

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 30th September, 1997

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

The Seventh Report of the Public Investments Committee on the Accounts of State Corporations.

(By Mr. Mutere)

NOTICE OF MOTION

ADOPTION OF PIC REPORT

Mr. Mutere: Mr. Speaker, Sir, I beg to give notice of the following Motion:-
THAT, this House adopts the Seventh Report of the Public Investments Committee on the Accounts of State Corporations laid on the Table of the House on Tuesday, 30th September, 1997.

ORAL ANSWERS TO QUESTIONS

Question No.291

NUMBER OF CHIEFS DISMISSED FROM SERVICE

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

(a) how many chiefs and assistant chiefs have been sacked since 1992 for collecting Harambee funds forcibly; and,

(b) whether he could give their names together with the locations and districts affected.

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

(a) The information I have at the moment does not show that there is any chief who has been accused of the crime the hon. Member has levelled against chiefs.

(b) In view of my answer to part (a) this part of the Question does not arise.

Dr Otieno-Kopiyo: Mr. Speaker, Sir, this is very surprising because there have been several instances in which the Assistant Minister himself has answered Questions about chiefs collecting Harambee money forcibly.

Now he has said that he is not aware of this issue, even though he has answered many Questions here in this respect. What action would the Chair want to take against the Assistant Minister for deliberately misleading the House?

Mr. Speaker: Dr. Otieno-Kopiyo, how do I know whether what he is saying is true or not?

Dr. Otieno-Kopiyo: Mr. Speaker, Sir, you have been presiding over the House most of the time over the last few years, and you are aware that this issue of chiefs collecting Harambee forcibly has come before the House many times. Since I have made the Assistant Minister aware that this is happening, could he tell the House when he will bring here the names of the chiefs involved? I would like the Chair to take notice of the fact that the Assistant Minister does not even have a file on this issue!

Mr. Awori: Mr. Speaker, Sir, I just want to remind the hon. Member that his Question is on how many

chiefs and assistant chiefs have been sacked. I have said that I have no information that any chief has been sacked for collecting Harambee money forcibly. I am talking about forcible collection of Harambee money.

Mr. Shikuku: Bw. Spika, Waziri Msaidizi anajua kwamba machifu na manaibu wao wamekuwa wakitoza pesa za Harambee kwa nguvu. Hata wakati mmoja walikuwa wakivitwaa vitanda, mablanketi, magodoro na viti vya watu. Jambo hilo lilifanyika wakati wa ujenzi wa chuo cha ufundi cha WECO. Hili si jambo la siri; linajulikana wazi. Kwa nini Waziri Msaidizi hajamwachisha kazi chifu yeyote? Pia anajua kwamba tumependekeza katika marekebisha ya sheria tutakayojadili leo kuondolewa kwa uwezo wa machifu kukusanya pesa za Harambee kwa nguvu? Analijua jambo hili?

Mr. Awori: Bw. Spika, wakati Harambee ya WECO ilipofanyika mimi sikuwa katika Ofisi ya Rais. Kwa hivyo, siwezi kuyajua mambo yaliyotendeka wakati huo. Ninachojua ni kwamba tumependekeza kufutiliwa mbali kwa mambo mengi sana, na tukiupitisha Mswada wa marekebisha ya sheria tutaona matokeo mazuri.

Mr. Busolo: Mr. Speaker, Sir, could the Assistant Minister give an undertaking to this House to the effect that no chief or assistant chief will henceforth be a chief guest in any Harambee fund raising occasion? Usually, chiefs and assistant chiefs insist on being guests at Harambee meetings so that they can ask village headmen to forcibly collect money for them from wananchi.

Mr. Awori: Mr. Speaker, Sir, as the hon. Member knows---

Mr. Speaker: Bw. Awori, kwa nini umeanza kugeuzageuza lugha? Mara unaongea Kiingereza, halafu unageuka na kuongea Kiswahili! Chagua na uongee Kiingereza au Kiswahili.

Mr. Awori: Bw. Spika, nilianza kwa Kiingereza halafu mhe. Shikuku akanifanya kuongea kwa Kiswahili.

Mr. Speaker: Endelea kwa Kiswahili sasa.

Mr. Awori: Bw. Spika, lakini *vavola vati mbole mululuhya!*

Mr. Shikuku: Jambo la nidhamu, Bw. Spika. Mhe. Awori sasa amekiingilia Kiluhya! Ulimwelewa?

Mr. Speaker: Bw. Awori, mbona unageuzageuza lugha?

Mr. Awori: Bw. Spika, nikimjibu mhe. Shikuku, ningependa kusema kwamba kuna Hoja ambayo imeletwa hapa na ambayo itatupilia mbali mamlaka yote ya machifu. Nina uhakika kwamba Hoja hiyo itapitishwa na Bunge hili. Pia, Katiba yetu itabadilishwa na kwa hivyo, siwezi kusema kwamba machifu hawataalikwa kama wageni mashuhuri katika mikutano rasmi. Kwa wakati huu, Mtukufu Rais amesimamisha shughuli zote za Harambee. Kwa hivyo, kazi ya machifu imekwisha.

Dr. Otieno-Kopiyo: Mr. Speaker, Sir, since Harambee collection is not legal, what action will the Assistant Minister take if I brought evidence to him to prove that these people are collecting Harambee forcefully from wananchi?

Mr. Awori: Mr. Speaker, Sir, appropriate action will be taken if the hon. Member brings evidence.

Mr. Speaker: Very well, we will move on to the next Question.

Question No.227

EMPLOYMENT OF TEACHERS FROM PRIVATE COLLEGES

Mr. Anyona asked the Minister for Education:-

(a) how many teachers graduated from both Government and private teacher training colleges in 1994, 1995 and 1996;

(b) whether he is aware that teachers from private colleges have not been absorbed by the Teachers Service Commission; and,

(c) if the answer to "b" above is in the affirmative, he could ensure that these teachers are employed without further delay.

The Assistant Minister for Education (Mr. Komora): Mr. Speaker, Sir, I beg to reply.

(a) The numbers of primary school teachers who graduated from Government and private teacher training colleges in 1994, 1995 and 1996 were as follows:-

| Year | Graduates From Government | Graduates From Private Colleges | Total |
|------|---------------------------|---------------------------------|-------|
|------|---------------------------|---------------------------------|-------|

| | | | |
|------|-------|------|------|
| 1994 | 8,130 | 913 | 9043 |
| 1995 | 8,293 | 1048 | 9341 |
| 1996 | 8,441 | 871 | 9312 |

(b) I am aware that those teachers who graduated from private colleges have not been absorbed into employment by the Teachers Service Commission (TSC).

(c) My Ministry cannot ensure that these teachers are employed. The TSC has no vacancies since the Government colleges produce enough graduates to satisfy the staffing needs of the public primary schools.

Vacancies may arise in future, however, in certain isolated areas. Such vacancies will be advertised. The graduates from private colleges, along with other qualified Kenyans, may then apply to be considered for employment on those specific areas.

Mr. Anyona: Mr. Speaker, Sir, I do not know whether the Assistant Minister is reading the same answer as the one he gave me because there are some words he has read out that are not contained in my written answer. Can this Assistant Minister, if he is able to do so, confirm or deny that His Excellency the President of the Republic of Kenya, in Western Province and recently in Molo, instructed the Assistant Minister to ensure that all these teachers are absorbed into the TSC? Can he also confirm or deny that during the debate on the Vote of the Ministry of Education here, the Minister gave a categorical undertaking that these people were going to be absorbed into employment by the TSC?

Mr. Komora: Mr. Speaker, Sir, I am not aware of this directive, but as far as the records are concerned, we are restricted by budgetary provision and World Bank conditions.

Mr. Sankori: Mr. Speaker, Sir, now that the teachers are set to go on strike, can the Assistant Minister consider absorbing these teachers into employment so that they can take over from the teachers who will be on strike as from 1st October, 1997?

Hon. Members: No! No!

Mr. Komora: Mr. Speaker, Sir, we will not do that.

Mr. Shikuku: Bw. Spika, mhe. Komora amesema kwamba hakisikia Rais akisema kwamba hawa walimu waajiriwe. Je, ana habari kwamba hatuna waalimu wa kutosha katika shule za upili za Butere? Ni kwa nini hawa watu waliohitimu katika uwalimu hawawezi kuletwa huko?

Mr. Komora: Mr. Speaker, Sir, provisions in teacher training colleges have taken care of all the shortages in this country.

Mr. Anyona: Mr. Speaker, Sir, this is a very serious matter. Firstly, it is a matter where the Government defies and undermines the authority of the Head of that Government. Secondly, it is a matter where a Minister of this Government comes to the House and misleads it.

Mr. Speaker, Sir, with your indulgence, I want to illustrate the two points. While the President was visiting Molo recently, in one of the last directives he gave, it was stated as follows: "President Moi directed that the Ministry of Education employs 30 or more teachers from private teacher training colleges and posts them to schools in Naishi". He was talking about Molo. That is one.

Two, when the Minister for Education was moving the Vote, he said as follows: "May I give an assurance to this House that, currently, we are carrying out an exercise of taking all those who have graduated during the last three years." After I challenged him, he went on to say: "I have made a very categorical statement on one of the Presidential directives. We will take those teachers and at the same time ask those concerned to start thinking about the future graduates of those colleges because at the same time, we are reaching a saturation level of our public teacher training colleges."

Mr. Speaker: I think you have made your point. Mr. Komora, what do you have to say to what your Minister said?

Mr. Komora: Mr. Speaker, Sir, with regard to any directives by His Excellency the President and the Minister for Education, the Ministry will implement such directives within the limited financial provision that has been made.

Mr. Ndicho: Mr. Speaker, Sir, we are dealing with a very funny Government here. This is the Government that has registered these private teacher training colleges. Why did the Government, in the first instance, agree to register institutions which would train Kenyans who would in turn not get employment?

Mr. Komora: Mr. Speaker, Sir, there is no legal provision to the effect that when the Government registers any institution, it takes full responsibility of giving the graduates employment. **Mr. Otieno:** Mr.

Speaker, Sir, it is very disappointing to note the casual manner in which the Assistant Minister is handling very serious issues. The Assistant Minister knows that there are private teachers training colleges where students pay money. Already, in Government institutions, parents are equally paying money. The Assistant Minister knows that it will be discrimination in this country for graduates of certain colleges not to be employed and graduates of others to be employed. When is the Ministry going to change the system so that teachers are employed on merit irrespective of the colleges they come from?

Mr. Komora: Mr. Speaker, Sir, this will be done as soon as financial provisions are availed, and the limitation of space in primary schools is attained.

(Mr. Otieno stood up)

Mr. Speaker: Order, hon. Otieno. Who gave you the Floor?

Mr. Otieno: Mr. Speaker, Sir, I was pleading to you to bring it to bear on this Assistant Minister that evasion of issues will not solve them. As long as they exist, we have to address them. "When funds are available" is an answer that should stop so that the right decisions are taken to help the Government.

(Applause)

Mr. Komora: Mr. Speaker, Sir, unfortunately, we have to mention the provision of funds, limitations of revenue and also the limitation of primary school space. But my replies have no relation with regard to the sincerity and determination of my Ministry to absorb all employable teachers as and when it is possible.

Mr. Speaker: Mr. Ruhii's Question!

Question No.339

SUPPLY OF PIPED WATER TO VILLAGES IN EMBAKASI

Mr. Ruhii asked the Minister for Local Government when the residents of Mihango, Ruai and Kamuru will be supplied with piped water, since clean and treated water by the City Council has already reached Njiru Village, which is only a distance away from these areas.

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

The project for extending water supply to Mihango area commenced in July, 1997 and will be completed by February, 1998. The project for extending water supply to Ruai and Kamuru commenced in March, 1997 and will be completed by October, 1998.

Mr. Ruhii: Mr. Speaker, Sir, I am gratified by that answer from the Assistant Minister for Local Government. I would like to add that since they re-instated a professional Town Clerk, Mrs. Zipporah Wandera, we can now see that things at City Hall, have started taking shape. I want to thank the Ministry for Local Government for that move.

Mr. Speaker: I thank you for that. Mr. Nthenge's Question!

Question No.425

COLLECTION OF RENT FROM SHAURI MOYO ESTATE SUB-TENANTS

Mr. Nthenge: Mr. Speaker, Sir, I would like to request that this Question be deferred because the original wording has been so much changed that the Question has lost its intended meaning.

Mr. Speaker: Very well, the Question is deferred.

(Question deferred)

Question No.561

ALLOCATION OF A ROAD RESERVE

Dr. Lwali-Oyondi asked the Minister for Local Government:-

- (a) whether he is aware that a road reserve in Block 9, that is the, Plots No.106,107 and 108 in the Central Business District of Nakuru Town, has been allocated; and,
- (b) if the answer to "a" above is in the affirmative, what steps he is taking to nullify the allocation in order to ease traffic congestion along Kenyatta Avenue.

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

- (a) I am aware
- (b) None.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, I think the hon. Assistant Minister should be reading the whole answer to the House so that we understand exactly what he means by those one-word answers.

Could the Assistant Minister explain to the House why this one single *Muhindi* took over these plots, Nos.106, 107 and 108, which are all road reserves?

Dr. Wameyo: Mr. Speaker, Sir, the allocation was made by the Commissioner of Lands and Settlement, and not the Council. But if hon. Dr. Lwali-Oyondi has more questions to ask about that, he should direct them to the Ministry of Lands and Settlement.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, is the Assistant Minister aware that the Nakuru Municipal Council protested against the allocation of these road reserves to this person? In fact, he had closed some roads which are being used.

Mr. Mak'Onyango: On a point of order, Mr. Speaker, Sir. I find it odd that the Assistant Minister should ask hon. Dr. Lwali Oyondi to refer his Question to the Ministry of Lands and Settlement. If he felt that this was not for his particular Ministry, why did he not refer it to the Ministry of Lands and Settlement himself? Is it in order for him to refer hon. Dr. Lwali-Oyondi to the Ministry of Lands and Settlement?

Mr. Speaker: Order, hon. Mak'Onyango! I think that the Assistant Minister has answered the Question directed to his Ministry. But he says he has no power to reverse what has been effected by the Commissioner of Lands, naturally, because this does not fall within his Ministry. If the Questioner wants to reverse this decision, he has to get hold of the Minister for Lands and Settlement. That is what he is saying.

Mr. J.N. Mungai: Mr. Speaker, Sir, the responsibility of planning a town like Nakuru lies squarely on the local authority there. The Assistant Minister answering this Question is in charge of that local authority. This particular area was a road reserve and the Municipal Council of Nakuru was aware of that. Now the Assistant Minister says the question of plot allocation there has to be directed to the Ministry of Lands and Settlement.

Is the Assistant Minister not contradicting himself in the sense that it is his Ministry, through the Nakuru Municipal Council, which is supposed to stop any meddling with the planning of that town like, in this case, the allocation of road reserves?

Dr. Wameyo: Mr. Speaker, Sir, I have already answered the question; it is the Ministry of Lands and Settlement that allocated the plots and the local authority was never consulted or involved in the allocations. They just came to learn later that the plots had been allocated by the Ministry dealing with the matter. However, as hon. Dr. Lwali-Oyondi puts it, I am not aware that the Nakuru Municipal Council protested.

Mr. J.N. Mungai: Mr. Speaker, Sir, my question was asking the Assistant Minister to intervene and ensure that these plots are re-instated to the local authority as road reserves. Would I be in order to ask the hon. Assistant Minister to intervene right now before these plots are developed so that they are returned to the local authority for their intended purpose?

Dr. Wameyo: Mr. Speaker, Sir, I will go and find out from the council, and confirm whether this was a road reserve or not. I will also verify the fact that they protested because I do not have the information that the area is a road reserve.

Mr. Mathenge: Mr. Speaker, Sir, my friend, the Assistant Minister, is a former senior Government Officer and he is very conversant with how a good government is run. He has admitted that contrary to the Town Planning Officer's report, which allows for road reservers and other developments, what was earmarked as road reserve has now been allocated to an individual. This is contrary to the regulations. As an Assistant Minister, is he just going to preside over land grabbing and violations of regulations?

Dr. Wameyo: Mr. Speaker, Sir, I have already said I was not aware that it is a road reserve. I have received the information just now, and I am going to investigate.

Dr. Lwali-Oyondi: On a point of order, Mr. Speaker, Sir. Part "a" of my Question stated thus:-

(a) whether he is aware that a road reserve in Block 9, is Plots 106, 107 and 108 in the Central Business District of Nakuru Town, has been allocated.

The Assistant Minister, in reply, said that he is aware that the road reserve had been allocated. Is he in

order, therefore, to contradict himself that he is not aware that it is a road reserve?

Dr. Wameyo: Mr. Speaker, Sir, it is a question of language. I am aware that the plots were allocated, but I did not say that I was aware that it is a road reserve.

Mr. Muluya: On a point of order, Mr. Speaker, Sir. The Assistant Minister is taking this House for a ride. I think he is taking advantage of his height. Why can the Assistant Minister not tell this House in very clear terms that he is going to have these allocations cancelled, in the spirit of the agreement by the IPPG on land grabbing?

Dr. Wameyo: Mr. Speaker, Sir, I have already said that I am going to investigate and confirm whether or not these are road reserves, and then we will communicate with the Ministry concerned.

Mr. Speaker: Next Question!

Question No.587

PAYMENT OF SALARY ARREARS TO MR. ASIMETO

Mr. Magwaga asked the Minister for Environment and Natural Resources:-

(a) if he is aware that Mr. Harrison M. Asimeto, who was posted to Kakamega Forest Station on 18th April, 1995, as a Forest Assistant III, has not been paid his salary; and,

(b) if the answer to "a" above is in the affirmative, when Mr. Asimeto will be paid his salary and accrued arrears.

Mr. Speaker: Anybody from the Ministry of Environment and Natural Resources!

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

Mr. Speaker: I will come back to your Question later on! Next Question!

Question No.508

BOTTLING OF WATER FOR SALE

Mr. Munyasia asked the Minister for Commerce and Industry:-

(a) how many companies are bottling water for sale in the country; and,

(b) if he is satisfied that this water is of good quality as claimed by these companies and if not, what he is doing about it.

The Assistant Minister for Commerce and Industry (Mr. Galgalo): Mr. Speaker, Sir, I beg to reply.

(a) There are 45 companies bottling water for sale in the country.

(b) I am satisfied that this water is of the quality claimed by these companies.

Mr. Munyasia: Mr. Speaker, Sir, it is not this Assistant Minister who is supposed to tell us that he is satisfied with the quality of the water. I thought he would give us a list of those companies that have been certified by the Kenya Bureau of Standards. Could the Assistant Minister lay the list of these companies on the Table and tell us when each of them was cleared by the Kenya Bureau of Standards as bottling clean water?

Mr. Galgalo: Mr. Speaker, Sir, I have got the list of companies here and I will lay it on the Table.

Mr. Michuki: Mr. Speaker, Sir, would the Assistant Minister agree that the advent and the fact that these 45 companies do exist, is a failure on the part of the Government and the local authorities to provide clean water to its own people?

Mr. Galgalo: Mr. Speaker, Sir, I will not admit that.

Prof. Ouma: Mr. Speaker, Sir, the Assistant Minister has said that there are 45 companies bottling water. Could he tell us how many classes of water there are, the criteria for classifying them and what makes him satisfied that they are right.

Mr. Galgalo: Mr. Speaker, Sir, I do not know how many classes of water there are, but I know there is the ordinary drinking water and the mineral water.

Prof. Ouma: On a point of order, Mr. Speaker, Sir. I am trying to get rid of conmen from such an important industry. Water comes from certain mineral parts, mineral resources or from ordinary well water and so on. There must be various classifications depending on what one gets from these various sources. It is quite possible for a company to claim that its water is from a mineral source. We would like to know which particular natural resource area they get that water from. The Assistant Minister should only be satisfied after knowing the classifications. If he does not know the classifications of the various types of water, he should go and find out, so

that this House is satisfied that Kenyans are not being conned by paying for ordinary tap water which is claimed to be of some superior quality.

Mr. Galgalo: Mr. Speaker, Sir, the Kenya Bureau of Standards has already assessed some of these companies and is fully satisfied. For others, investigations and studies are still going on.

Mr. Busolo: Mr. Speaker, Sir, I would like the Assistant Minister to inform us why bottled water is very expensive, yet there is very little that is added to it. For instance, compared to sodas and other soft drinks, in which at least there is use of industrial sugar and other chemicals, this water is more expensive. Why is it so?

Mr. Galgalo: Mr. Speaker, Sir, I think it is because the water is on demand so much. Maybe the chemical composition in water is not liked by wananchi. They prefer the natural water.

Mr. Munyasia: Mr. Speaker, Sir, in reply to the supplementary question from Prof. Ouma, the Assistant Minister said that some of these companies have had their water tested by the Kenya Bureau of Standards. Could he tell us which companies have had their water tested and which companies have not had their water tested by the Kenya Bureau of Standards and yet, they are selling that water to wananchi?

Mr. Galgalo: Mr. Speaker, Sir, Crown Foods Limited (Keringet), Highlands Mineral Water, Oasis Mineral Water, Baruwa Estate, Top Crystal and Perly Waters have been allowed to apply the diamond mark of quality of the Kenya Bureau of Standards.

Mr. Speaker, Sir, the following companies are being assessed, so as to apply the diamond mark of quality of the Kenya Bureau of Standards:-

- Multifoods Limited
- Satton and Company Limited
- Kilimanjaro Mineral Water
- Kethian
- Dew Fresh Water
- Mountain Springs
- Kabazi Cannery
- Athiano Mineral Water

Mr. Speaker: Are you going to read 45 of them?

Mr. Galgalo: Mr. Speaker, Sir, they are 20 companies under category (b). Under category (c) the following are new processors and are currently under surveillance to ensure the quality status of their waters. They are 16 and I will lay the paper on the Table.

(Mr. Galgalo laid the document on the Table)

Mr. Speaker: Very well! Next Question!

Question No.609

CLOSURE OF KFA PETROL STATION

Mr. J.N. Mungai asked the Minister for Co-operative Development:-

(a) if he is aware that the Kenya Farmers Association's Shell Petrol Station in Molo Town has not been operational due to lack of fuel for the last six months;

(b) if he is further aware that this state of affairs has affected the local farmers who operate accounts with the organisation; and,

(c) if the answers to "a" and "b" above are in the affirmative, what steps he is taking to have this petrol station opened in order to serve the farmers.

The Assistant Minister for Co-operative Development (Mr. Titi): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that the Kenya Farmers Association Shell Petrol Station at Molo has not been operating for the last six months due to financial constraints experienced by the Association.

(b) I am further aware that this state of affairs has affected the local farmers who operate accounts with the Kenya Farmers Association.

(c) My Ministry is supporting the Association in taking concrete steps to recover Kshs21 million owed by the farmers in Molo to enable it to resume the operations of this petrol station.

Mr. J. N. Mungai: Mr. Speaker, Sir, I think the hon. Assistant Minister is misleading the House and he is answering this Question as though he does not know what is really happening in KFA or he has been misled to

come and mislead this House. The hon. Assistant Minister says that it is only for four months that this petrol station has not operated. To prove him totally wrong, can he give us, lay on the Table or tell the House when was the last delivery of fuel made to this station? Was it four months ago or about nine months ago?

Mr. Titi: Mr. Speaker, Sir, the information that I have is that this station has not been operating for the last four months. So, if that is not the case, then it is not my fault.

Mr. J. N. Mungai: On a point of order, Mr. Speaker, Sir. I have just asked the hon. Assistant Minister and he has just relayed the answer to the House that the petrol station in Molo has not been operating for the last four months and for him to prove to the House that he is giving the correct answer, I demanded to know when the last delivery for this petrol station from the Shell Company was made. I also requested that he lays the delivery schedule on the Table so that the House is satisfied that he is telling the truth. He has not done that. Is he, therefore, in order to tell us that the information that he has is that the petrol station has not operated for the last four months and he expects this House to be satisfied with that answer?

Mr. Titi: Mr. Speaker, Sir, if the hon. Member is dissatisfied with the answer, then I can go back to the Ministry and answer the Question next week.

Mr. Speaker: Is that all that you want to do?

Mr. Titi: Yes, Mr. Speaker, Sir.

Mr. Speaker: Very well. I will then defer the Question. Next order.

(Question deferred)

Mr. J. N. Mungai: On a point of order, Mr. Speaker, Sir!

Mr. Speaker: I am sorry. I have already deferred the Question. There is a Question that we were waiting for; Mr. Magwaga's Question!

Question No.587

PAYMENT OF SALARY ARREARS TO MR. ASIMETO

Mr. Magwaga asked the Minister for Environment and Natural Resources:-

- (a) if he is aware that Mr. Harrison M. Asimeto, who was posted to Kakamega Forest Station on 18th April, 1995, as a Forest Assistant III, has not been paid his salary; and,
- (b) if the answer to "a" above is in the affirmative, when will Mr. Asimeto be paid his salary and accrued arrears.

Mr. Speaker: Is there anybody from the Ministry of Environment and Natural Resources? There is nobody. I will defer the Question.

(Question deferred)

POINT OF ORDER

MINISTERIAL STATEMENT SOUGHT
GRAZING OF CATTLE IN CITY ESTATES

Mr. Ruhiu: On a point of order, Mr. Speaker, Sir. I rise to demand a Ministerial Statement from the Office of the President over a very serious incident that occurred in Embakasi Constituency last Thursday when ten Maasai herdsmen grazed their cattle in Embakasi Constituency because of this dry spell. They invaded a cabbage garden belonging to Mr. Kihungi which is adjacent to a primary school. On being stopped from grazing on this cabbage, they pursued the owner into Kifaru Primary School where they terrorised the teachers while looking for the owner of the cabbage garden until they disrupted lessons in all the classes. I would like to know from the Government their policy on this issue. These Maasai herdsmen have been grazing during drought periods in all the estates in Embakasi without such incidents arising. But due to this incident, I would like to know what the Government really proposes to do because we want to know what the Government policy is on the question grazing cattle in Nairobi estates.

Mr. Speaker: Order! Order! Just as a matter of interest, would the position, Mr. Ruhiu, been different if the herdsmen were not Maasai but Kikuyu? Must you say "Maasai herdsmen?" Why not simply ask about

herdsmen? Would it make any difference?

Mr. Ruhiu: Mr. Speaker, Sir, we also have Kikuyu herdsmen who graze their cattle in Embakasi, around the estates, but they have not caused an incident of this nature. Therefore, I am requesting the Government to issue a Ministerial Statement particularly on herdsmen.

Mr. Speaker: Very well. Is there anybody here from the Office of the President who would like to respond? I suppose we will get time to come back to you, Mr. Ruhiu.

BILL

Second Reading

THE STATUTE LAW (REPEALS AND MISCELLANEOUS AMENDMENTS) BILL

(The Attorney-General on 25.9.97)

(Resumption of Debate interrupted on 25.9.97)

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, when the House adjourned on Thursday, I had just read out the recommendations of the Public Collections Act as contained in the Constitutional, Legal and Administrative Reform Committee Report. I had dealt with the first part of that recommendation which was meant to amend Sections 3 and 5 to remove the requirements for a licence for public collections and to provide only for notification of the same to district commissioners.

Mr. Speaker, Sir, I had gone through the amendments and I had shown that we had, indeed, removed the licensing requirements and replaced the same with notification. I had explained to the House that the only ground for refusal of notification was if the person applying was an adjudged bankrupt or if he had been found guilty by a competent court of an offence which involved fraud or dishonesty or if he was collecting money for an unlawful association. Those are the only grounds, otherwise, the collector just gives a three days notice and he proceeds to collect.

Mr. Speaker, Sir, then on a point of order, the other two recommendations were brought to my notice and I had just finished reading the recommendations which were that it was agreeing in the long-term, the Attorney-General should examine the Act in total to harmonise it with the Public Order Act to minimise the public collections (Harambee).

Mr. Speaker, Sir, I now wish to continue to say that without discouraging the spirit of Harambee, which has contributed greatly to the economic and socio-development of Kenya, time has come as the IPPG did indeed recognise, for us to undertake a review of that Act to achieve the following objectives:-

(a) To remove the negative aspects which have emerged since 1963 and which have led to the gross abuse of public collections. The complete, voluntary nature of the spirit of Harambee must be regained and any influences, direct, indirect or subtle, which put pressure on a person to contribute must be removed.

Hon. Members will recollect that under the proposed amendment to the Chiefs' Authority Act, Clause 20(1)(3), a chief cannot demand or solicit any donations or collections as a precondition for any services. All those aspects, as the Committee did recognise, must be reviewed in the long term.

(b) The other objective which must be achieved by reviewing this, is the fact that there are many projects which were begun through the Harambee efforts but have failed because of lack of proper planning and conceptualization. This is a tragedy because in those Harambees, it is the poor people who contribute their hard-earned money and yet, the project fails and this means that money has gone to waste. Therefore, there may be need to ensure that money being collected on Harambee basis for a project is used for its intended purposes. There should also be a way of ensuring that, that project has been conceptualized, brought out and that its chances of success are high.

Besides other things that may have to be considered in the long term as we review this Act and repeal it with another Act, is to give some incentives to the rich people in order to contribute. Hon. Members may have noted that last week, in the United States of America, a billionaire by the name of Ted Tanner contributed US\$1 billion to the United Nations Organisation which will be spread over 10 years. Of course, part of it was in good philanthropic spirit, but part of it was because of the benefits which his businesses may get from marketing and also the tax cut incentives that he will get as a result of that gift to the United Nations Organisation. So, all these aspects, which were

recognised by the IPPG, must be looked at when we are reviewing this particular Bill. As we look at it, we need to ascertain our ideas in it before they can be turned into a law which we can draft, so that we can repeal the Public Collections Act and replaced it with that law. But in the meantime, we have removed the licensing procedure and replace it with notification.

Mr. Speaker, Sir, before I move on to the Film and Stage Plays Act, I just want to mention in passing, something under the Ministry for Local Government. I did mention that the entire purpose of the amendments to the Local Government Act is to transfer the authority on all matters related to elections from the Minister of Local Government to the Electoral Commission. But let me mention one other fact which we are recommending: As far as the nominated councillors are concerned, political parties which are represented in Parliament will be political parties represented in the council and they must nominate members to the local authority, in proportion to their strength of representation there. So, those are the amendments that are set out on page 526 of the Bill. The other point which I want to add, of course, is that in nominating those members, the principal of gender equality must be observed, and where possible, it must be on a fifty-fifty basis.

Mr. Speaker, Sir, the proposed amendments on to the new Films and Stage Plays Act, are just to tie in with the amendments that we have carried out on the Public Order Act, and also the Public Collections Act. We are removing the licensing procedure. Here, we are removing the licensing procedure in total and not even replacing it with notification procedure. Part four of that Act which deals with licensing of stage plays is repealed completely. There will be no need even for notification. All other amendments that you see are consequential to the repeal of part four of the Act. As we know, stage plays are not only educational but also cultural and are part of freedom of expression. So, by repealing part four of this Act, we are enhancing freedom of expression, promoting our culture and education in this country.

Mr. Speaker, Sir, the other issue which I want to comment on here is the Forest Act, although it did not emanate from the IPPG recommendations. The proposed amendments are to enhance the penalties for the destruction of forests. The proposed penalties are pegged to the values of the forest produce removed or the extent of damage caused, so that compensation can be 10 times the value instead of the old rate of five times the value. Where there was a fine of Kshs200, it will now rise to Kshs1,000 and where there was custodial sentence of six months, it will now rise to one year.

Mr. Speaker, Sir, the other recommendation which emanated from the IPPG is on the Traditional Liquor Act. Section 30 of that Act provides for entry and search of unlicensed premises. We are removing the words "any administrative officer." The removal of the words "any administrative officer" will mean that the DCs, DOs, chiefs and assistant chiefs will not search unlicensed premises. Those powers will now be vested on a police officer only and he must go there under a written authority from a magistrate to be able to enter and make a search. That is the effect of that amendment.

Mr. Speaker, Sir, the other amendment is the increase of the members of the council of the Law Society of Kenya. It is currently the Chairman and the Vice-chairman plus other nine members. The Law Society of Kenya, through a resolution, has asked us to increase the members to 10, so that the total membership will be 12 and out of those, two would serve up-country stations. So, we are just effecting their request in that regard.

Mr. Speaker, Sir, the other amendment is related to the Banking Act. The proposed amendment, if passed, would enable both the Minister for Finance and the Central Bank of Kenya to apply stringent measures, to ensure integrity and discipline in the banking industry. For this purpose, the Bill proposes to introduce an objective criteria to be applied by both the Minister for Finance and the Central Bank.

Mr. Speaker, Sir, if you look at page 514 of the original Bill, you will note that the Governor of Central Bank, before he issues a licence, has to be satisfied under the proposed sub-clause 3. He has to be satisfied as to the professional and moral suitability of the person proposed to manage or control the institution. Under sub-clause 5, the Minister in making consideration to this, will take into account the character of its management and also the professional and moral suitability of the person proposed to manage or control the institution. I believe the amendments are self-explanatory.

Mr. Speaker, Sir, the other proposed amendment is the Council of Legal Education where we had said that only the Chief Justice can be the Chairman of the Council of Legal Education. He has too much work and is not fit and that he should be able to delegate that responsibility to a senior judge, if he so wishes. The other one is with regard to the Council's law reporting Act to enable members also to get allowances when they meet.

Mr. Speaker, Sir, I want to inform the House that the proposed amendments to the Pensions Increase Act are deleted. Proposed amendments to the Wildlife Conservation and Management Act are deleted because the Government will soon be bringing to this Parliament a more comprehensive legislation to deal with those aspects.

Mr. Speaker, Sir, that finalises the various amendments that have been proposed under the Statute Law (Repeals and Miscellaneous Amendments) Bill. We will note that under the various Bills, the wide discretion

that had been placed among some officers has been limited and made more objective. We have established a code of conduct for categories of chief officers. We have told the police what they should not do; we are telling the Commissioner that he must have a code, and we are also telling the Electoral Commission that they must also have a code of conduct.

Mr. Speaker, Sir, I think the rules of the game have become even clearer. By enacting this Statute Law (Repeals and Miscellaneous Amendments) Bill, we would have created a legal environment where Kenyans will: (a) enhance their enjoyment of their human rights, (b) democracy will thrive; and, (c) there will be a free and fair election with an even playing field.

As I had informed this House, as far as the implementation is concerned, the Government will fully implement the provisions of these Bills when they are enacted. The Government will fully implement even the administrative reforms that have been recommended. In fact, I am aware that an Inter-Ministerial Committee has already been formed to look into the administrative reforms that have been implemented and, at an appropriate time, we would be hearing from the Government on that issue.

Mr. Speaker, Sir, as I told this House, on my part, those matters that touch me, I have already begun implementing.

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

(Applause)

Mr. Murungi: Mr. Speaker, Sir, thank you for giving me the opportunity to second this important Bill.

Mr. Speaker, Sir, I am very excited. This is the first day that I am seconding a Bill which is proposed by the Government. I am usually opposing almost all Bills!

Mr. Speaker, Sir, first, let me thank the Attorney-General and his staff, I can see the Solicitor-General, Mrs. Nzioka, and I do know that Mr. Steve Mwenesi also participated in the drafting of this Bill. They really worked very hard. They worked around the clock to translate all the recommendations of the IPPG into this Bill. As a trained draftsman, I know how difficult it is to put in the commas and sections in the right place. But we have to congratulate this team because it has really come up with a very good job this time.

Mr. Speaker, Sir, there is no drafting which is perfect. It is very difficult to find a Bill where you would not find a misplaced "comma", a "t" which is not crossed and so on. So, I am urging my colleagues in Parliament to be on the lookout for any grammatical errors, omissions and so on, which might be in this Bill. I also believe that Parliament should not abdicate its responsibility, and if there is room for improvement of the Bill, we should still improve on this Bill.

Mr. Speaker, Sir, on a different note I would say that the Attorney-General, has at last "woken up". We are now seeing the Attorney-General in his true colours as the champion of the human rights and democracy who is known all over the world!

(Applause)

Mr. Speaker, Sir, it is the veteran freedom fighter, Bildad Kaggia, who said this about history. He said, "You cannot wish away history. History is not what you want to happen. History is what has already happened." It will stay like that whether you like it or not!

Mr. Speaker, Sir, I have no doubt that we, as IPPG, have made history, through this Bill and that history will remain and it will stay like that whether some people like it or not.

(Applause)

Mr. Speaker, Sir, I can tell you from personal experience that wherever we go we are being celebrated. Even the people we do not know are now coming out to greet us. They are coming out to congratulate us and to thank us for saving this country from chaos and bloodshed.

Mr. Shikuku: That must be remembered!

Mr. Murungi: Mr. Speaker, Sir, we have made history because we refused to be dreamers. We refused to be romantic and adventurous. We chose to put our country Kenya first and ourselves second. That is why we have made this history.

Mr. Speaker, Sir, I believe that the majority of Kenyans want change. They want peaceful and orderly change. This is what we, at IPPG, are providing.

(Applause)

As you are aware, Mr. Speaker, Sir, there have been numerous Press conferences, papers and public statements dismissing these reforms as hopelessly inadequate. You are also aware that we have been called "ugali-eaters", "con men", "fools" and "cowards". But I will take this opportunity to tell these "inventors" and "manufacturers of fiction" that in this country there are some Kenyans who are definitely not for sale. No amount of *ugali*, *sukumawiki*, *irio* or *githeri* will stand between us and reforms!

(Applause)

Mr. Speaker, Sir, this controversy about reforms has not been about paragraphs, sections and commas, but it is much more fundamental. We, as IPPG, are aware that we can never satisfy a certain section of our political class. There is nothing we can do as IPPG, which will be right in the eyes of some people. This is because the agenda of those people is different from ours.

(Applause)

Mr. Speaker, Sir, Kenyans know those of us who are generally committed to reforms. Kenyans also knew those "just men" who are merely using the language of reforms to advance their own personal ambitions. Some people have been on television in this country saying that there can be no reforms so long as President Moi is in power. We are told that we have to remove President Moi first, so that we can have genuine reforms. What method are we going to use to remove President Moi if we are busy burning the voters' cards? Those who are dreaming about "Kabila" should know that Kenya is a long way from Zaire. We, at IPPG, do not mind being called fools, traitors and "ugali-eaters" so long as we bring peaceful and orderly change in this country.

Mr. Speaker, Sir, we are here on serious business. We have not come here to launch "hot-air balloons". The reforms that we are going to introduce will bring fundamental political changes in this country. Today, we have come here to say "Goodbye" to the dark days of colonialism and dictatorship in this country. As the Attorney-General said, we have come here to usher in a new era of freedom and democracy. What we are doing is to provide a framework and political space within which free and fair elections are going to be held in this country. Those who want to remove President Moi, this is the only way which is available, and that is free and fair elections. Let them prepare for elections. After these reforms, there will be no excuse for any Kenyan to engage in clandestine activities. There will be no excuse for *coups detat* in this country, and there will be no excuse for underground politics.

I hear Prof. Ouma Muga, who has served a jail sentence in the past for these underground activities, telling me to say it again. We have opened all the avenues, so let the people come out and fight in open, free and legal struggles. Sometimes when we think about freedom and democracy, some people think only about one thing; they think about the elections. But freedom and democracy is much more than elections which only come once in five years. We have a broader concept of political participation. Political participation means the freedom to participate in making decisions which affect our everyday lives. What we are looking for is also freedom for our people to participate in making decisions freely at family level. When you are discussing breakfast with your children, you should be free to do so. When you go to work and you have a debate with your boss, you should also have freedom in that debate. You should have freedom at your place of work. Also, when you go for a drink in the evening, when you are chatting with your friends in bars, you should also have freedom to express yourself. We are looking at freedom in this broad sense.

Mr. Speaker, Sir, those people who have just focused on elections are missing this whole point of greater freedom and democracy for our people. I think that this Bill will expand those freedoms.

(Applause)

Mr. Speaker, Sir, although the Bill looks technical in terms of "delete", "insert", "put this comma, "renumber" *et cetera*, this is not a Bill merely of "commas and fullstops". It is a "major political surgery" in this country which involves 28 laws. When the "surgery" is complete, we shall have removed a huge baggage of repression from the back of our people. So, we should see the amendments in this broader sense.

Mr. Speaker, Sir, I am proud today because what I am saying is being recorded in the HANSARD and I will appear in the history of this country as one of those people who participated in removing the last yoke of colonialism from our people. Most of the 28 laws which are being repealed and amended, are legacies of the

oppressive and dictatorial colonial regime. Although, we have been independent for the last 30 years or so, we have been ruled by colonial laws enacted by colonialists who are already in their graves. So, colonialism has been ruling us from the grave and we have now come to assert ourselves and say no to them. Most of these laws were enacted during the colonial era to facilitate colonial domination and exploitation of our people, and also to outlaw their political participation. These colonial statutes gave some of our civil servants, and especially in the Provincial Administration, very broad discretionary powers which turned our constitutional rights into mere concessions to be enjoyed at the whims of those officials. We have come to fine-tune those laws, to reduce those broad discretionary powers so that our people can enjoy the freedom which our fathers fought for.

Mr. Speaker, Sir, I now wish to take a little more time to look at the specific pieces of legislation that we are reviewing. The Attorney-General took us through minute details of those pieces of legislation and my intention is to give the basis for that legislation, the mischief which the legislation was intended to address and also, what the effect of what we are doing would be as far as those laws are concerned.

Mr. Speaker, Sir, let me begin with the most notorious one, and this is the Preservation of Public Security Act (Cap 57). This is the most unjust, cruel and oppressive piece of legislation in Independent Kenya. Detention without trial is a serious invasion of personal liberty, and of the fundamental freedoms of expression, assembly, association, amongst others. You recall that detention without trial was first introduced in this country in 1897, that is 100 years ago, under the authority given in the East African Order in Council. Unlike European countries where these laws were first enacted, the colonial government did not use detention without trial as an emergency measure. It was a political tool which was used by the colonial governor to oppress and restrict Africans, who resisted colonial rule.

When we attained Independence in 1963, we abolished detention without trial along with the other emergency laws. Between 1963 and 1965, there was no person who was detained in this country. This is because there was no legal framework under which a person could be detained without trial. But in 1966, when the KPU was being formed, we looked for the colonial piece of legislation, dusted it up and re-enacted it as the Preservation of Public Security Act. In fact, the provisions of the current Preservation of Public Security Act are borrowed directly from the Emergency Order in Council, 1939. You will note that the first victims of the Preservation of Public Security Act were the KPU leadership. The entire KPU leadership was detained in 1969, under the Preservation of Public Security Act, and Mzee Achieng-Oneko, if he is around, will remember this!

Mr. Achieng-Oneko: Ayee! I hear you!

(Laughter)

Mr. Murungi: Mr. Speaker, Sir, the Act has been used to torture, punish and intimidate Kenyans who have spoken out against oppression and dictatorship in this country, and sometimes things like corruption. You remember what happened to hon. Anyona when he talked about corruption in 1970. The list will have various characters like Messrs. Achieng-Oneko, Martin Shikuku, George Anyona and even Raila Odinga.

Mr. Speaker, Sir, hon. Raila Odinga should be with us today to celebrate the fact that we are abolishing detention without trial, because he has been one of the greatest victims of the Preservation of Public Security Act. He knows how oppressive this Act is and how much he suffered because of it. I had occasion to visit him both at Shimo-la-Tewa and at Naivasha prisons. So, hon. Raila Odinga, we are going to have a drink this evening because of this.

(Laughter)

Mr. Speaker, Sir, let me move on to the Penal Code. What we have done is to delete Section 4 (2A), which provides for detention without trial, and also, you remember some people were placed under house arrest and restricted as a result of their political activities. In 1982, when the late Jaramogi Oginga Odinga and hon. George Anyona were coming to address a press conference at Hotel Inter-Continental, to launch a new party, the Kenya Socialist Party, hon. Anyona was detained. Mr. John Khaminwa who had drafted the constitution of that party was also detained. The late Oginga Odinga was placed under house arrest. Now, we have even abolished any provision for house arrest and restriction of persons on grounds of political opinion. I am very happy that this will not occur again to people like the late Oginga Odinga and others, who want to exercise their democratic rights.

Mr. Speaker, Sir, let me move on to the Penal Code, Cap 53. The entire Penal Code is a colonial piece of legislation and I would appeal to the Attorney-General to give it a fresh look. This is because there are provisions in the Penal Code which make it a criminal offence for you to blacken yourself, in preparation for

committing a crime; the assumption being that you are a white person, and you are blackening yourself in preparation for committing a crime. We should not have such provisions in Independent Kenya, where the majority of the people are black.

Mr. Speaker, Sir, certain sections, especially Sections 52 and 56 of the Penal Code, severely curtail the freedom of expression, which is contained in Section 79 of the Kenya Constitution. The most oppressive parts of this Code are contained in Section 52, which deals with prohibited publications, and Sections 56 to 58, which deal with sedition.

Mr. Speaker, Sir, Section 52 of the Penal Code gives the Minister broad discretionary powers to censor publications. According to that section, the Minister can declare any publication, including its past and future issues, a prohibited publication, if it appears to him necessary to do so in the interest of public order, public health, public morals or the security of Kenya. The Minister has exercised these powers in the past, and has banned many books and restricted the freedom of information in this country. We have reached some ridiculous proportions in a provision in the schedule to the Penal Code, which empowers the Minister to ban or prohibit the importation of any publication, depicting or containing any symbol, emblem, device, colours, slogans, mottos, words and letters signifying any association with, or support for a political object or political organisation. Under this provision, if you imported a publication from England bearing the flag of KANU on its cover, it would be a prohibited publication because it will be containing an emblem associated with a political party. The powers of the Minister to ban mottoed words especially associated with political associations or parties should be reviewed.

I do remember that in August, 1978--- This case was reported on the 1st of August, 1978 in the *Daily Nation*. A teacher at Nyandarua High School called Mr. Dickson Otieno was imprisoned for 18 months for possessing the following books: 1. Geography of China; 2. Wages, Prices and Profits; and, 3. Archaeological Findings in China. The reason why he was imprisoned was because these books were published by Foreign Languages Press; Peking, and the publisher had been banned under the Section that I read to you. I have gone through the list of banned publications, and it is quite clear that the list is a relic of Cold War politics. It has no relevance to the current political realities in this world. I am very happy that the Attorney-General has now agreed to set up a Board, which will be set up by this Bill, to review all these banned publications, and see whether there is any need or relevance in prohibiting them. We feel that the amendments to Section 52 will increase the freedom of Kenyans to receive and impart ideas and information without unnecessary restrictions, and they are very welcomed.

Mr. Speaker, Sir, with regard to sedition, the colonial government enacted sedition laws to insulate itself against any kind of criticism from Africans. There was no lawful way of criticising the colonial government because Section 56 of the Penal Code controlled not only the content of the criticism, but also the manner in which the criticism was expressed. If you criticised the Government in a manner which was likely to cause disaffection, that was considered to be sedition, even if the intention was honest and you wanted the Government to correct certain errors. The House will remember that in 1960, there was a Member of Parliament called Mr. Lawrence Oguda. Mr. Oguda addressed a public rally in which he violently criticised the colonial Government and suggested that, the Governor must go. He not only lost his seat, but served several years in prison.

An hon. Member: For saying that the Governor must go?

Mr. Murungi: Yes!

Mr. Speaker, Sir, he had not been very clear about the method in which he wanted the Governor to go. Sedition laws in this country could have been used even much more against us. You recall that one of our friends here, hon. Aluoch Polo, has a case pending in court because of saying that: "*Hii ni Serikali ya shetani!*"

Mr. Speaker, Sir, we have repealed Sections 56, 57, and 58 of the Penal Code so that Kenyans can have freedom to criticise their Government.

Mr. Shikuku: Yet that is nothing!

Mr. Murungi: Mr. Speaker, Sir, these sections which have been used to silence the critics of the Government, like hon. Gatabaki, are no longer going to be law in this country. So, Mr. Gatabaki, wherever he is, should be celebrating because all his sedition cases which are pending in court are going to be withdrawn after this Bill is enacted into law.

(Applause)

Mr. Speaker, Sir, let me touch on the Public Order Act. The Public Order Act was introduced at the height of colonialism in this country, as Act number 13 of 1950. For most of the colonial rule, in the 1920s, 1930s and 1940s, it was not necessary for any Kenyan to get a licence from a district commissioner to address a public rally. The licences became necessary in the 1950s during the greatest challenge to colonial rule by the Mau Mau

organisation. It appears as if there was much more freedom to hold meetings in Kenya during the colonial period, in the 1940s, than there is in the 1990s.

Mr. Speaker, Sir, in Independent Kenya, and you remember the Motion by the late Marie Seroney, in this House, this Act has been used to oppress and undermine elected Members of Parliament by denying them the right to address meetings even in their own constituencies. The Act has made nonsense of the freedom of assembly which is protected under Section 80 of the Kenya Constitution. Our main problem with the Act has been Section 5 which gives the DC extensive powers to refuse or cancel licences for public rallies. The section also gives the DOs and police officers broad discretionary powers to stop meetings even after those meetings have been licensed.

Mr. Speaker, Sir, the worst sub-section of section 5 is sub-section (8) which requires the DOs and the police to comply with any general or specific directions given by the President, Minister, the Provincial Commissioner or the Commissioner of Police. So, when you hear the police on the ground and the DO talking about "orders from above," they are talking about either the President, the Minister, the PC or the Commissioner of Police. It is this section that has been so much abused and used in stopping meetings, even those which are lawfully held; so much to the anger of the people that you remember the open fights which people have had with the police in places like Mwea.

Mr. Speaker, Sir, we in the Opposition have really suffered under this Act. You will remember that hon. Wamalwa Kijana has been shot at, and there was an attempt to shoot hon. Kibaki. It is the police who refused to shoot him. We have been whipped and clobbered; our seminars have been dispersed; our "meet-the-people tours" have been stopped, and this also applies to some of our brothers in KANU. You will remember that after killing so many bulls, last December, hon. ole Ntimama had problems in eating them, because he did not have a licence.

(Laughter)

Mr. Speaker, Sir, even some KANU meetings organised by some of our colleagues in KANU, and Assistant Ministers, they have gone to a meeting to find a DC, a chief or a DO telling them, "sorry, the meeting has been cancelled." Today, I think, we are all going to celebrate, those in KANU and the Opposition, because there will be no licences, there will be no chief, there will be no DO, there will be no DC or PC to stop our meetings.

(Applause)

Mr. Speaker, Sir, let me come to the Police Act, Cap 84. At Independence, we had a neutral police force, which did not support either KANU or KADU. Those police officers, in 1963 and 1964, did not get any instructions from politicians. There were no instructions "from above" because there was an Independent Police Commission, which was established by the constitution.

Mr. Speaker, Sir, in 1964, President Kenyatta abolished the Independent Police Commission and directly appointed the Commissioner of Police. We have looked at the Police Act and there is no provision under the Act, giving power to the Police Commissioner to have the overall control or direction of the Police Force in this country. There is no such provision, it is silent. There have been cases where the police, and especially the Special Branch, have been used as "political emissaries." Some of our colleagues who defected to KANU were approached by the Special Branch and they have told us.

Mr. Speaker, Sir, in other areas the police have been reduced to youth-wingers campaigning for KANU or against the Opposition or harassing the Opposition. We feel that there is need to restore the 1963 situation to our Police Force, if this country is going to have democracy. We think that when the Constitutional Review Commission is appointed, it will look into the possibility of re-establishing the Independent Police Commission for the future of this country. What we have done now is to amend the Police Act to make the police impartial and neutral in all political matters so that they may not discriminate on the basis of political opinion. We have also noted that in the past the police have been giving this country a bad name through torturing of suspects. Although Kenya is a signatory to the UN convention against torture and our constitution expressly outlaws torture, the police have routinely tortured suspects and sometimes with impunity. We have amended Section 14 of the Police Act to make it a felony for any police officer to torture anybody. It is also a felony for any police officer to take any partisan interest in political activities. So any police officer campaigning for any political party or campaigning for any candidate or against any political party or candidate will now be subject to imprisonment, if convicted by the court because this is a felony. We hope that this will improve the situation regarding the level playing field as far as the next elections are concerned.

Mr. Speaker, Sir, let me now come to the Public Collections Act. It was enacted by the departing colonial

authorities in 1960s, and the reason was because this is the time Mau Maus were coming from detention and very many of them were organising themselves in various associations. You remember groups called *Kiama Kia Muingi*, and all those formed around the 1960s, and the whole idea was that there were some of them who intended to occupy European farms by force because the argument was that since the white settlers had stolen the land from the African, there was no basis on which the African should buy the land from the thief. Now since these people did not have any money, they went round the country collecting money for those organisations. The Act was therefore enacted to kill the growth of those organisations which were considered subversive by the colonial government. It is at this time, 1960, that for the first time the DC was granted powers to grant licences for any public collection of money. In the 1940s and 1930s, when the Kikuyu Central Association was campaigning all over Central Province and when people like Bildad Kaggia were having big political meetings to challenge colonialism, they used to collect their money in public meetings. *Walikuwa wanatoa kofia*, then they circulate it around and people put in whatever money they had, 10cts, 50cts and whatever, and they used the money they collected to hold the next meeting in the next town, and that is how the politicians survived in the late days of colonialism.

Our political parties today are very weak because they have no sources of raising funds. Hon. Mwai Kibaki, Kijana Wamalwa or Raila Odinga cannot remove their hats at Kamukunji and ask people to contribute because they do not have a licence, under the Public Collections Act. Then we have come to a situation where our political parties cannot grow, they are going to be very weak and they will continue being controlled by a few rich people. We are very happy that this law is removing the licensing requirement from the DC because political parties and other organisations can now freely raise money to finance their activities without discrimination. Hon. Michuki says we are going to the chiefs, but we are now merely informing the chief. The chief can only prevent you from raising the funds if you have been found guilty of a crime involving dishonesty in the past, and obviously we do not want crooks going around raising money.

We have numerous cases where licensing of Harambees has been made in a very discriminatory manner. I do know of some Harambees in Meru District which were not licensed because my name appeared in the card. There are many stories from Opposition Members of Parliament who have been prevented from being guests of honour at Harambees and the feeling is that these Harambees have been used to build some people and destroy others. So we are very happy that from now on, the Harambees are not going to be used for that purpose.

Mr. Speaker, Sir, hon. Michuki should be advised to read the Bill because we are only required to notify the regulating authority and not to seek a licence. The freedom to hold Harambees which we have created, as the Attorney General pointed out, stands a danger of being grossly abused because, as you know, we have moved from the traditional purposes of Harambees and these days, if I lose my car and I am not insured, I can call my friends and ask them to come and assist me to buy the "Mheshimiwa" a new car. We have to distinguish between the public Harambee and the private Harambee. We have had cases where con men have gone around town sometimes holding pre-wedding parties when they have no intention of getting married, and raising money to run their businesses. We have contributed to many fictitious Harambees from books held by executive officers in government so that when you go to seek services from them they give you Harambee receipts and these Harambees are endless. So we are asking the Attorney-General to look into this area so that this rampant abuse of a very good system of Harambee can be stopped. We expect that in the long term, the Attorney-General will come with an appropriate Bill in this House which regulates Harambees for funeral contributions, pre-wedding parties and other new form of social blackmail which one notices in town these days.

Mr. Speaker, Sir, let me now come to the Societies Act. The history of the Societies Act is very interesting. There was no Societies Act in Kenya until the year 1952. So, we introduced the Societies Act in the year the state of emergency was declared in this country. The whole idea of the Societies Act was to deprive African nationalists of any organisational or political voice against the colonial government. Thousands of Kenyans were tortured and imprisoned for many years for either being members or managing unlawful societies. Hon. Members will recall that the infamous trial of Jomo Kenyatta, Paul Ngei, Achieng-Onoko and other people, the so-called "*Kapenguria Six*", occurred because these people were accused of managing an unlawful society - the MAU MAU. They received very long periods of imprisonment: 14 years for managing an unlawful society, and seven years for being a member of it.

This Bill has done a good thing in that the provision for those colonial sentences has now been removed and if you are managing an unlawful society, the maximum imprisonment you can now get is three years. If you are a member of such a society, the maximum punishment is imprisonment for one year.

When the Kenya African National Union (KANU) came to power in 1963, people were very bitter about the Societies Act. So, it was repealed altogether in 1963. But when the Kenya Peoples Union (KPU) was formed in 1966, the colonial Societies Act was resurrected and re-enacted in 1968. Soon after it was re-enacted, the KPU

was declared an unlawful society through Legal Notice No.239 of 1969.

From 1969, Kenya became a *de facto* one-party State, and for the next 26 years, no other political party was registered in this country, because the Registrar of Societies found all the applications for registration inadequate. He refused to register them on the ground that they were dangerous to the good Government of Kenya.

It was not until 1992 that the Forum for the Restoration of Democracy (FORD) was registered.

Mr. Shikuku: On 31st December!

Mr. Murungi: Hon. Shikuku tells me that it was on 1st December 1991. So we had 26 years of executive control over formation of political parties in this country. The Registrar has, under Sections 11 and 12 of the Act, very broad discretionary powers either to refuse to register a party or to cancel the registration of a party or a society.

Mr. Speaker, Sir, you recall that when about 30 Members of Parliament formed an organisation called the Coffee and Tea Parliamentary Association (COTEPA), the Registrar of Societies also refused to register it on the ground that it was dangerous to the Government of Kenya. The Chairman of COTEPA, Mr. Michuki, who served in the Government for many years, is here. How could these hon. Members be dangerous to the good Government of Kenya, when all that they wanted was to promote the coffee and tea industry in this country? We are appealing to the Attorney-General - our appeal to him for registration has been pending on his desk for almost one year - that when he is re-considering the refusal of registration of other parties, he should consider registering COTEPA. We do not think that it really poses any danger to the good Government of this country.

We are also very happy that the Attorney-General has moved expeditiously to consider all the applications of political parties which have been pending in his office - that is the Registrar's office. We expect a decision, either way, on all the parties soon. I think the 14 days which the Inter-Parties Parliamentary Group (IPPG) requested for will end tomorrow. So, we hope that before the end of the week, the parties will know their fate. They will know which one is being registered, and which one is not being registered, so that they can prepare themselves for elections.

Mr. Speaker, Sir, what we have done is to amend Sections 11 and 12 of the Societies Act, which give the Registrar of Societies broad discretionary powers to refuse to register or to cancel registration of societies. We have replaced the words "in his opinion," which is a subjective phrase, with the words "when he has reasonable cause to believe," which is an objective phrase. So, the Registrar now cannot refuse to register a society or a political party without giving reasonable reasons. He cannot refuse to register a political party merely because the applicant is a Mzungu. He has to have better reasons than the mere fact that the applicant is white or black.

We think that we have gone a long way in removing the harshness of this oppressive and colonial piece of legislation. We are urging the Attorney-General, as a long-term measure, to further review the Act and see which kind of societies should be controlled in the future, and whether political parties should not be registered and regulated under a different piece of legislation.

Mr. Speaker, Sir, let me now come to the Traditional Liquor Act, Cap 122. The title of this Act looks innocent, but in fact the Act has been a tool of corruption and rural dictatorship.

(Applause)

The traditional liquor laws were part and parcel of colonial capitalism and labour in this country. In the 1920s, the chiefs had to control dancing and drinking in the native reserves to make lives dull and miserable for natives, so that they could be forced out to go and work in settler farms. There was no problem of alcoholism in the rural areas because traditional laws and customs discouraged the youth from drinking and, in most societies, beer was used largely for ceremonial purposes. So, the traditional liquor laws were not meant to fight alcoholism in the rural areas: They were meant to force out natives to go and work in settler farms.

Since Independence, the chiefs have mechanically implemented this colonial law and introduced a reign of terror in the rural areas under the pretext of fighting traditional liquor. We did a research in my constituency on the level of involvement of chiefs in the traditional liquor. We found that chiefs were supporting key brewers because they make money from the brewers every weekend. So, the chiefs, under the pretext of fighting liquor, are actually making money out of it. It is big business for chiefs all over the country. Those who do not cooperate with these chiefs are harassed, their pots broken and, sometimes, arrested and taken to police stations. So, we as the IPPG, should note that it is high time we saved our people from this reign of terror.

[Mr. Speaker left the Chair]

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

We should look at Section 30 of the Traditional Liquor Act and ensure that there will be no chief or DO who will enter somebody's house under the guise of searching for traditional liquor. These powers were left to the police and they are the only people who can search with the search warrant from the court. So, Section 76 of our Constitution, which protects to an extent the right to privacy, will be reinforced especially in the rural areas by these provisions. We know that too much drink is not good for any community, but we hope that religious organisations will work even harder to persuade our people not to engage in too much drinking.

Mr. Temporary Deputy Speaker, Sir, let me now turn to the Chiefs Authority Act. The Chiefs Authority Act is another colonial piece of legislation which was enacted, first as the Native Authority Ordinance in 1912. The chiefs were at the bottom rank of the colonial administrative structure and it is the chiefs who had the primary contact with people. The Chiefs Authority Act gives the chiefs unlimited and unquestionable power over the people. The chiefs became absolute and unrestricted dispose in the rural areas. Except for the change of the title, From the "native" to "chief" and from "ordinance" to "Authority", the National Authority Ordinance remained very much the same until Inter-parties Parliamentary Group (IPPG) looked at it. Even in independent Kenya, the chiefs have remained absolute dictators in our rural areas. The IPPG decided to do a major surgery on the Chiefs Authority Act in the following respects: First, the Committee decided to delete the word "Authority" so that from now on the Chiefs Authority Act will no longer be in existence and what we shall have is the Chiefs Act. The whole idea of changing the title was to send the message that the chiefs will no longer have dictatorial powers over our people. That the chiefs are only going to help in development and other matters relating to environment, but they are not going to dictate to our people. Sections 10 and 11 of the Chiefs Authority Act concentrated most of these powers, including the power to stop drinking, the power to stop excessive dancing and that kind of thing. So, we have looked at those sections and we, in the first place, removed all the powers bestowed on chiefs to control the manufacture, consumption and possession of traditional liquor by adults. We said that, like in the traditional society, the chiefs can control consumption and possession of liquor by the youth, but not by the adults.

We have also repealed the sections in the Chiefs Authority Act which enables the chiefs to employ other people like youth-wingers to assist them. So, the chief may no longer have a gang of people to assist him in raiding homes where *busaa* is brewed and that kind of thing. We have also repealed Section 9 which empowers the chief to compel people to attend courts. We saw that there are enough court brokers and bailiffs to enforce attendance of courts and we should leave the chiefs out of this business.

We also repealed Section 10(J) which empowers the chiefs to order the people to construct game pits. We feel that this might have been necessary in the old colonial days, but these days we have planted coffee, tea and other crops and so there are no wild animals disturbing the people. I think I would like the Attorney-General to look again at Section 10(K) and (M) because I think the Committee had recommended the repeal of this section, but it was inadvertently left out. Section 10(K), gives the chief power to prohibit excessive dancing. I think we were clear on that.

The Attorney-General (Mr. Wako): That has already been done in the original Bill.

Mr. Murungi: Could you also confirm to me whether Section 10(M) has been covered?

The Attorney-General (Mr. Wako): It is on page 500 of the original Bill.

Murungi: Thank you. So, as you have heard, we have removed the powers of the chiefs to control excessive dancing and we have also repealed the powers of the chiefs to collect money from the public. With regard to Section 11, we have removed the powers of the chiefs to prevent evasion of tax and any legal duty. We have also removed the powers of the chiefs to prevent movement of persons from one location to another. We have also removed the powers of the chiefs to compel people to attend before any particular authority. We have also removed the powers of the chiefs to force people to plant any specified crop in their shambas. I think the greatest innovation of IPPG in this Bill is the introduction of the code of conduct for chiefs under the new Section 20 of the Act. Under Subsection (a) "no chief shall engage in the activities of any political party or act as an agent of any such party." We have had numerous cases in the rural areas where chiefs campaign against the Opposition parties and this section will now put an end to that. So, any chief found campaigning for or against any political party will be in deep trouble.

Under Subsection (b) "no chief shall in the performance of his functions or exercise of his powers under the Act, subject any person to torture or to any other cruel, inhuman or degrading treatment." When we were discussing these subsections, somebody died in a police camp somewhere in Kisii and we are enforcing that no chief should hold any person in a cell within a chief's camp. He should hand over all the suspects to the police as

soon as possible. No chief shall enter or search any private premises save with a warrant duly issued by a magistrate. Subsection (c)" states that "no chief shall demand or solicit any donation or collections in a manner likely to suggest that such donations are preconditioned for the services. Subsection (d) "goes ahead to state that "no chief shall maintain a cell or other place of confinement of persons." With this code of conduct, the people in the rural areas are going to breathe fresh air of freedom. I would like the Attorney-General to look at this clause again and see whether we could have a new paragraph because if you look at the Police Act, we said that any police officer who contravenes the various provisions we set out there, will be guilty of a felony. We forgot to insert a penalty clause for chiefs under Section 20, and I think it is appropriate that we insert such a clause. We can insert the same clause like we inserted for the police.

Mr. Temporary Deputy Speaker, Sir, I will now move to the Kenya Broadcasting Corporation (KBC) Act.

In 1961, during the colonial days, the Kenya Broadcasting Corporation Ordinance had a provision which required the Board to keep a fair balance in allocation of broadcasting hours between different political view points. Between 1961 and 1963, when KANU and KADU were campaigning against each other, there was no discrimination in allocation of air time in KBC radio.

Mr. Shikuku: It was during Stephen Kikumu's tenure and the programme was known as *Heshimuni Madaraka*.

Mr. Murungi: Hon. Shikuku tells me that this was during the days of Stephen Kikumu. There was no discrimination between political parties. I understand that the late Ronald Ngala regularly featured in KBC radio programmes. What we would like to do is to return this country to those good old days of 1961 and 1962.

The 1990 version of the KBC Act does not have any such clause. So, what we have done is to resurrect the 1961 clause and insert it as paragraph 8.1(j), which reads as follows:

"That the Board shall keep a fair balance in all respects in the allocation of broadcasting hours as between different political view points."

We hope that when we come to implementing administrative reforms, we have to sit down with the KBC Board to work out modalities of how the various political parties and their programmes are going to be aired by KBC. We hope that this will be implemented soon, because as we know, there is election fever already in the country and various political parties want to send their messages out as soon as possible. We have strengthened the provision by adding a new paragraph "K", which says that during the election campaigns, the KBC Board and the Electoral Commission will allocate free air time to all parties participating in elections. So, these two bodies will sit down and draw up a time-table allocating the air time between different political parties. So, in the very near future, we expect to hear hon. Mrs. Ngilu, hon. Raila, Kibaki, Wamalwa and, of course, hon. Shikuku, regularly on KBC.

Mr. Shikuku: Are you forgetting that I will be there?

Mr. Murungi: Sorry, hon. Shikuku. No, I have not forgotten *mundu khu mundu*.

Mr. Temporary Deputy Speaker, Sir, let me now come to the Film and Stages Plays Act - Cap 222. In the past, no play could be performed in this country anywhere without a licence from the District Commissioner (DC). You recall our troubled history with Ngugi wa Thiong'o's plays; *Ngahika Ndeenda and Maitu Njugira*, which could not be publicly staged in this country in the late 1970s and early 1980s. It was also very unfortunate that we used extra legal measures to burn down the people's theatre at Kamirithu. We have repealed the entire part four of the Films and Stage Plays Act, which made the requirement for the licence to stage plays mandatory. With the repeal of this part, I have no doubt that the barbaric repression of the freedom of expression through stage plays is now going to be a thing of the past, and we are very happy about it.

Mr. Temporary Deputy Speaker, Sir, let me come to the Local Government Act, Cap 265. I was not in Parliament then, but I was told that the late Moses Mudavadi, the father of hon. Musalia Mudavadi, when he was Minister for Local Government, once said that there are two Governments in Kenya. There is the Central Government controlled by President Moi and the Local Government controlled by Moses Mudavadi. The late Mudavadi was not very wrong because the Minister for Local Government has very great powers and control over local authorities in this country. The Local Authorities have become personal fiefdoms of the Minister for Local Government. He appoints and nominates Councillors the way he likes without any set criteria. He creates and destroys local authorities and wards at will. I think it is high time that we had more rationality prevailing in this area. The Bill before us seeks to introduce this rationality by removing the power to create electoral areas like wards, *etcetera*, from the Minister and transferring them to the Electoral Commission.

We have also removed the absolute discretion of the Minister in appointing nominated councillors. We have transferred these powers to political parties. We have also introduced rationality by saying that a half of all the nominated councillors will be women, and will be nominated by political parties on a basis of proportional representation, depending on their strength in the council. We think this is very welcome and this provision will bring greater freedom and also rationality in the management of local authorities in this country.

The local authority elections will also be subject to the Electoral Code of Conduct, which basically prohibits violence, corruption and bribery during the elections. Councillors who engage in acts of violence or bribery can be disqualified from the elections if they are caught.

Mr. Temporary Deputy Speaker, Sir, there is an issue which I would like the Attorney-General to consider. There was a strong recommendation that the mayors and the chairmen of county councils be directly elected by the people in these forthcoming general elections. I think as we are now, the mayors and the chairmen are held hostage by the councillors who elect them. I have had a case of a chairman of a county council, who, when I asked him why he had grabbed so many plots, he told me that each councillor wanted one plot and since he wanted to retain his seat, he had to give them the plots.

Mr. Temporary Deputy Speaker, Sir, if we are to liberate our people from councillors who are operating like a gang of criminals, looters and robbers, we have to free these chairmen. We should introduce the clause in this particular elections, because I do not think there is too much logistics. I think the county council chairmen would be ready to campaign all over the district and the mayors all over the cities. So that we can also attract substantial people for these positions.

Mr. Temporary Deputy Speaker, Sir, with regard to the National Assembly and Presidential Elections Act, I think the main bone of contention in this area is the independence and the impartiality of the Electoral Commission, and whether it has the credibility needed to run and honestly manage free and fair elections in this country.

Mr. Temporary Deputy Speaker, Sir, the IPPG was concerned about the honest, transparent organization and management of elections in this country. It made strong recommendations in this area. We noted that there was no law which governs the operations of the Electoral Commission. I do recall that there was a draft provided by none other, than Justice Chesoni himself. We think there is need to improve this area. I do recall that there was a draft forwarded to the Attorney-General for consideration. Hopefully, it is going to be introduced at the Committee Stage. We would like to strengthen the Electoral Commission and transform it into a credible body for supervision and management of free and fair elections in this country, through those provisions.

Mr. Temporary Deputy Speaker, Sir, the current Section 3 as drafted is the area which we need to look at and strengthen even further. We hope that a new paragraph will be introduced by the Attorney-General, to provide that the Electoral Commission and all its individual members shall act and be seen to act independent of any public officer, organ of Government, political party or candidate.

Mr. Temporary Deputy Speaker, Sir, this provision would be strengthened by providing that, just as we did with the police and the chiefs, it is going to be a felony for any person employed in the public service to openly campaign, canvass for support or oppose any political party or candidate. This is going to bring rationality. Because, if we are excluding the police and the chiefs, there is no reason why we should not also exclude the Civil Service from this provision. All we are asking is that, Section 3 be looked at, so that the recommendations of Committee No.2 be fully expressed through a language like that.

Mr. Temporary Deputy Speaker, Sir, we also need an amendment empowering the presiding officers to exclude certain people from polling stations; to exclude all persons except polling officials, voters and observers. You will note that we are not introducing anything new. We are merely asking the Attorney-General to express more clearly the consensus arrived at, at IPPG. These provisions which we have already forwarded to him would be able to do this.

Mr. Temporary Deputy Speaker, Sir, we would also like the Attorney-General to build more confidence in the electoral process by establishing through a paragraph in Section 3, the party liaison committees through which the Electoral Commission can consult regularly with political parties on all matters relating to preparation of elections.

Mr. Temporary Deputy Speaker, Sir, I think the code of conduct for members of the Electoral Commission is very good because it contains the dos and do nots of the members of the Electoral Commission. We feel that rule five of the code of conduct is weak because it merely says:-

"A commissioner who breaches any of the provisions, will be guilty of misbehaviour".

Misbehaviour can only be punishable through a long process in the Constitution. We feel that, that provision should be made for immediate suspension of any member of the Electoral Commission who flagrantly breaches the code of conduct, pending investigation by the tribunal under the constitutional process. So, there should be some immediate threats for enforcing the code of conduct.

Mr. Temporary Deputy Speaker, Sir, personally I am very happy with the electoral code of conduct, especially Rule 6 which requires parties and candidates to repeatedly condemn publicly and refrain from acts of violence and intimidation, as well as avoiding the use of inflammatory language. We are also happy with the provision which provides that the parties and the candidates should ensure that no weapons are carried during

marches and demonstrations and that, they should refrain from bribery and corruption. We are also happy with the drastic consequences which are contained in Rules 8 and 9 of the code of conduct, especially the ability to disqualify any party or candidate from participating in elections, if he flagrantly breaches the code.

Mr. Temporary Deputy Speaker, Sir, I was one of the commonwealth monitors in Sierra Leone and there was a code of conduct like this. We attended their political campaigns and I would like to inform the House that the code worked, and although in a situation of civil war, the political campaign meetings were very orderly. This is because politicians and political parties are not affected by fines. They can raise harambees and pay those. They are also not affected by other threats. But if you threaten to disqualify them from elections, then they will think twice before they can breach the code.

Mr. Shikuku: Political thugs should go away!

Mr. Murungi: Mr. Temporary Deputy Speaker, Sir, our only worry, and that is why we are insisting on a truly independent Electoral Commission, is the fact that, the powers granted to the Electoral Commission under this code are enormous. So if we do not have an independent electoral commission, it could be used by one party to destroy and disqualify other parties from participating in the elections. So, the code is very good. The implementation by an impartial and neutral electoral commission is a must, otherwise it can be used to cause great injustice in this country.

Mr. Temporary Deputy Speaker, Sir, let me talk about cabinet positions.

Mr. Gatabaki: On a point of order, Mr. Temporary Deputy Speaker, Sir. The reason why the Electoral Commission is being questioned and more commissioners being added is because of the disgraceful conduct of the existing Electoral Commission. Can we ascertain the independence of this Electoral Commission when the existing commissioners are still in that Commission?

The Temporary Deputy Speaker (Mr. Ndotto): Order! Order, hon. Gatabaki. That is not definitely a point of order; it is a point of argument. You will get your time to make your point.

Proceed, hon. Murungi.

Mr. Murungi: Mr. Temporary Deputy Speaker, Sir, hon. Gatabaki is a friend of mine. If he had asked for a chance to give some information, I would have given him. But he should not embarrass himself by standing on a point of order.

(Laughter)

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

The Temporary Deputy Speaker (Mr. Ndotto): Order! Order! Hon. Gatabaki, you should always start speaking after I have given you the permission to do so. You do not say "Point of order", and then you proceed. I have not allowed you to raise your point of order. Proceed, Mr. Murungi.

The Assistant Minister for Transport and Communications (Mr. Saina): On a point of order, Mr. Temporary Deputy Speaker, Sir. It defeats me when hon. Gatabaki stands up on a point of order because he does not speak properly; he swallows his words. Can he stand up and speak properly so that we can hear? He is a friend of mine. I would like him to speak properly.

(Laughter)

The Temporary Deputy Speaker (Mr. Ndotto): Order! You have no point of order, hon. Saina.

Proceed, hon. Murungi.

Mr. Murungi: Mr. Temporary Deputy Speaker, Sir, you recall that on Friday there was a lead story in *The People* which said that hon. Prof. Anyang'-Nyong'o, Dr. Mukhisa Kituyi and myself have been involved in this process and we are also trying to persuade some leading members of NCEC to go to State House to meet the President because we have arranged a deal with the President that the three of us are going to be Ministers when he forms the next Government. That reasoning was based on lack of understanding on what we are doing. There is no way that we, as members of the Opposition, can be appointed Ministers by President Moi or any other presidential candidate without him consulting our parties. That is the law. So, all this fear that there is going to be political acrobats; that there are going to be unprincipled politicians, who are going to be "fished" out to become cabinet Ministers in other Governments without consent of their parties is totally unfounded.

Mr. Temporary Deputy Speaker, Sir, we have introduced an amendment to Section 17 (4) of Chapter 7 of the National Assembly and Presidential Elections Act which reads as follows:-

"No person nominated by a political party under this section shall be appointed under Section 16

of the Constitution without concurrence of the party which nominated him or her for elections."

So, Mr. Temporary Deputy Speaker, Sir, there should be no fear that whoever is the President is going to "fish" people from other parties.

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

The Temporary Deputy Speaker (Mr. Ndotto): Mr. Murungi, do you want some information?

Mr. Murungi: No, I know that hon. Paul Muite does not understand what we are talking about here. What information can he give me?

(Laughter)

Mr. Temporary Deputy Speaker, Sir, I know how he thinks about Section 16 of the Constitution, but when the Constitutional Amendment Bill comes for debate, we shall inform the House that there is also a proposal to amend Section 16 (2) of the Constitution by inserting the words "Subject to any written law" before the word "President" which means that this section is not unconstitutional because we have amended the Constitution so that the President--

Mr. Gatabaki: On a point of order, Mr. Temporary Deputy Speaker, Sir. Let me take the opportunity to speak from this podium so that those who did not go to school can have the benefit of understanding my English. I am raising the point of order because I am a Member of this Parliament and we are talking about the Constitution. In 1982, some of you were here and passed within 48 hours the change of the Constitution that made this country a one-party State. We have lived to regret that. I am not just being frivolous. I am raising further fundamental issues because I want to be recorded in history that I stood up and I opposed what is going on.

Mr. Temporary Deputy Speaker, Sir, my point of order is that hon. Murungi, who is a great friend of mine and a great legal scholar who was at Harvard University, is telling this House that the President of the Republic of Kenya--

The Temporary Deputy Speaker (Mr. Ndotto): Hon. Gatabaki, I would like to respect you as an hon. Member of this House, but I would also like you to respect the views of this House. If I allow you to raise a point of order, you should not go round it. You rise if you have any point of order to raise. I do not think, so far, you have raised any point of order. You are merely trying to advance an argument and, therefore, I am not going to allow you to continue.

Proceed, hon. Murungi.

(Mr. Gatabaki moved to the Table)

The Temporary Deputy Speaker (Mr. Ndotto): Order! Hon. Gatabaki, I am not allowing you to continue.

Mr. Gatabaki: Mr. Temporary Deputy Speaker, Sir, you do not have to allow me to continue!

The Temporary Deputy Speaker (Mr. Ndotto): Order! Proceed, hon. Murungi.

Mr. Murungi: Mr. Temporary Deputy Speaker, Sir, I am about to finish and I hope hon. Gatabaki will catch your eye so that he can say whatever he wants to say.

Mr. Gatabaki: Mr. Temporary Deputy Speaker, Sir, you will live to regret for what you are passing in this House! Who are you to do this to me!

(Hon. Gatabaki left the Chamber without bowing)

The Temporary Deputy Speaker (Mr. Ndotto): Order! Order, hon. Gatabaki. You must respect the rules of this House.

The Assistant Minister for Lands and Settlement (Mr. Sumbeiywo): On a point of information, Mr. Temporary Deputy Speaker, Sir. Did you notice that hon. Gatabaki left the august House without bowing to the Chair and after uttering a curse to you saying that you will regret for what you are passing in this House?

Mr. Shikuku: On a point of order, Mr. Temporary Deputy Speaker, Sir. I think we have Standing Orders that govern the procedures of this House. If a Member decides to be unruly, I think we have got Standing Orders which provides for naming of such a Member, it would be proper to name him. Would you allow us to name hon. Gatabaki for his gross misconduct?

The Temporary Deputy Speaker (Mr. Ndotto): Yes, if you so wish Mr. Shikuku.

MOTION

SUSPENSION OF HON. GATABAKI FOR
DISORDERLY CONDUCT

Mr. Shikuku: Mr. Temporary Deputy Speaker, Sir, I would like to name him for his gross misconduct in this House by not bowing to the Chair and having been unruly in this House. He should be kept out of this House for at least two days.

The Temporary Deputy Speaker (Mr. Ndotto): Hon. Shikuku, you should move a Motion that he should be named.

Mr. Shikuku: Mr. Temporary Deputy Speaker, I beg to move that hon. Gatabaki be named.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Seconded.

(Question put and agreed to)

Mr. Raila: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Motion was not seconded.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): I seconded the Motion.

The Temporary Deputy Speaker (Mr. Ndotto): Order! Order, hon. Raila! The Motion was seconded by the Vice-President and Minister for Planning and National Development.

Mr. Raila: I did not see him doing so.

The Temporary Deputy Speaker (Mr. Ndotto): If you did not see it, I saw him seconding the Motion. It is not your business, but my business, to make sure that procedures are followed and they were followed properly. Therefore, hon. Gatabaki has been named and the Motion has been carried. In fact, if you look at Standing Order No.90, it states:

"If any Member be suspended under Standing Order No.89, a Member may be suspended after being named. His suspension on the first occasion shall be for three days including the day of suspension and that is exactly what the effect is."

So, I think hon. Gatabaki will remain suspended from this House for the next three days, including today.

Proceed, Mr. Murungi!

Mr. Murungi: Mr. Temporary Deputy Speaker, Sir, as you can see, the debate on this Bill is generating a lot of heat and emotions. On the whole, if this Bill is enacted into law, it will move this country a long way on its journey to democracy. It is the prayer of those of us who are on this side of the House, and all those who participated in the IPPG, that this Bill should be supported, subject to the minor amendments that we are suggesting. We hope that when it is enacted into law, the words of the Attorney-General that the Act will be implemented to the letter will be taken seriously. You all know where we have come from. The IPPG initiative was made to save this country from disorderly change. It was meant to stop the demonstrations that were taking place on a weekly basis in this country and reduce the political temperatures that were rising to boiling points in this country. Sometimes, people tend to forget too, what the original objectives of the initiative were.

Mr. Temporary Deputy Speaker, Sir, when I was in high school, we read a book called the *Plague*, by a French author. The setting of that book was a city in North Africa and it was describing a catastrophe in which plague invaded the city from nowhere, rats came from all over the place and were dying in the cities and the people really fought against the plague for quite a long time and they were not succeeding. The rats kept on coming and they everywhere in the sitting rooms, bedrooms and kitchens of people's houses. All of a sudden, the rats disappeared and the plague disappeared on its own, because the human beings had been unable to defeat it. There was celebration after that and people came out in the streets to hug each other because they had defeated the plague and won. In all the merrymaking, there was one doctor who never wanted to celebrate with others. This doctor was called Dr. Leu. He could not share in the joy with the people who were celebrating in the streets because he knew something which those people did not know; that the plague bacillus never die, but they will hide in bedrooms for years and years and one day, they will come again and make rats die in a happy city.

We are now celebrating about the IPPG package, but personally, I think any celebration at this stage is premature. We have not fully overcome the plague. The rats can come out again, any day to die in this happy city. I would like to urge our colleagues to sincerely commit themselves to the process of reforms, especially in the implementation. If we get things wrong and the General Elections are not free, fair and peaceful, this country

will never see peace in the next 20 years. It will take us as long as it took Uganda to get Museveni to re-stabilise the country. So, if we get our jig-saw wrong in the implementation of these reforms, I might meet with Prof. Saitoti somewhere in exile and he will remember the things we are saying today.

Mr. Temporary Deputy Speaker, Sir, the reforms have brought in a lot of controversy, debate and bad blood even among friends. Our people in this country are victims of wars which they do not understand. These fights about who owns the reforms are unfortunate and should stop because the reforms are owned by Kenyans. I think the way forward for this country is for all of us to try to walk together. I think in the spirit of the traditional society, we should look for a goat to slaughter, eat and forgive each other and join hands in the implementation of these reforms. They are the ones which are going to save the country. I do recall the words the late President, Mzee Jomo Kenyatta when he was talking to white settlers in Nakuru, a few days before Independence. He used very moving words. He said: "There is no society of angels whether it is white, brown or black. We are all human beings and as such, we are bound to make mistakes. If I have done wrong to you, it is for you to forgive me and if you have done wrong to me, it is for me to forgive you." I think this is the spirit which should guide all of us, if we are to save Kenyans and move forward with this process of reforms.

With those few remarks, I beg to second this very important Motion.

(Question proposed)

The Minister of State, Office of the President (Mr. Biwott): Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute on this Bill.

Mr. Temporary Deputy Speaker, Sir, what is needed most is faith. Kenyans must have faith, confidence and accept that they are the ones who are entrusted with the responsibility to look after Kenya's interests. Kenya's interest encompasses peace, stability, orderliness and security.

Mr. Muite: What about the clashes at Likoni?

The Minister of State, Office of the President (Mr. Biwott): Mr. Temporary Deputy Speaker, Sir, maybe Mr. Muite knows about that. What has been done by the IPPG is a Kenyan recipe for solving our own problems. It is Kenyans themselves who know where the shoe pinches and nobody else will come and educate Kenyans, on what to do because they know Kenya better than anybody else.

Mr. Temporary Deputy Speaker, Sir, what we need to do is to convince others that we are a mature nation. We have people here who are mature and who can read those laws which govern them, translate, amend and repeal them in accordance with the wishes of the people because we have a responsive Government and this is why KANU participated fully. We also have confidence, as KANU people, that we have the mandate, the responsibility and capability to do what we want to do. Perhaps, some of our friends should also learn that we cannot rely on foreigners to look after our own interests. The foreigner does not wear the shoe, therefore, he does not know exactly where it pinches. In any case, if we have to rely on foreigners, we will be perpetuating the thought that we are incapable and we should, therefore, be colonised.

Mr. Temporary Deputy Speaker, Sir, the previous speaker who has just been seconding this Motion talked of colonial oppression, subjugation and laws which were enacted in order to enhance administration of colonial authority. The Chiefs Authority Act, for example, came about conveniently as an indirect legal structure, which would enable the colonial master to rule without interfering with the order of society that existed. The only problem that exists today is that the chief is now operating in another society which has transformed itself from what it used to be when the colonial authority left it, to a modern civilised society which, therefore, requires amendments and modifications in order to keep pace with the wishes, operations, management and orderliness of the modern society.

So, the first thing for us to do is to avoid being dependent on and guided by the foreigners, even to the extent of destroying ourselves. We must also teach foreigners that we have something that they can learn from us. One of the things that they can learn from us is that we, as Kenyans, can manage ourselves. All they can do is to assist us, they can also learn from us and we can learn from them. It is not that we will be perpetually under their colonial yoke. We must also accept that in order to keep Kenya stable, we have to listen to the wishes of the wananchi and remove the archaic laws as we have done, as the two learned lawyers have gone through them meticulously. Therefore, I would not go into the details of what the IPPG has done. We have removed the laws that are archaic; laws that are no longer applicable and we have introduced few amendments that will assist in the process of liberalising the legal operations and administrative structure that will enable us to conduct ourselves in a free and civilised manner.

Hon. Murungi mentioned the fact that whatever is done is done for a given reason. We have actually gone into this exercise because there were demands for certain actions to be taken. One, it was to ensure that the

legal structures that exist are adopted to such an extent that it will guarantee free and fair elections in this country. I believe that the IPPG have done that and even gone beyond as has already been enunciated.

There was also the hue and cry that, perhaps, the KBC was not giving every aspiring political candidate in this country a chance to air his views. I believe that has been done. If we can only have faith in what we have done, which shall be implemented in full. I am sure whoever wants to address Kenyans, he can do so through the instruments that have been established by this country and for everybody.

Mr. Temporary Deputy Speaker, Sir, there was also the problem of the chief; that the chief harasses his people. I believe that has been amended as has already been said. There was also the question of the Electoral Commission; that, perhaps, it was not impartial. We believe it was impartial. But we have made it so impartial that it has gone beyond impartiality from the point of view of those who were not believing in it by adding another ten commissioners from members of the Opposition, even though the existing Electoral Commission does not necessarily reflect the predominance of KANU. Why have we done this? We have done this because we are Kenyans and we believe that we have a responsibility to sit together. Sitting together for Kenyans is not a new thing. Kenyans have always sat together when they are faced with crisis. For example, in 1990, when Kenya was a one party State, Kenyans sat together under the Saitoti Commission. We detected some weakness which we tried to implement. Kenyans were not satisfied, they amended Section 2(a) and so forth. This is a healthy process which we must accept. I was taken aback to see some of our learned gentlemen and various special people refusing to participate in the IPPG talks when, in fact, that could have given them an opportunity to excel. As we have said, there is no monopoly of knowledge. Those who sat in the IPPG did not pretend to have all the knowledge in the world. They would have benefited from the knowledge and experience of those who chose to stay out of the talks. We must, in Kenya, accept to be humble so that we can serve the interests of Kenyans for today, tomorrow and posterity.

Mr. Temporary Deputy Speaker, Sir, the question of security in this country is paramount. Kenyans must be assured of security so that they can live in peace and secured atmosphere in order to plan for the future. For them to prosper they need security. Without security, we cannot have tourists, investors and so on. Therefore, it is incumbent upon every Kenyan leader to ensure that he does his level best knowing well that Kenyans are clever people. They read us and understand us and follow what we do. For example, they see whether we are responsible or not. As, indeed, it has happened, in the case of those who did not participate in the IPPG talks, Kenyans have judged and they have found out. Perhaps, they missed the opportunity, but the fact that we are sitting with them and are listening, no doubt, they will be contributing. It is a healthy situation.

Mr. Temporary Deputy Speaker, Sir, in the case of the police, Members were complaining about their impartiality. They can rest assured that, the police, through the legal process, have been given the conditions under which to behave impartially. Perhaps, in the case of detention, we should not only stop at making sure that nobody shall be detained for political reasons. We should also move in and ask the donors who have been following us and talking very much about human rights to give us a lot of money so that we can go to the detention cells and prisons to improve their standards to be commensurate with civilised society. I believe too that if they really care for us, as they say, they should ensure that their sisters do prosper within the existing order that we have already established.

Mr. Temporary Deputy Speaker, Sir, what we have done in the IPPG is not exhaustive. We have made it possible for the Constitutional Commission to be constituted so that every idea can be discussed in future, and anybody who thinks that he has ideas that will improve the Kenyan way of life, the Kenyan society, should then be prepared to come forward and assist us in that particular aspect. We will be looking for a Kenya of the 21st Century, and we need all the brains, we need all the resources and every kind of help that is needed. In the case of the Public Collections Act, we looked at it and found that there were a lot of abuses. It is possible even under the existing circumstances for people to raise money for weddings, for building their own houses and so on. The original purpose of public collections was to assist in a worthy cause.

Mr. Temporary Deputy Speaker, Sir, I do not want to take a lot of time because I know my colleagues want to contribute on this Bill. But I would like to emphasise the point that KANU has always been reformist and willing to reform, and that KANU is fully committed to the implementation of the IPPG package. They participated fully in the IPPG because they believe in it. We would like to send the message to the donors that Kenyans are not Zaireans or other countries; Kenya is a well organised society, with proper administrative structures with the willingness to protect its own interest and that Kenya cannot, therefore, be manipulated by anybody other than Kenyans themselves, who know exactly what they want. Also, they can sit and discuss their own problems and find solutions.

Mr. Temporary Deputy Speaker, Sir, when Kenyans met under the IPPG, those who had never sat in such meetings, discovered that the difference between the Opposition and KANU was minute. It was more or less

"imaginary". All of us had Kenyan interests before our own interests and this is why we were able to achieve what we have achieved.

I would like to thank the leaders of the political parties that participated, the President who gave us the encouragement and his commitment, the leader of DP who was very much behind all the forces that were appearing in the name of DP, and hon. Shikuku who is a veteran politician and a man who knows peace and a man who has, perhaps, suffered even more. I also wish to thank hon. Anyona, hon. Achieng'-Oneko and hon. hon. Wamalwa, the Chairman of FORD-K, who also participated fully, and is going to participate fully. The only one we missed was the leader of a newly created party called National Development Party (NDP). I hope that in future, they will have learned that a Kenyan initiative is worthwhile and is the only way Kenyans can solve their problems. I am very pleased that he is present here and he will contribute from now on because the train is still boardable, anybody can board. The train is still going towards a destination of peace and security and so on. I hope that those who have been preaching the destruction or burning of their voting cards, will realize that such an act is sadistic and is not really normal. Whoever is thinking that way should first question his faculties, because no reasonable man can destroy what he needs, if he is going to be judged by wananchi.

Perhaps, another thing which we ought to be conscious of is that changes are always inevitable, but peaceful changes are preferred over other changes. Kenyans shall not accept any change that is violent, and that Kenyans must accept change through the ballot box. Anybody who is afraid of the ballot box should realise nobody forces him to stand. If he does not want to stand because he fears the ballot box, all he has to do is to vote for whoever he thinks can serve his interests better.

So, I would like to also thank the Attorney- General, the Leader of Government Business and all those who participated. I think the atmosphere was very cordial and the Attorney-General gave us invaluable support, and people like Kiraitu here were shining; Ms. Karua and all the others were really good---

An hon. Member: It is a compliment!

Mr. Murungi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Yes it is a compliment, but my name is hon. Kiraitu Murungi, not "people like".

(Laughter)

The Minister of State, Office of the President (Mr. Biwott): Of course, the hon. Kiraitu Murungi, Member for Imenti South, very nice and proud people. This is why you saw him being proud and not being afraid of being maligned unnecessarily by those who said that he was going to eat ugali. There is no ugali in State House. Mr. Temporary Deputy Speaker, Sir, with these few remarks I beg to support.

(Applause)

Mr. Raila: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to make a contribution to what I consider to be an important matter. First, I will begin by making a few preliminary remarks. It has been said that some of us boycotted the IPPG initiative. The truth needs to be said. It was not so much a question of boycott, but it had something to do with the way the IPPG initiative was brought about.

Mr. Temporary Deputy Speaker, Sir, we who did not participate told our colleagues on this other side, that we want to give them the benefit of the doubt. We have all along been talking about reforms. In fact, for the last four years, we have been talking about nothing else other than reforms. On the contrary, it is the other side, which has been against reforms, which has been telling us all the times that there will be no reforms before elections. We said that we wanted reforms and that is the reason why we went into NCEC. So, we told our colleagues that "when this process is hijacked, we will stay away and we wish you all the best of luck. If you succeed, fine. We do think that, if you are ever going to succeed at all, it is going to be more because we have stayed away, because the other side is going to give you something to show that, in fact, they are not taking you for a ride". So, we are open and willing to appreciate anything that is positive along the way of reforms, and it is with that in mind, that we have looked at the package that has been released by the IPPG.

Mr. Temporary Deputy Speaker, Sir, I would like the House to give me a hearing without interruptions, because I want to make a very constructive critique on the package that we have here. This reminds me of an Arab proverb of the camel that was pregnant. While the camel was expectant, the owner of the camel was equally expectant that a booming baby was going to be born and that he was going to get milk. Unfortunately, the day that the camel gave birth, the owner was very sad. This is because the camel gave birth not to a baby camel, but to a rat. For the last two weeks, the Kenyan nation has been very patient and expectant---

An hon. Member: Is he saying that a camel can give birth to a rat?

(Laughter)

Mr. Raila: We were very expectant while the deliberations were proceeding at County Hall. While the Kenyan nation expected a baby camel, what came out was a rat, which we have in front of us. At a time like this, it is important for a nation to go back to its roots. I was very keen to listen to the Attorney-General when he moved his Bills here, and made certain remarks, which reflected on our history, from Independence up to date. The Attorney-General referred to the constitutional reforms that this country has witnessed since its birth. He actually said that the path that we have travelled since Independence has not been all that smooth-sailing. However, the Attorney-General used a philosophy that has become very common, and it is known as afro-centrism. Afro-centrism is a theory that was propounded by founders of several African nations after their independence. This is because most of the African countries inherited multi-party systems of government at independence. Very soon, the development was almost similar, save for the countries where we had military *coups d'etats*. Very quickly, the multi-party system was discarded in favour of the single-party dictatorship. The argument was that young developing countries did not have time for the luxuries of multi-party democracies; that the gigantic task of nation building required consolidation of forces. Therefore, pluralism was a luxury which a young developing country could ill-afford. So, very quickly, the multi-party system that was inherited at independence was discarded, through a combination of coercion, intimidation, cajolery and bribery. Consequently, the opposition was destroyed and single-party systems emerged.

Mr. Temporary Deputy Speaker, Sir, several African leaders have even written books about this. In Kenya, the argument was that multi-partyism or political pluralism was alien to the traditional African society. Mwalimu Julius Nyerere argues, and I quote: "Where there is a one-party system, and the party is identified with the nation as a whole, the foundations of democracy are firmer than they can ever be, when you have two or more parties, each representing only one section of the community".

This was a typical case of the African elite invoking the ideology of developmentalism to rationalise monopoly of power and domination of the civil society. This is what has also happened in Kenya. This is because if you look at the series of constitutional amendments that have been introduced in this country since Independence, they have just had one thing in view: To remove the power from the periphery to the centre. So, we have ended up with a very distorted Constitution, where the institution of the Presidency has emasculated all other institutions of democracy. That is the crux of the matter. That is where we have a problem.

Mr. Temporary Deputy Speaker, Sir, in 1966, the Constitution of Kenya was amended to amalgamate the Upper House or the Senate with the Lower House. But before that, when we moved from the Independence Constitution to the Republican Constitution, we began to introduce some of the matters that have created the current problems. This is because the Independence Constitution provided for clear separation of powers, where you had the Head of State, who was the Queen of England, the Prime Minister, an independent Legislature and an Independent Judiciary. However, when we adopted the Republican Constitution, we created an Executive President: A President who was the Head of State, and also the Head of the Executive, a Leader of Government Business, a head of a political party, a Commander-in-Chief of all the Armed Forces and a Member of Parliament. So, we have a President who enjoys the powers of the President of the United States of America, and the privileges of the Queen of England. This is because the President is also above the law at the same time. So, here is where we have a problem. I think that we need a comprehensive review of the Constitution.

Mr. Temporary Deputy Speaker, Sir, during the amendments to the Constitution in 1966, the then Attorney-General, Mr. Charles Njonjo, had this to say:

"Therefore, Mr. Speaker, Sir, it is the view of the President and his Government, that the new National Assembly should be re-elected from the new Assembly and the new constituencies which have been in existence for a reasonable term of years. In exceptional circumstances, the lives of other Parliaments have been extended. These are very exceptional circumstances. We are creating a new Parliament".

Mr. Temporary Deputy Speaker, Sir, I am quoting that to telescope our intention on this side, to ask for an extension of the life of this Parliament, to give sufficient time for the changes that we want to introduce to take root.

The debate at that time was to try to amalgamate the Senate and the Parliament. Many people argued against the amalgamation and the transfer of the powers of the Senate to the Presidency, that you will then create a dictatorial President. The problems that we are having today were created then. That is why it is very important for this House to listen to the points that we want to make today. The late Tom Mboya argued, as the hon.

Attorney-General did here, by saying:

"It will be recalled that right from the start, and before Independence, all of us were committed to creating in Kenya, institutions of our own liking; institutions that reflect and represent the mode and pattern of life of our own people. We rejected at the time, and said so publicly, a West-Minister type Constitution of Parliament. We felt that in accordance with the tradition, we should have one body where all the leaders and representatives of the people meet to deliberate on the affairs of the nation".

Mr. Speaker, Sir, that was the genesis of afro-centrism that, we reject what we think is alien, and we go for what is traditional. But without critically examining the traditional society--- It should be pointed out that the traditional society did not have prisons, barracks and the GSU, who would go to an area and cause mayhem and violence and rape innocent citizens in the name to trying to combat violence. Whereas we have inherited the vices of the foreign powers like the prisons, barracks, the police force and so on, there is nothing wrong in us inheriting some of the virtues of those societies; like democratic governance. The elites, who are usually very quick to talk about foreign ideologies or foreign masters, are themselves usually [**Mr. Raila**] very quick to run to those very same foreign masters because that is where they hide their money. I was listening to the Member for Kerio South talk about foreign masters. There is nothing wrong in consulting foreigners. After all, the hon. Member consults a foreigner every day because he shares a bedroom with one of those foreigners. There is nothing unusual about consulting foreigners.

(Laughter)

Dr. Lwali-Oyondi: On a point of order, Mr. Temporary Deputy Speaker, Sir. Hon. Raila has just said that the hon. Minister, Mr. Biwott, shares a bedroom with a foreigner. Could he substantiate that remark?

The Temporary Deputy Speaker (Mr. Ndotto): Order! This is a very serious debate. I think now you are introducing issues which are going to take us away from the seriousness of this debate. Those are personal matters and if you have anything to square with hon. Biwott, you can do it outside the House but not here. I want you to stick to the debate.

Mr. Raila: I really intend to take this debate very seriously. I was only making that remark in answer to the remark which had been made by the hon. Member for Kerio South.

The Minister of State, Office of the President (Mr. Biwott): On a point of order, Mr. Temporary Deputy Speaker, Sir. While my wife is a Kenyan citizen---

An hon. Member: And she is white!

The Minister of State, Office of the President (Mr. Biwott): And she is beautiful! What has all this got to do with the constitutional arrangement in this country, with all the institutions of this country and with the IPPG? That has absolutely nothing to do with us. What I said was that we must not allow foreigners to tell us what to do as Kenyans.

An hon. Member: Which foreigners?

The Minister of State, Office of the President (Mr. Biwott) The foreigners whose boots the hon. Member is licking all the time!

The Temporary Deputy Speaker (Mr. Ndotto): Order! Order, hon. Raila! May I request the House to refrain from introducing personal issues.

Raila, can you proceed and stick to the debate?

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, I am really trying to stick to the debate. I am just trying to answer this constant remark about foreigners or foreign masters, because Mr. Richard Leakey is a Kenyan also. Mr. Richard Leakey is a third generation Kenyan. The hon. Member has referred to Mr. Richard Leakey as a foreigner, and I am saying that there is nothing wrong in consulting foreigners, be they in Kenya or even Auckland, New Zealand, where the hon. Member had such a chance to consult foreigners and---

(Laughter)

The Minister of State, Office of the President (Mr. Biwott): On a point of order, Mr. Temporary Deputy Speaker, Sir. Well, you can see how bankrupt in ideas the hon. Member is. He said he wanted to offer a critique of the IPPG.

An hon. Member: And the Bull of Auckland?

The Minister of State, Office of the President (Mr. Biwott): He said he was going to make

constructive criticism but now he is talking about the "Bull of Auckland." He must be the "Bull of Auckland," because I do not know who created this story. I would like the hon. Member to stick to the Bill, or if he wants me to stand up and argue with him, I will stand here and argue with him.

The Temporary Deputy Speaker (Mr. Ndotto): Order! Order, hon. Members! Hon. Raila, for the third time, and mark my words, I am requesting you to stick to the debate, otherwise, you are getting out of order.

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, I referred to what the late Tom Mboya said, during that debate on constitutional reforms. At the same time, the late Jaramogi Oginga Odinga had this to say---

The Temporary Deputy Speaker (Mr. Ndotto): Hon. Raila, we are dealing with The Statute Law (Repeals and Miscellaneous Amendments) Bill, 1997. We have yet to start debating the Constitution of Kenya Review Commission Bill, which apparently you are advancing--- At the moment, you are anticipating debate on that one and I want you to refrain from doing that.

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, I am merely making reference to that debate because I am only quoting the relevant sections of that debate which are relevant to what we are discussing today. If you allow me to proceed, you are going to see how relevant what I am quoting is to my other remarks which are going to come out of this. You may be very happy with---

The Assistant Minister for Agriculture, Livestock Development and Marketing (Mr. Osogo): On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member for Lang'ata is misleading the House. The debate he is referring to--- I was in the House at that time, and we were debating constitutional reforms and amending the Constitution to absorb the Senate.

Mr. Raila: That is right. We are amending certain laws or Acts which have been drawn from the Constitution. But I am just quoting this to show that the laws that we are trying to amend, and the manner in which we are trying to do it, may in the end prove to be counter-productive to this country. I am just contextualising. I am almost done. You may be very happy at this time, but you may come to me at one time and say: "Oh, no we made a mistake." I do believe that we must never actually give one individual powers which can make him an absolute dictator in the State. Maybe today, you are very happy about this but tomorrow, you will not because all of you are very young people and you will live in this country just as long as I will.

Having said that, the background to IPPG was an abortive meeting at the Safari Park Hotel, where a church group had offered to broker discussions or dialogue between the ruling Party, the Government on one side, and the Members of the Opposition and the civil society on the other side.

The first meeting was scheduled to take place at the Safari Park Hotel, and when we were assembled at Safari Park Hotel, we were snubbed by representatives of the ruling party and the Government. At that time, the contention was that they would only negotiate with the elected Members of Parliament; that they would not negotiate with a non-representative body or an amorphous body as they called it, under the name of the National Convention Executive Council.

Mr. Temporary Deputy Speaker, Sir, we are saying that the matter of the Constitution is very fundamental and large. There are very many stakeholders and it is not only Members of Parliament (MPs) who are stakeholders when it comes to amending the Constitution. I am happy that the two weeks of deliberations at County Hall finally brought MPs to that conviction: That, in fact, amendment of the Constitution is a large issue.

That is why they were not able to touch certain sections of the Constitution and instead they said that the amendment of such sections needed wider consultation.

Compromise has now become the latest fudge in the Kenyan language: If you have two contending views over an issue, no matter how diametrically opposed they may be to each other in terms of principles, you can sit down and, in the process of give and take, work out a compromise. This is also called "deal making". What we have here is a deal that has supposedly been made between representatives of MPs from the Opposition and KANU sides. It is supposed to be a deal, but it falls far short of the expectations of Kenyans.

In his remarks the Attorney-General (AG) said that the Limuru documents formed the starting point of the drafting of proposals at County Hall. The AG acknowledges that the Limuru documents were presented to him by the National Convention Executive Council (NCEC) and yet the AG, or the Government, has been very quick to say that he does not recognise the NCEC. It is interesting that the Government should use the documents prepared by the NCEC when it is not willing to let its representatives to take part in the discussion. This basically shows bad faith. This bad faith is reflected in the documents which the AG has presented here.

There are a lot of laws that are covered in this package. Very many of them are meant to camouflage the critical issues. You will remember we said that we would divide the reform process into two parts. First, we wanted to deal with facilitative reforms, that is reforms that were meant to level the playing field before the general election, and then leave other reforms to be dealt with later after the general election. There is a plethora

of reforms here. Several other Acts have been repealed here. This is complimentary, but we are saying that these Acts have nothing to do with elections. That is why I am going to confine my remarks to just the amendments which deal with elections. I am going to show that these amendments themselves fall far short of making the electoral playing field level. The playing field is still as uneven as it was before MPs went to County Hall.

I am happy that the Preservation of Public Security Act has been repealed. As hon. Murungi said, I am one of the victims of this archaic law. I have been detained three times for a total of eight years, but in each time I was not given any reason as to why I was being detained. Hon. Murungi did not check his facts when he said that hon. Anyona was arrested in 1981. Hon. Anyona was, in fact, arrested in 1982. The reason why he was arrested and detained was because he, myself, the late Jaramogi Odinga, Mr. Salim Lone, Prof. Tim Odhiambo and several other people were trying to form a political party. We had drawn up a manifesto and a constitution, and were going to the AG for registration of our party. This matter was leaked to intelligence officers. That is why hon. Anyona was arrested and found in possession of the manifesto and constitution of our political party. That was the only crime that sent hon. Anyona to detention. Hon. Anyona was arrested on a Sunday and on Tuesday the former Section 2A of the Constitution was introduced to this House. Section 2(a) was passed with the spirit in which it was passed here. Section 2(a) was brought here, not because Kenyans wanted a single party state, but because certain Kenyans wanted to form a political party and it was necessary to stop them from doing so. There are some Members of Parliament who were here that time and who voted for the passing of Section 2(a).

Mr. Temporary Deputy Speaker, Sir, be it as it may, they say in Latin, *errare humanus est*. That phrase is translated into the English language as, "to err is human". It would appear from what is being proposed here that the Government is determined to retain the Public Order Act in whatever form. You will remember that during the Madaraka Day, this year, His Excellency the President said that the Government was going to repeal the Public Order Act and replace it with the Peaceful Assemblies Act. When the Bill was finally drafted, it proved to be worse than the Act that it was seeking to replace. Even the amendments that are now proposed here have made very little substantial difference to the Act. We have moved away from licensing to notification. In my view, that is still a form of licensing. First of all, three days before the meeting is held, you notify the police about the intended meeting, but you are not allowed to go ahead with the meeting until the police allow you to do so.

Mr. Nyagah: On a point of order, Mr. Temporary Deputy Speaker, Sir. I would like to correct some impression that has been created by hon. Raila. Is he in order to say that once a Member informs the police about the intended meeting, he cannot go ahead with it until he is told to do so? What we have provided for here is that, as soon as one informs an OCS or any police officer above an inspector about the intended meeting, he records that in a public register which will be open for examination in a police station and only then, can he hold the meeting. If anybody has booked an appointment for a public rally, it will be seen by whoever goes there and that is the only time an OCS can stop a person from holding a public rally.

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, what is there to stop a police officer from telling you that public security is threatened and, therefore, the meeting cannot be held?

The Temporary Deputy Speaker (Mr. Ndotto): Order! I agree with hon. Nyagah. Hon. Raila, you are misleading the House. That is not the position. You had better read the recommendations thoroughly.

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, what I am trying to say is this: What is it that makes the hon. Members here believe that police officers are going to behave differently from the Provincial Administration?

Hon. Members: The law.

Mr. Raila: Which law? Even right now, there is no law that requires you to give the Provincial Administration 14 days' notice. The current Public Order Act does not say that we need to give a District Commissioner (DC) 14 days notice. It is nowhere in that Act.

An hon. Member: It is there.

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, it is not in the Act. I want somebody to show me where, in the Public Order Act, it says that we need to give a DC 14 days notice. You do not need it and yet, if you apply three days before the meeting, they will not give you a licence. They will say you have not complied with the 14 days requirement, which is not a law.

The Attorney-General (Mr. Wako): On a point of information, Mr. Temporary Deputy Speaker, Sir. It may very well be true that under the current Public Order Act, there is no 14 days notice requirement, and that is why the wide discretion comes in. According to administrative directives to implement that provision, the 14

days notice comes in. Under the proposed amendments, we are now providing for a specific time period Three days of notification. Therefore, there can be no regulation on the part of the Provincial Administration to lengthen or shorten that time, because it is provided for in the Act.

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, of course, he is saying that it is not provided for in the Act, and I know it is not provided for. He has confirmed it before I have raised this matter in the House that, there is nowhere in the current Act where a member of the public is required to apply 14 days in advance. Yet, this has been happening, even with the "meet the people tours", whereas the current Act does not forbid it. A good example is a recent incident within this week, when I was stopped in Vihiga, under the orders of a DC and prevented from just greeting the people in the markets of Majengo, Mbale and Chavakali. In Chavakali, the police beat up people when I was just passing and greeting them. Then I told the police officer that I am a Presidential candidate for my party and I am greeting the people in that capacity. I further went on to say that if the KANU candidate came here and stopped to greet the people and requested them to vote for him, which he does everyday, would you come and tell him that, that is an illegal meeting? This is happening hardly two months before the elections. At the same time, we are saying that the reforms are meant to level the playing field for the elections. Are we not cheating ourselves?

The Minister for Information and Broadcasting (Mr. Makau): On a point of order, Mr. Temporary Deputy Speaker, Sir. We are debating this Bill so as to have these Acts passed here, then after passing them, one has a reason to go to court. Is he in order?

An hon. Member: First of all, you have to incorporate the Kenya Broadcasting Corporation (KBC).

The Minister for Information and Broadcasting (Mr. Makau): The KBC is incorporated and when my turn to speak comes, I will give you the details. But my point of order here is: Is hon. Raila not misleading us? He made his tour before we pass the Bill. Let us first pass the Bill and he will be free to visit any part of the country.

(Applause)

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, hon. Makau confirms exactly what we have been saying; that we are just engaged in a game of delaying tactics; buying time.

Mr. Muite: On a point of information, Mr. Temporary Deputy Speaker, Sir. The real shortcoming in the amendment proposed under IPPG, to the Public Order Act is this: That the police retain the power to disperse a meeting, in contrast to what we have been asking for. What we have been saying is that, the police in this country have got the equipment, the personnel and the capacity to ensure that public meetings are not disrupted by youth-wingers from any party. So we are saying that, that discretion in the police to disperse meetings should be taken away. The job of the police should be to ensure that anybody coming to disrupt a meeting is arrested. As long as the powers to disperse a meeting is retained, that power will continue to be misused.

The Attorney-General (Mr. Wako): On a point of information, Mr. Temporary Deputy Speaker, Sir. As I explained when I was moving this Bill, the fact of the matter is that the police have those powers which are limited and were recognised by the National Convention Executive Council (NCEC), in their amendment to the Public Order Act; a power which all law enforcement agencies have all over the world. Where there is imminent danger, they can disperse. This power is everywhere in the world. I quoted cases both in America and in the United Kingdom. I would have gone on to quote cases by the European Court on human rights on these powers. What we have in this Bill is consistent with national standards and what was drafted by the NCEC, in the cited amendments to the Bill. I can quote you the page where it is contained in the NCEC document.

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, I am grateful to the Attorney-General for that information, but that information was contained in what he said.

Mr. Temporary Deputy Speaker, Sir, there is something else that the Attorney-General has missed, which is in the NCEC recommendations. That has to do with the power of appointment of public officers. So long as that power resides in the President who is also a contender, we will not be able to have the independence of the Civil Service and the police force which we desire.

Mr. Mulusya: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Raila not misleading this Parliament and the world at large, by saying the appointment of public officers is being retained by the President? Does he intend to do away with the police force when he becomes president?

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, you will agree with me that, that is not a point of order. If I were to tell the House what I would do with the police if I took power, I would spend a whole day doing just that.

An hon. Member: Go ahead!

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, I would, for example, restore the security of tenure of the head of police. At Independence, we had the post of Inspector-General of Police who enjoyed security of tenure like the Chief Justice. That was done away with, so that the Commissioner of Police is appointed by the President. Therefore, we now have the trickle down effect. The Commissioner of Police only needs to get instructions from the President, then these instructions are passed down up to the constables. Then they will enforce the order which is coming from above. So, if you want to have a true independent police force, then you must restore the security of tenure for the head of the police force.

Hon. Members: Who will appoint him?

Mr. Raila: Of course, it will be the Attorney-General.

Mr. Temporary Deputy Speaker, Sir, about the Societies Act, I would like to say that it is very important and, I think, it is in a democratic society---

(Mr. Kariuki crossed the Floor without bowing)

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. Did you notice that hon. Kariuki, instead of going to the Bar to bow to the Chair before coming to our side, he just crossed the Floor?

The Temporary Deputy Speaker (Mr. Ndotto): Order! Hon. G.G. Kariuki, can you go right to the Bar and then come and back.

*(Mr. Kariuki went to the bar
and bowed to the Chair)*

The Temporary Deputy Speaker (Mr. Ndotto): That is right. Proceed, hon. Raila.

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, in a democracy, it should not be right for an appointee of one of the contenders of the political power to have the discretion of the registration of other political parties. This is wrong. That is why we are saying that it is not right for the Registrar of Societies to have the discretion in registration of political parties.

An Hon. Member: But that has been amended!

Mr. Raila: But that is not in the amendment. It is still the Registrar of Societies who registers the only amendment here is that, he has to give you reasons for his refusal to register your party. We are saying that this is wrong. This power should be transferred to the Electoral Commission when it is made independent, as it is happening in other countries. The Electoral Commission should have the sole power of registering political parties and that so long as a political party satisfies the electoral requirements set out by the Electoral Commission, it should be automatically registered because we are trying to remove this from the bureaucracy and the civil servants who will get instructions from their masters at the top.

Mr. Temporary Deputy Speaker, Sir, it is helpful that you have added a provision for one to appeal to the High Court. But to which court? It is public knowledge that our courts are unfairly constituted and they do not have the independence that is required to be able to make independent decisions as it has happened in other countries like in Zimbabwe, where the court ruled recently that it is wrong for the ruling party to discriminate against other political parties when it comes to an occasion for campaign funding. That was against the Constitution of the country. However, the courts of this country cannot make such a ruling. The courts in Zambia have made some very bold rulings against the Government in power. Here, we know that the Registrar of Societies has refused to register a party mainly due to political reasons. It is not for any other legal reasons that Safina has not been registered. Safina has not been registered because the President of KANU said that Safina cannot be registered, because it is headed by a foreigner who is a whiteman. KANU says that it is against racism and yet, it has refused to register a political party purely on racial grounds. So, we are saying that this is wrong. It should not be left to the discretion of an appointee of one of the presidential contenders.

Dr. Otieno-Kopiyo: On a point of information, Mr. Temporary Deputy Speaker, Sir. I would like to inform hon. Raila that the brother of the so-called foreigner was, indeed, in the same Cabinet with the President of the Republic of Kenya until he was voted out in 1992, but KANU did not find it fit to describe Mr. Philip Leakey as a foreigner.

Mr. Raila: He is right because he is saying that the two brothers were born of the same mother and father and, in fact, they are so identical genetically that one donated a kidney to the other. The Government is now saying that one is a Kenyan and the other is not! Mr. Philip Leakey was a KANU candidate in Langata

Constituency and I defeated him. When he was in KANU, nobody complained about, him and when his brother joins SAFINA, then he is a foreigner. If this is not hypocrisy, then I do not know what hypocrisy is all about.

Mr. Temporary Deputy Speaker, Sir, I now turn to the "KANU Broadcasting Corporation" or the Kenya Broadcasting Corporation Act---

The Minister for Information and Broadcasting (Mr. Makau): On a point of order, Mr. Temporary Deputy Speaker, Sir. Could the hon. Member quote where "KANU Broadcasting Corporation" is in the amendment? He is misleading the whole nation because we do not have a "KANU Broadcasting Corporation". If he can quote where it is, then we can let him continue.

The Temporary Deputy Speaker (Mr. Ndotto): Order, hon. Raila. Why do you not deal with serious matters? At the beginning, you said that you were going to give a very serious critique of the IPPG proposals. Surely, when you say the "KANU Broadcasting Corporation"---

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, it is a popular public opinion that KBC is a KANU mouth-piece.

On a serious note, the Kenya Broadcasting Corporation Act--- I listened to hon. Murungi intently when he was contributing on this Act, and---

The Minister for Agriculture, Livestock Development and Marketing (Mr. D.M. Mbela): KANU can now have its kidney back from Dr. Richard Leakey!

Dr. Otieno-Kopiyo: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. D.M. Mbela in order to allege that KANU can now have its kidney back from Dr. Richard Leakey?

The Temporary Deputy Speaker (Mr. Ndotto): Order, Dr. Kopiyo! I did not give hon. D.M. Mbela the Floor. So, continue hon. Raila.

Mr. Raila: Mr. Temporary Deputy Speaker, Sir, the Kenya Broadcasting Corporation Act says in Section 8: "Keep a fair balance in all respects in the allocation of broadcasting hours as between different political viewpoints." This is vague. Who is going to determine what different political viewpoints are? Is this going to be left to the KANU hawk running KBC today? Is there going to be any change in the management of KBC? If there is going to be no difference, then this is academic. Hon. Murungi said that when they come to administrative reforms, they will sit down with the management of KBC Board to work out the modalities. I want to give the hon. Attorney-General some advice on how it is done in some other countries. In Mozambique where they worked out elaborate election laws when they were negotiating the package in Rome, it is specifically said that each and every political party shall have 10 minutes of airtime both on radio and television on a daily basis during the entire period of campaign. In Mexico, it is 15 minutes of airtime---

The Minister for Information and Broadcasting (Mr. Makau): On a point of information, Mr. Temporary Deputy Speaker, Sir.

Mr. Raila: I do not need your information. You can say that when you will have the Floor to contribute.

In Sub-section (1) (L and J) it says: "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."

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ndotto): Order, hon. Members it is now time for interruption of business. The House is, therefore, adjourned until tomorrow, Thursday, 1st October, at 9.30 p.m.

The House rose at 6.30 p.m.