallel assembly next week.

Mr. Speaker, Sir, when you find even church leaders misleading *wananchi* you then wonder what we are left with. These are just leaders! I thought that it was deliberate, because he is a very dedicated church leader. In fact, we thought that he was helping us a great deal. We discovered that he was not helping us when we contacted the Opposition party leaders directly and found out that what we were trying to convey through the church leaders was not getting through. We then found out that we were not dealing with straight religious people in frocks. We were told---

Mr. Shikuku: On a point of information, Mr. Speaker, Sir. May I inform Mr. Osogo that he and I are not "learned" - I am very fortunate that I am not. Our learned friends said that while we would be debating this Bill they would be having a "Peoples Parliament" going on at the same time. I am glad that God prevailed upon them. They never held another "Peoples Parliament" while we were debating this Bill here. When learned people mislead the people, you wonder whether they are really learned.

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Thank you Mr. Speaker, Sir. Indeed, the learned people have said that they want to come and address this House. They have not refuted that Press statement. I can see that the hon. Member for Ugenya is looking at me.

The Minister for Land Reclamation, Regional & Water Development (Mr. Nyachae): On a point of order, Mr. Speaker, Sir. I do not think that Messrs Osogo and Shikuku are right to use the general term "learned people". We have so many learned people who know what is happening in this country. Are they not misleading the House when they use this general term "learned people"? There are very few learned people who are involved. The majority of them must not be blamed. We must avoid usage of this general term.

Mr. Speaker: If by the term "learned friends", you mean to refer to people who are schooled in the science of law, I think that includes the Chair - the current occupant of the Chair is learned in the science of law. I hope the hon. Member for Butere is not putting me in that boat.

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. The point of order I was trying to rise on is in connection with that clarification. We are now specifically talking of the learned friends in the NCEC.

Mr. Kipten: I am a member of the NCEC, but I subscribe to the principles of the IPPG.

Mr. Shikuku: Mr. Speaker, Sir, I am sorry and I apologise. We know that he is a member of the IPPG. He is not in the NCEC which was talking about holding a parallel people's parliament. He is not one of them. We know them and they know themselves.

Mr. Speaker: I think we must end the debate now. We must now come straight to the Bill. We can leave the learned friends alone for now. As the speaker, I just want to say this very simply and clearly: Whatever one's name, party, status, qualifications and imaginations, one will never address this House. May that sink in their mind.

Mr. Orengo: On a point of order, Mr. Speaker, Sir, I do not want to go against your ruling, but I just want to point out that when I was in the university, I was the President of the student's Government. We had a speaker, recognised under a constitution which was registered with the Attorney-General's Chambers. We had a Cabinet, we had a Minister for Foreign affairs, we had a students' Parliament which was properly constituted. So, I think people are looking at these things in a very narrow sense--- You have a lot of patience---

Mr. Speaker: Normally, I have a lot of patience, but I am only patient with the things that are real and not things that are imaginary. I know for sure also that at one time, I was President of the debating club of my school. I had a cabinet of my own. You cannot imagine because you were the Chairman of your school debating club, you will make a trip uninterrupted and that you will walk to the National Assembly of the Republic of Kenya and make an address. That is the greatest dream ever entertained by an individual.

(Applause)

Mr. Orengo: Mr. Speaker, Sir---

Mr. Speaker: Well, I do not think there is an alternative between me and you---

Mr. Orengo: Mr. Speaker, Sir, at least let me make the point. The point I was trying to make, was that the laws had to be changed. The Attorney General at that time, Mr. Charles Njonjo, had to come before this House and laws were made to ban the use of the terms President, Government and Minister. We were refused from using those words. Under the present statutes there is nothing that bans the use of the words "Parliament" or "Assembly". If they

would so decide to call themselves an Assembly or a Parliament, there is nothing in the law against it. I am saying if this Parliament wants the NCEC not to use the word "Assembly", then you need to make a law to that effect, but not just use imaginations. Mr. Speaker, Sir, please let me point out, and you should have patience when other people are talking!

Mr. Speaker: Order! Order, Mr. Orengo! May I say this; I do not think that we should take more time on this. Any group which want to amuse itself by calling itself a Parliament can do so. It is not illegal. Now proceed.

The Assistant Minister for Ministry of Commerce and Industry (Mr. Osogo): On a point of order, Mr. Speaker, Sir. Nobody was saying that it was legal. What you were doing at the University was like children playing with toys.

(Applause)

There are children who make cows and make them fight although they are not fighting real cows. I think my friends are a bit anxious, but I wanted to say something about independent candidates. This was a very crucial matter which hon. Orengo and the other Members debated on. You cannot have your cake and eat it. You cannot, on one side say that you want to strengthen democracy and at the same time say you want independent candidates to finish the powers of the political parties. You cannot have your cake and eat it.

If you allow independent candidates to stand for election, much as I would like to stand as an independent candidate, owing to the life and experiences I have had in the KANU party, we will be killing democracy. I will be weakening the party if I allowed that. So, we debated that particular item on two sessions and we agreed that we do not need independent candidates, instead, we need to strengthen parties. There were people who were, in fact, campaigning that they wanted to stand as independent candidates. Then we said that: "If you want to stand as independent candidate, why are you in a party at all"? There is even a party for independent candidates. That is enough for you to go there as an independent candidate.

Mr. Shikuku: Jambo la nidhamu, Bw. Spika. Jana, mhe. Osogo alikuwa anasema jambo la maana sana. Sehemu anayowakilisha Bungeni iko mpakani na alijua kulikuwa na hatari. Kulikuwa na mazungumzo ya kuingilia nchi hii kivita. Anaweza kuthibitisha jambo hilo?

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): Mr. Speaker, Sir, I said so, knowing very well what I was talking about. There are people coming from neighbouring countries, who hear what is being said in those countries. If I may say what they say in Kiswahili: "Hawa watu wa Kenya wanacheza. Hawa watafukuzwa tu na tutakujia upande huu. Tuko na Wamarekani wanaotupatia sisi mafunzo". These are people who come from neighbouring countries bringing fish, but relaying messages to us. That frightened those of us who live there; that we were going to be chased away and become refugees; I also said, that a foreigner in Midland Hotel, Nakuru, told a Kenyan that soon, his tribe would be refugees in other countries. In addition to that, there are sacks of fish which bring in fire arms through the lake. We have told the security people about this. We have arrested some. We do not want to say this but, honestly, we have arrested them. Combined with that, who are we to take lightly what we hear? So, sacks of a fish called *omena* have been bringing in arms. We have arrested some people and the security people know about this. This is because they were handed over to the security people who questioned them. I do not know what happened after that. But my KANU youth-wingers did arrest some people because they suspected that these things are happening. So, when we got frightened, and I personally got frightened of what was going to happen to this country, I did what I did. I said: "Brothers, let us talk"; and we talked.

ADJOURNMENT

Mr. Speaker: Well, for now, I am frightened about time!

Hon. Members, it is now time to interrupt the business of the House. The House is now adjourned until next Tuesday, 28th October, 1997, at 2.30 p.m.

The House rose at 6.30 p.m.