

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 30th October, 1997

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Mr. Mulusya: Mr. Speaker, Sir, before I ask my Question, I wish to inform the Minister that I have not got a written answer as he had promised.

Question No.675

AWARD OF POWER SUPPLY CONTRACTS

Mr. Mulusya asked the Minister for Energy:-

(a) whether he could table the contract documents between the Westmont Power (Kenya) Limited; Iberafrica Limited and the Government of Kenya for the supply of power to the Kenya Power and Lighting Company;

(b) whether he was satisfied that these contracts are for the benefit of the country and if so, why were the tariff rates as quoted in the two contracts above preferred to the tenders received from all other bidders;

(c) whether he could table all the other tender documents, and provide the House with the evaluation criteria for the award of this contract; and,

(d) how much the Kenya Power and Lighting Company and the Ministry paid for power already supplied by the two contractors

The Minister for Energy (Mr. M'Mukindia): Mr. Speaker, Sir, I apologise to the hon. Member because I have not given him a written answer. But as I mentioned yesterday, we had to do a lot of work on this Question. Now that he has got a copy, I beg to reply.

(a) The contracts for the supply of power were signed between the Kenya Power and Lighting Company and Iberafrica Limited and Westmont Power Kenya Limited respectively and not between the Government and the two parties. Nevertheless, I hereby table the correct contract documents.

(Mr. M'Mukindia laid the documents on the Table)

(b) I am satisfied that these contracts were for the benefit of the country. The tenders were evaluated by an internationally recognised consultant. The contracts were awarded to the two lowest bidders. As such, the question of preferential power tariffs does not arise. The two firms are supplying a total of 88 Megawatts of power to the national grid currently. Had these contracts not been signed, the country would now be experiencing severe power short falls.

(c) Mr. Speaker, Sir, I wish to table the tender documents from all the tenderers as well as the evaluation reports of the bids. Nevertheless, these constitute two big cartons of documents and I have deposited them in the Library. So, the hon. Member may actually access them.

(d) Mr. Speaker, Sir, the Kenya Power and Lighting Company has paid the following amount for the power supplied:-

Iberafrica Limited was paid by 30th September, US\$2,592,935, while Westmont Kenya Limited was paid US\$1,715,157.

Mr. Mulusya: Mr. Speaker, Sir, could the Minister tell this House how much money was paid as advance payment to these two companies and more so, to Westmont Kenya Limited? Why were they given advance payments

instead of waiting for the commissioning of the power supply generating plant to supply power to the Kenya Power and Lighting Company?

Mr. M'Mukindia: Mr. Speaker, Sir, I think the first thing which hon. Members must accept is that at the time when these contracts were signed, this country was facing a major problem of inadequate power supply. There was a major rationing. At the moment, with the additional 88 Megawatts of power, we are just breaking-even. We are not out of the woods yet. Therefore, one must take into consideration the fact that this was something of an emergency nature. We had to move very quickly to avert the crisis that is currently facing our brothers and sisters in Uganda and Tanzania.

In lieu of Government guarantee, bank guarantee or letters of credit (LCs), these two companies insisted that some form of comfort be given to them. Iberafira requested for an amount of US\$7.5 million which has been put in an interest bearing account at 11 per cent which is supposed to be repaid over a seven-year period on a declining balance. At the end of the seven-year period, this money is paid back to the KPLC. The idea was to ensure that Iberafira Limited is given comfort by KPLC. In other words, it was a customer deposit as we pay as consumers.

Secondly, Westmont Power Kenya Limited requested for an Escrow account which is better as far as investment is concerned. Some US\$4.9 million was recently paid to an Escrow account bearing an interest of 25.9 per cent in a local bank.

Dr. Kituyi: Mr. Speaker, Sir, I had occasion to raise the matter of these two companies on the Floor of this House. Now that the Minister is talking about them, could he be so nice as to explain to this House why, against the advice of the World Bank and IMF experts, who said that the repayment period for any short term power supply company in Kenya has to be 14 years in order to make the cost of servicing that debt affordable without excessive raising of the tariffs on electricity, the Government went ahead and signed a contract with two companies with a recouping period of seven years, which has had a dramatic increase on the cost of tariff servicing by the taxpayers and the consumers of this power? Could the Minister be so good as to confess that the deposit paid by the Kenya Government is evidence of the company's distrust of the Kenya Government's ability to honour its obligation, which made them want to have a fixed deposit as a guarantee that when they default, there will be some money to hold on to?

Mr. M'Mukindia: Mr. Speaker, Sir, to answer the last question first, it is not. It is normal commercial relations between one organisation and another. The Government does not want to get involved in these power projects. We are slowly moving away from Government involvement in the power industry to allow private sector participation. For that reason, any relationship between two commercial entities has to be left to the parties concerned, so long as they do not tax the taxpayers too much. Secondly, it is not true that we have higher costs of power as a result of the repayment period being seven years rather than 14 years. We can compare Westmont Power (Kenya) Limited, where we are paying about 80 cents per kilowatt hour, with Iberafira Limited where we are paying 80.5 cents per kilowatt hour. This is below what we are achieving at the moment with our own equipment run by the Kenya Power Company (KPC). Thirdly, we must compare the period within which these plans have been made with the commissioning of the World Bank and IMF supported projects. These projects date back to 1992/93 but they have not produced a single kilowatt of power; they are not even scheduled to start production of power before 1999. The country cannot afford to wait.

Mr. Obwocha: Mr. Speaker, Sir, my colleague, Dr. Kituyi, raised the issue of the World Bank and the IMF. I had complained about the contract given to these companies; Westmont Power (Kenya) Limited and Iberafira. When I complained about these companies, the Permanent Secretary, Ministry of Energy wrote to me through Price Waterhouse and Associates limited saying that I had information which I must supply to the Ministry about this contract. I have no information. I would like the Minister to tell this House who the other bidders were and how much each bid on this contract. He has already told us about Westmont and Iberafira. What about the other bidders?

Mr. Speaker: I thought a list of companies has been deposited in the library. Would you like to say how many they are?

Mr. M'Mukindia: Mr. Speaker, Sir, the list of companies consists of papers which are contained in two cartons and they have been deposited in the library. Nevertheless, these were the two lowest bidders; Iberafira and Westmont Power (Kenya) Limited. As regards the information requested from the hon. Member by my Permanent Secretary; when this Question was raised early in this House, hon. Orenge, hon. Obwocha and hon. Mulusya spoke on it. In our efforts to get to the bottom of this issue, we appointed Price Waterhouse and Associates to review this contract, the whole evaluation procedures and the tender process. We are trying to get any member of the public or an hon. Member of this House who has information to give it to us so that we can establish conclusively whether there were any under-hand dealings or not. Hon. Obwocha did not favour us with a reply. I must thank hon. Orenge who replied to our letter and gave us some information about this issue.

Mr. Speaker: Final question, hon. Mulusya.

Mr. Mulusya: Mr. Speaker, Sir, with your indulgence, let it not be the last question.

The Minister is deliberately trying to mislead this House and the country at large because Iberafrica Limited has the same directors as the Kenya Postal Services (KPS). The Westmont Power (Kenya) Limited has local directors who already own 30 per cent shares of the company. The directors of Westmont Power (Kenya) Limited are the same directors who are indirectly bidding to purchase the Grand Regency Hotel. This hotel is set to be bought by Kamlesh Pattni from the Central Bank at a cost of Kshs32.2 million. He is planning to sell it to Westmont Power (Kenya) Limited at Kshs60 million. I will table a company profile for Westmont Power (Kenya) Limited and all they have been doing. By yesterday, the Westmont Power (Kenya) Limited had acquired Uganda Commercial Bank. Could the Minister tell us whether he is aware that these two companies have local directors and there has been a collusion by those local directors, some of whom are Cabinet Ministers and people of very---

Dr. Otieno-Kopiyo: On a point of order, Mr. Speaker, Sir. What is wrong with having local directors in a company? Have they done something wrong?

Mr. Speaker: Order! I honestly hope that hon. Mulusya will respond hon. Dr. Otieno-Kopiyo's question.

Mr. Mulusya: Mr. Speaker, Sir, I am ready to prove that US\$12.4 million which was paid in advance was part of a scheme to raise funds for the purpose of acquiring Grand Regency Hotel by Westmont Power (Kenya) limited. There is fraud involved in this. This is not the first time for the people who have been mentioned to be involved in this type of fraud.

Mr. Speaker: Order! Hon. Mulusya, may I remind you of the provision of Standing Order No.35 which states that: "Questions shall not be made the pretext for debate." This is Question Time and not debate time. Put your question to the Minister as precisely as possible so that he can answer it.

Mr. Mulusya: Mr. Speaker, Sir, is the Minister aware that the following people have already acquired equity to the tune of 50 per cent in Westmont Power (Kenya) Limited, and they have been indirectly trying to raise funds from the Government for the acquisition of the Grand Regency Hotel? They are Mukesh Gohil, Kamlesh Pattni, Harbinder Singh, Mr. Gichuru, the Managing Director, KPLC, Mr. Mutitu; the Permanent Secretary, Ministry of Energy, Mr. Gideon Moi and hon. Biwott.

(Applause)

Mr. M'Mukindia: Mr. Speaker, Sir, I am not aware. Nevertheless, I fully support Dr. Otieno-Kopiyo. In fact, it is our policy, as the Ministry of Energy, to encourage local people to own shares in companies that are going to set up power generation plants. I would encourage hon. Members, especially on the other side of the House, to take up this matter and encourage their own constituents, to take advantage of this new Government policy.

(Loud consultations)

Mr. Speaker: Order! Let us go to hon. Obwocha's Question!

Question No.701

PAYMENT OF TERMINAL BENEFITS TO MR. NYARIKI

Mr. Obwocha asked the Minister for Education when Mr. Richard Nyariki, TSC No.118929/18 would be paid his terminal benefits.

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

Mr. Richard Nyariki's terminal benefits will be processed for payment as soon as he returns to the Teachers Service Commission (TSC), his letter of permanent appointment, and a duly completed pension form.

Mr. Obwocha: Mr. Speaker, Sir, Mr. Richard Nyariki got a letter from the TSC for compulsory retirement based on age ground. I have a copy of the letter with me. They requested him to submit five items; payslip for the month preceding, photostat copies of his new identity card, the pension form, lumpsum gratuity and the Income Tax Clearance Certificate. He submitted all these documents.

There are very many cases outstanding at the TSC for teachers who have retired either on compulsory or other grounds. Could the Assistant Minister be kind enough to pay this teacher?

Mr. Komora: Mr. Speaker, Sir, we would like to pay him if he complies with the instructions. Two forms have not been returned. Once he returns those forms, he will be paid.

Question No.697

TRANSFER OF GK VEHICLES TO PRIVATE OWNERSHIP

Mr. Anyona asked the Minister for Health:-

- (a) whether he was aware that Vehicle Registration No.GK 7186 (Bedford T5 Bus) changed ownership and registration as Ex-GK;
- (b) whether he was further aware that Vehicle Registration No.KAC 103P (Land Cruiser) being used by the Principal of Kenya Medical Training College also changed both ownership and registration as Ex-GK; and,
- (c) if the answers to "a" and "b" are in the affirmative, the circumstances under which these two vehicles were changed from GK to private ownership and registration.

The Assistant Minister for Health (Mr. Criticos): Mr. Speaker, Sir, due to the unsatisfactory answer that I have, I beg the indulgence of this House to answer this Question on Tuesday.

Mr. Anyona: Mr. Speaker, Sir, yesterday, there was a Question for the Ministry of Health which was answered with a lot of difficulties. Again, today, we cannot get an answer from the Ministry. The Ministry of Health is one of the most important Ministries in the Government and yet, it is not functioning. What can we do? Even on Tuesday, we will not get a satisfactory answer. What is he going to do, that he could not do before, to get a proper answer?

The Assistant Minister for Health (Mr. Criticos): Mr. Speaker, Sir, I am not going to bring an unsatisfactory answer. Therefore, the hon. Member should bear with me because every time I answer a Question here, I am very truthful.

(Question deferred)

Mr. Speaker: Next Question!

Question No.688

NON-PAYMENT OF RETIREMENT DUES TO MR. GATONYE

Mr. Speaker: Bishop Kimani not here! We will leave his Question until the end. Let us move on to the next Question!

Question No.523

OPERATIONS OF EMBAKASI VILLAGE HEALTH CENTRE

Mr. Ruhii asked the Minister for Local Government:-

- (a) whether he is aware that the residents of Embakasi Village face hardships when they fall sick at night as they have to travel all the way to Kenyatta National Hospital; and,
- (b) if the answer to "a" above is in the affirmative, whether he could direct the Nairobi City Council to ensure that Embakasi Village Health Centre is operational on full time basis.

The Minister for Local Government (Mr. F.P.L. Lotodo): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that residents of Embakasi Estate travel to Kenyatta National Hospital and other health facilities, within Embakasi and elsewhere, when they fall sick at night, since Embakasi Health Centre, which is managed by the Council does not offer night services.

(b) At the moment, the Embakasi Village Health Centre is not offering night services because in the previous review that was done, it did not qualify to operate on full-time basis due to the low patient population. However, there is an on-going review which is being undertaken by the Council to determine additional health facilities that will operate on a full-time basis. This health centre is being considered along with the others.

Mr. Ruhii: Mr. Speaker, Sir, the answer from the Minister is most misleading. Embakasi Village has a population of about 5,000 residents. The residents have come to me with a request that night services should be offered by this Health Centre. Could the Minister tell us what criteria the review used? Was it based on the population or what?

Mr. F.P.L. Lotodo: Mr. Speaker, Sir, we do not just have one health centre there. We have several health

centres which offer night services. But in Embakasi itself, we do not have a person who can offer night services. We have to employ somebody and budget for him. At the moment, we do not have somebody to do that.

Mr. Mbeo: Mr. Speaker, Sir, arising from the answer given by the Minister, could he tell this House what is required to employ somebody on a full-time basis at this particular health centre?

Secondly, how many health centres in Nairobi operate 24 hours?

Mr. F.P.L. Lotodo: Mr. Speaker, Sir, what is required is somebody to provide the night services. But we do not have the money to employ that somebody.

On the second part of the supplementary question, I am not in a position to tell this House how many health centres operate 24 hours.

Mr. Speaker: Next Question!

Question No.692

RE-CARPETING OF NDUMBERI-GITHUNGURI HIGHWAY

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

(a) why the Ndumberi-Githunguri Highway had not been re-carpeted given that the funds for the same were authorised in 1992; and,

(b) when the road would be re-carpeted, given the appalling condition it is in, and its significance in terms of volume of traffic it caters for.

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

(a) The Ndumberi-Githunguri Road has not been re-carpeted since funds were not set aside.

(Loud consultations)

Mr. Speaker: Order, hon. Members! I think we are interested in communicating to one another. I do not think we are communicating just now! Proceed, hon. Mwamzandi!

The Assistant Minister for Public Works and Housing (Mr. Mwamzandi): Mr. Speaker, Sir, the Ministry has been maintaining the road annually, using its recurrent budget. The Ministry is not aware of funds set aside and authorised in 1992.

(b) The road will be re-carpeted, since it is a priority road in Kiambu District, when the current on-going work on the Rironi Road and Uplands-Githunguri-Ruiru Road, which is supposed to be completed within this Financial Year, is completed. The re-carpeting work on this road is expected to start in 1998/99 Financial Year.

Mr. Gatabaki: Mr. Speaker, Sir, I am shocked by the Assistant Minister not being aware about the funds his Ministry set aside for re-carpeting that road. In 1992, the Government of Kenya had set aside Kshs300 million for re-carpeting of the road. But the moment the long serving Minister, Arthur Magugu lost his Parliamentary seat, those funds were immediately withdrawn. This is a major highway connecting not only Githunguri but all the constituencies in Kiambu District which is one of the most productive areas of this country. That was the reason why it was first tarmacked by the Colonial Government. That road was used by the first President of Kenya, His Excellency Jomo Kenyatta when he was the Principal of Githunguri Teachers College. Could the Assistant Minister now give assurance, that in view of the importance of that road, it will be tarmacked immediately?

Mr. Mwamzandi: Mr. Speaker, Sir, my Ministry has no record of funds set aside for that road in 1992. In any case, let me assure the hon. Member that the Ministry is planning to re-carpet the road in the next financial year. Let him get that assurance from me.

Mr. Ndicho: Mr. Speaker, Sir, first and foremost, the Assistant Minister has misled the House by saying that the re-carpeting of the road will start when Rironi-Uplands-Githunguri Road will be completed. I would take the pleasure to inform him that, that road was completed three months ago. It is now in very good condition. The Ndumberi-Githunguri Road is full of potholes and many accidents occur there as a result of its bad state. Could the Assistant Minister now, using the Recurrent Expenditure for his Ministry, assure this House that the people of Kiambaa and Githunguri, who use this road, are going to enjoy the tax money they pay to have this road done? This road is wrecking their vehicles, as well as causing many accidents and it is causing a lot of concern. Please could he use the money the people of that area are contributing to the Government in form of taxes?

Mr. Mwamzandi: Mr. Speaker, Sir, we will regard the work completed when we get a certificate from our Resident Engineer there. Immediately he brings that certificate, we will know that the road is completed.

Meanwhile, my Ministry is taking care of the road in that this financial year, we have set aside Kshs550,000 to take care of the potholes, shoulder rehabilitation and bush clearance. So, we are taking care of it.

Mr. Gatabaki: Mr. Speaker, Sir, I must tell the Assistant Minister that he is misleading the House. The repair of this major highway is not being done by the Government of Kenya. It is being done by Jua Kali artisans and not the Government of Kenya. So, there is no money being spent on that road. Could the Assistant Minister assure me and the House that there is money available for repairing the potholes right now, because nothing is being done by your Ministry right now? Whatever is being done is being done by Jua Kali artisans.

The Assistant Minister for Home Affairs and National Heritage (Mr. Mutiso): On a point of order, Mr. Speaker, Sir. The hon. Member is out of order to address the Assistant Minister directly. He should address the Assistant Minister through you.

Mr. Speaker: Mr. Gatabaki, the only reason why I am here is because you all hear each other through me!

Mr. Gatabaki: Mr. Speaker, Sir, let me have the opportunity to address you. First, I would like to congratulate you for the light moments you bring in this House. If this House was as it is now, Kenyans would be grateful. I do not know why we deserve this kind of treatment. Whatever the reason, the people of Githunguri wants the Government of Kenya to repair the roads because this is one of the most productive areas of this country. So, could the Assistant Minister assure this House, in view of the importance of this Constituency, that this road is going to be given priority?

Mr. Mwamzandi: Mr. Speaker, Sir, I wonder if the hon. Member followed my answer. I said earlier that it is within our plan to carry out repair work on this road during the next financial year, 1998/99. In any case, we have funds amounting to Kshs550,000 available now to take care of the potholes and other repairs. So, it is taken care of.

Question No.602

REVIEW OF KPTC RETIREES PENSION

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

- (a) when the Kenya Posts and Telecommunications Corporation staff retirees were last given pension increase;
- (b) why these retirees were not considered for pension increase when the civil servants pensions were reviewed; and,
- (c) whether he could state when the retirees of this Corporation will be given pension increase.

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

(a) The pensions of the Kenya Posts and Telecommunications Corporations (KPTC) staff retirees were last reviewed in 1989 and it was an increase.

(b) After the civil servants pensions were reviewed in 1996, the KPTC Board appointed a consultant to review the benefits and pensions of retirees. The consultants have now reported back and that report is going to be submitted to the Board in their meeting in December and that will be communicated to the retirees.

Mr. Nthenge: Mr. Speaker, Sir, does the Minister accept that the purchasing power of the Kenya shilling has gone so low that, increasing the pensions after ten years is punishing the retirees? Under the circumstances, when does he expect this process to be completed so that they get their increase?

Mr. Ayah: Mr. Speaker, Sir, I agree with the hon. Member that things are not as easy as they ought to be and that everybody needs some kind of increase. That is why the Consultants' report is going to be submitted to the Board in December so that, hopefully, the increase that will come from that report will alleviate some of the problems the retirees are facing.

Dr. Otieno-Kopiyo: Mr. Speaker, Sir, is the Minister aware that apart from the amount received by the staff of the KPTC being so low, the Pension Fund has been "raided" by the management to the tune of Kshs706 million, which the management has converted to its own use and the KPTC pensioners do not have actual money in the Fund? He is aware of that.

Mr. Ayah: Mr. Speaker, Sir, I am not aware of the allegations being made by the hon. Member. But what I would like to assure the hon. Member is that the pensions which are due to the retirees are being paid regularly as of now. What we are talking about now is an increase which has been recommended by the Consultants and which will be discussed in the Board meeting. There is nobody who has "invaded" the Pensions Fund.

Mr. Sambu: Mr. Speaker, Sir, hon. Dr. Otieno-Kopiyo has alleged just now that the Management of KPTC has converted to its own use Kshs706 million of the KPTC Pension Fund. Would he substantiate because that is a very serious allegation?

Dr. Otieno-Kopiyo: Mr. Speaker, Sir, I did not want to embarrass my friend, the Minister for Transport and Communications because we sat in the Public Investments Committee (PIC) for a few years together, and he is fully aware of what I am talking about; that these people have used the money for the Pensions Fund. Right now that Fund is insolvent. That is a matter of fact and it is in the PIC Report of which he was a member.

Mr. Ayah: Mr. Speaker, Sir, it is very unfair for the hon. Member to use information which we received in another forum. But I would like to assure the House and through it, the retirees that the funds---

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

Mr. Ayah: I am responding to a point of order.

Mr. Ayah: The important thing here is the fact that all the retirees are receiving their pensions regularly; as to the review that has been recommended, we hope this will be changed when the Board meeting decides.

Mr. Nthenge: Mr. Speaker, Sir, the retirees are in very great need. Could the Minister consider backdating some of the payments so that they are able to pay their debts? some of them are now in debts as the purchasing power of the shilling has dropped so drastically?

Mr. Ayah: Mr. Speaker, sir, I have just told the other Member that consultants have made some recommendations which are going to be considered by the board. I do not think it is right to anticipate the amount that has been recommended. I think we should wait for that recommendation to be discussed and passed and then we can consider whether it is adequate or not.

(Mr. Busolo stood up in his place)

Mr. Speaker: Hon. Busolo, I thought you were pleading with me. Yes, I hear your plea. What is it?

Mr. Busolo: Thank you Mr. Speaker, Sir. There is something terribly wrong with the Kenya Posts and Telecommunications Corporation, whichever way you look at it. I do not think the Minister is giving us the correct version of events there. In fact, when it comes to this pension, my understanding is that there has been nepotism and discrimination in the awarding of pensions to the workers there. Could the Minister confirm or deny that members of a certain community---. It is very unfortunate probably for me to say that workers from the Kalenjin Community have been paid all their pensions whereas workers from the other communities have not been paid. Could he confirm or deny that?

Mr. Ayah: Mr. Speaker, Sir, I have no hesitation in denying most emphatically, what the hon. Member has alleged. It is known that I do not favour any community in this country and I do not think it is fair to make that kind of allegation. But the answer is definitely no.

Question No.688

RETIREMENT DUES TO MR. GATONYE

Mr. Speaker: Is Bishop Kimani still not here?

(Question dropped)

QUESTIONS BY PRIVATE NOTICE

INVASION OF MR. MABETA'S FARM

Dr. Lwali-Oyondi: Mr. Speaker, Sir, despite the fact that I do not have a copy of the written reply, I beg to ask the Minister of State, Office of the President the following Question by Private Notice.

(a) Is the Minister aware that the farm belonging to Mr. Haron Onchimu Mabeta, in Kamara Sub Location of Mau Summit Location, has been invaded by Messrs: Talam, Telit Paulo, Kirui Paulo, Joel and Jane Paulo, who are not only cultivating, but have also sub-divided it among themselves?

(b) Is he further aware that this act is causing tension in kamara Sub Location?

(c) If the answers to "a" and "b" are in the affirmative, what urgent steps is the Minister taking to ensure that the dispute is resolved?

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

(a) What I am aware of is that Mr. Onchimu had fraudulently acquired the land in question when he was the Vice-Chairman of Mau Investment Company. The current directors allocated the land to Messrs: Talam, Telit Paulo,

Kirui Paulo, Joel and Jane Paulo, who had bought shares in the company but had not been allocated the land.

(b) I am not aware of any tension in Kamara Sub Location.

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

Dr. Lwali-Oyondi: Mr. Speaker, Sir, I think the Assistant Minister is misleading the House in that Mr. Ondimu and other people in that particular farm acquired it in the normal way through the co-operative. They have been living there and they have even been given loans from Agricultural Finance Corporation (AFC) to cultivate the land and it is only after the tribal clashes that these people were driven out. Ondimu and other people from other communities, other than Kalenjin, were driven out and the vacant farms invaded. Could the Assistant Minister get the right perspective of the Question because I have even given him the information?

Mr. Sunkuli: Mr. Speaker, Sir, indeed the hon. Member has given me some information. But the information I have indicates that Mr. Onchimu was the Vice Chairman of this company from 1987 up to 1989. While he was there, he did some allocation. Due to certain complaints from members of that farm, a probe was ordered which revealed that Mr. Onchimu had forged some receipts giving himself four more shares than he had actually bought. Mr. Onchimu actually owns two acres on which he lives and over which there is dispute no at all. That is how he could be able to get a loan because there is no dispute at all over the two acres.

Mr. Obwocha: Mr. Speaker, Sir, first of all, I wish to correct the name of this individual. The Assistant Minister continues calling him Onchimu. This man is called Haron Ondimu Mabeta and I personally know him.

An hon. Member: He is called who?

Mr. Obwocha: he is Ondimu, not Onchimu. This is one of those cases of people who have been displaced from farms that they bought. Ondimu is one of the people who were displaced during the ethnic clashes. Could I ask the Assistant Minister to reinvestigate this issue and come up with proper information because, indeed this man has stayed in this farm for a long time?

Mr. Sunkuli: Mr. Speaker, Sir, I think the hon. Member has misunderstood my answer. I have not said that Mr.--- He now calls him Ondimu and I trust his word because he is a Kisii. It is very clear, according to the records I have, that Mr. Ondimu is entitled to two acres of land on which he ought to live. The only dispute is the land which reflects four more shares which he had not actually bought. The probe indicated that he had fraudulently allocated himself those shares.

Dr. Lwali-Oyondi: Mr. Speaker, Sir, there is a lot of correspondence between Mr. Ondimu, the DO, the Chief, the Sub-Chief and even the PC. I have given the Assistant Minister a dossier of that correspondence and nowhere does it ever mention fraud of any kind. If this case had not been taken to court, how does the Assistant Minister believe that what he has been told is true, bearing in mind that the administrators were more or less from the same ethnic group?

Mr. Sunkuli: Mr. Speaker, Sir, I know that there is a lot of correspondence, some of which confirms, perhaps, what the hon. Member for West Mugarango has said about the clashes and so on. But it appears that there are two matters. There is the matter of land to which actually-

(Loud consultations)

Mr. Sankori: On a point of order, Mr. Speaker, Sir. There is another Luo meeting in one corner of the House.

(Laughter)

Mr. Speaker: Order! Order! I had already requested hon. Members to make it possible for us to communicate to each other. In any case, those hon. Members interested in holding a rally, can very well go and do it outside. But for now, no rally is permitted here!

Mr. Sunkuli: Mr. Speaker, Sir, I said there seem to be two matters here. There is the matter of the ownership of land, and I am saying that two acres of that land lawfully belong to Mr. Ondimu. If during the clashes he may have gone out, he is entitled to go back to that land. What is in dispute is the land that he allocated to himself fraudulently.

Mr. Speaker: Next Question, Dr. Otieno-Kopiyo.

Dr. Lwali-Oyondi: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: We are running out of time. I am sorry, Dr. Lwali-Oyondi. Dr. Otieno-Kopiyo is also entitled to ask his Question.

AT KILINDINI HARBOUR

Dr. Otieno-Kopiyo: Mr. Speaker, Sir, I beg to ask the Minister for Transport and Communications the following Question by Private Notice.

(a) Is the Minister aware that the current torrential rains have destroyed more than 1000 containers of valuable cargo, thereby occasioning huge losses to shippers and the economy in general?

(b) If the answer to "a" is in the affirmative, could the Minister explain what urgent steps the Kenya Ports Authority (KPA) will undertake to ease congestion of containers at the Kilindini Harbour?

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

(a) I am not aware that the current torrential rains have destroyed more than 1000 containers of valuable cargo as the hon. Member has alleged. However, a few containers were covered with water up to two feet above the ground during the two days of heavy rains. Modern containers are water-tight and built to protect cargo from such eventualities as rains and floods. No shipper has so far complained about any destruction of any container.

(b) In view of my reply to part "a", there are no urgent steps for the KPA to take to ease congestion of containers at Kilindini Harbour.

Dr. Otieno-Kopiyo: Mr. Speaker, Sir, the Minister is probably in need of information. On Monday, last week, 300 containers were submerged under water at Kilindini Harbour and the following day, over 600 containers were submerged under water. When you add those two figures, you get close to 1000 containers. With regard to congestion, it is a well known story that even our neighbours, Uganda, are diverting their cargo route from Kenya to Dar-es-Salaam due to delays in cargo clearing at the port because of congestion. Why did the KPA suspend the construction of the container freight station which would have eased this congestion a few years ago?

Mr. Ayah: Mr. Speaker, Sir, the hon. Member is, in fact, misleading himself. At the time that we had the floods, which was on 29th October, 1997, we had 1000 containers which were covered with water up to two feet above the ground, but that did not pose any danger whatsoever. The broaches were drained in no time at all and as I said earlier, no damage has been reported by any shipper.

I categorically deny that shippers have shifted to Dar-es-Salaam or anywhere else because of that problem.

(Loud consultations)

Mr. Nthenge: On a point of order, Mr. Speaker, Sir. There is loud consultation to the extent that we cannot hear what the Minister is saying.

Mr. Speaker: Order! Order! I am sure that the hon. Members who bring Questions here are interested in asking them and hearing the answers. So, hon. Members, can we consult in low tones? Proceed, Mr. Ayah. Have you finished replying?

Mr. Ayah: Yes, Mr. Speaker, Sir.

Mr. Obwocha: Mr. Speaker, Sir, I think the Minister has missed hon. Dr. Otieno-Kopiyo's Question. The civil works at the container station were stopped. Subsequently, there is a problem of floods. The Government, through the KPA, had paid a certain amount of money to the contractor for the works at the container station. Could the Minister ask the contractor to go back to the site before any mobilisation fee has been paid so that this work can be completed to alleviate this problem of torrential rains destroying the containers?

Mr. Ayah: Mr. Speaker, Sir, the floods at the port were as a result of the drainage system being overwhelmed by the heavy volume of water, as I have said before. With regard to the contract that the hon. Member is talking about, which is a separate question altogether, I would like to inform him that the contract has been terminated.

Dr. Otieno-Kopiyo: Mr. Speaker, Sir, it is absurd that the Government is operating like this. In 1995, the Government awarded a contract to Messrs Krisina Bahala & Sons to construct a container freight station at the port.

On 18th October, 1995, the Managing Director wrote to the then Head of the Civil Service and Secretary to the Cabinet, Prof. Mbithi, that he was under instructions to suspend the contract. Again in November, 1996, the KPA wrote to the same contractor to recommence the work. The result of all this backward and forward movement has caused the Government or the KPA Kshs289 million and we are no better off because we do not have a container freight station. What is he going to do to ease the congestion? Since the KPA have spent Kshs289 million on the contract, why do they not recommence the work by calling the contractor back on site and save Kshs289 million for Kenyans?

Mr. Ayah: Mr. Speaker, Sir, I do sympathise with the concern the hon. Member has for this particular structure at the port, but as I have said, it is a question that needs a little bit of preparation on my part. If the hon. Member wants to put a Question with regard to that particular contract, I will be very happy to answer, but as of now,

the contract has been terminated.

Mr. Speaker: Next Question, Mr. Maoka Maore.

PROVISION OF ADEQUATE DRAINAGE
ON MAILI TATU-LARE ROAD

Mr. Maore: Mr. Speaker, Sir, I beg to ask the Minister for Public Works and Housing the following Question by Private Notice.

(a) Is the Minister aware that Maili Tatu-Lare Road tarmacked this year has serious drainage problems?

(b) If the answer to "a" is in the affirmative, what measures is the Minister taking to ensure adequate drainage for the same is provided?

(c) When will the Lare-Mutuati portion commence, since funds required have been made available?

The Minister for Public Works and Housing (Prof. Ng'eno): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that some sections of Maili Tatu-Lare Road have developed some drainage problems.

(b) The Ministry has instructed the contractor, who is still on site, to carry out the necessary repairs and improve the drainage system along the road.

(c) Work on the Lare-Mutuati section will commence within one month from now as the contract has already been awarded a sum of Kshs74,967,818.60.

Mr. Maore: Mr. Speaker, Sir, the Question was in regard to the drainage system on the Maili Tatu-Lare Road. When the Road was being done, the Minister did not take into consideration the issue of drainage, given that this is an area which receives heavy rainfall twice a year.

Could the Minister give a specific assurance on what instructions he has given to the contractor in as far as the drainage is concerned? Why was it ignored in the first place and how much money has he allocated for the Lare-Mutuati portion? Why should it take a month to commence work when the money has been allocated and made available by his Ministry?

(Loud consultations)

Prof. Ng'eno: Mr. Speaker, Sir, I do not think I understood what the hon. Member was asking owing to too much consultation in the House. Could he repeat his question?

(Hon. Kamuyu walked into the House)

An hon. Member: There is a stranger in the House!

Mr. Speaker: Order! I thought we were on Business. Could we proceed?

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

Mr. Speaker: No point of order!

Mr. Maore: Mr. Speaker, Sir, the problem was from the stranger, the Member for Dagoretti, who seems to have lost his way.

Mr. Speaker: Would you proceed?

Mr. Maore: Mr. Speaker, Sir, why did the Minister, in the first place, ignore the question of drainage, when he knew very well that this is an area that receives a lot of rain? He never allocated money for it in the first place. Secondly, how much money has been allocated for the Lare-Mutuati portion, and, when did he release the letters of award?

Prof. Ng'eno: Mr. Speaker, Sir, I have said that I had given instructions for the drainage work to be done and in response to part "c" of the Question, I said that, Kshs74,967,818.60 has been given out because of the contract which has been awarded to start work immediately on the Lare-Mutuati section. I thought that the hon. Member would have been very happy and would have stood up to say "thank you" for that work on my part. I cannot give the specific dates when the contract was given, but I can give the assurance that the contract has been awarded.

Mr. Murungi: Thank you, Mr. Speaker, Sir. We are very happy that this road is being constructed because the state of roads in Ntonyiri Constituency, Nyambene District, has been very bad. Is the Minister aware that, as a result of a delay in the completion of this road, His Excellency the President had to ride on a tipper when he visited Ntonyiri Constituency to inspect development projects earlier this month? In view of that, could he expedite the completion of this road?

An hon. Member: How can the "government" ride on a lorry?

Prof. Ng'eno: Mr. Speaker, Sir, I did notice the difficulty which His Excellency the President experienced when he was passing through that road. I will expedite the construction of the drainage and the rest of the work on that road.

COMMUNICATION FROM THE CHAIR

DISTINGUISHED GUESTS IN THE SPEAKER'S ROW

Mr. Speaker: Order, hon. Members! Order, Orwa! Hon. Members, Question Time is over and, I wish to make the following Communication.

It is with great pleasure that I welcome, on behalf of us all, the distinguished guests who are seated in the Speaker's Row. They are:

The hon. Rebecca Kadaga, Minister of State for Foreign Affairs for Regional Co-operation of the Republic of Uganda; His Excellency Me Haile Woldensea, Minister for Foreign Affairs of the State of Eritrea; His Excellency, Ato Seyoum Mesfin, Minister for Foreign Affairs of the Federal Democratic Republic of Ethiopia; and, Dr. Gebray Tekeste, Executive Secretary IGAD.

(Applause)

They are attending the IGAD Peace Talks on the Southern Sudan Conflict. We wish them a hospitable, fruitful and successful stay in our country.

Thank you.

Next Order!

BILLS

Second Reading

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

(The Attorney-General on 15.10.97)

(Resumption of debate interrupted on 29.10.97)

Mr. Speaker: Mr. Ndicho, you were on the Floor. Proceed.

Mr. Ndicho: Mr. Speaker, Sir, I wish to take very little time, to sum up what I started deliberating on yesterday, because I know that there are some other hon. Members who wish to contribute to this very important Bill.

Mr. Speaker, Sir, I know there were a lot of points of information and points of order. I am going to block the points of information and I hope the Chair will help me to block the points of order, so that I take the least time possible.

Mr. Speaker, Sir, before I start, I wish to complain about what was reported on my contribution yesterday by the print media. The *Kenya Times* reported that I challenged Mr. Kenneth Matiba, the FORD(A), Kiharu Member of Parliament, to state which party he belongs to. They say that because of that, "Mr. Matiba abruptly cut short his stay in the Chamber yesterday, when a fellow FORD(A) Member of Parliament---"

Mr. Speaker: Order! Order! Mr. Ndicho, what Clause of the Bill is that? You must be relevant to the debate before the House. What The *Kenya Times* has reported is not before the House. What party Mr. Matiba belongs to, is not an issue. What is an issue before this House is the Constitution of Kenya (Amendment) Bill, 1997, and you must satisfy the Chair that what you are contributing is relevant to that debate. So, you are warned that, if you indulge in any further arguments on that one, you will be irrelevant.

Ah hon. Member: Do not talk about hon. Matiba any more!

Mr. Ndicho: Mr. Speaker, Sir, you have been giving hon. Members time to raise issues here when they have been misquoted in the Press. Anyway, because I do not want to argue with the Chair---

Mr. Speaker: Order, Mr. Ndicho! Order, hon. Falana! Mr. Ndicho, you know perfectly well that, when a Member has something to say in the nature of a Personal Statement, relating to what that hon. Member has said in this House or what has been said about him in the House, he stands under Standing Order No.69, after Question Time, and not in the course of debate. So, you are now guided to follow the rules of procedure, and thou shall not argue with the

Chair!

Mr. Ndicho: Mr. Speaker, Sir, I stand disadvantaged. I did not want to disturb you because I knew that I was going to be given the Floor. That is why I did not want to come and disturb you. However, I wish to say that I did not interrupt Mr. Matiba. In fact, he took five minutes here. I never cut short his stay here.

Mr. Speaker, Sir, before time came for the House to adjourn last night, I was talking about the amendments to the Constitution of Kenya, especially to Section 1(A). It says that the Republic of Kenya shall be a multi-party democratic State. I was complaining that--- This is where I was also misquoted by *The Daily Nation*. What I said is that, we have been warned by the President of this country that multi-partyism is going to bring ethnicity and tribalism in this country. What I was saying is that the situation in Kenya today is that, we have been divided along tribal lines because of the parties we belong to. I was saying that it does not matter, I only need to know which tribe you come from for me to know which party you belong to. That is why I was saying that, in the year 2002---

Mr. Wamalwa: On a point of order, Mr. Speaker, Sir. It is not my intention to interrupt hon. Ndicho, but when he alleges that he only needs to ask somebody what party he belongs to he will know which tribe that person hails from, is certainly not true of my party. This is because we have members from the Kisii, Kikuyu, Meru, Luhya, Luo communities and many more others. So, that is not true of FORD(K).

Mr. Ndicho: Mr. Speaker, Sir, majority of FORD(K) Members are from the Luo community.

Mr. Speaker: Order! Order, Mr. Ndicho! It is these irrelevancies that are putting you into trouble. This is because even if you were asked your name, how would we know which party you belong to? So, can you be relevant to the Bill?

Mr. Ndicho: Mr. Speaker, Sir, there is bickering when I am contributing! This is my opinion! You have told us several times that when a Member is giving his opinion, the rest should wait for their chance to give their own opinions. Why are some people getting jittery about my opinion?

Mr. Speaker, Sir, we should borrow the experience of the Uganda Government - I am happy there is a representative from the Uganda Government - where---

Mr. Busolo: On a point of order, Mr. Speaker, Sir. Is hon. Ndicho in order to address the galleries?

Mr. Speaker: Order! Mr. Busolo, you are right! Mr. Ndicho, while addressing this House, you shall address Mr. Speaker, who is seated here, not anywhere else!

Mr. Ndicho: Mr. Speaker, Sir, I would like you to protect me from these points of order. I would have been through with half of my contribution by now. I was looking at you and addressing you.

However, let me refer to the Uganda experience where there are no political parties which Members of the current Parliament represent.

Mr. Munyasia: On a point of order, Mr. Speaker, Sir. Yesterday, hon. Ndicho belaboured that point on partyless Uganda and now he is repeating it. Is he in order to repeat what he has already told this House?

Mr. Ndicho: Mr. Speaker, Sir, I started from where I stopped, and that is where I stopped.

Mr. Speaker: Order! Order! There is no provision in the Standing Orders that waives the rule of repetition when you resume. You are supposed to resume from where you left and proceed forth from there. Not backwards or sideways.

Mr. Mulusya: On a point of order, Mr. Speaker, Sir. Now that hon. Ndicho has been waiting for his Chairman, hon. Matiba, to come back from Britain and tell them which party they should join, is it not in order for him now to say, whether it is hon. Matiba's word that Kenya should be partyless or not? This is because they merely wait to be guided by their Chairman.

Mr. Speaker: Order! Mr. Mulusya, you are drifting very fast to the same boat with Mr. Ndicho. Your point of order, is very flimsy! Proceed, Mr. Ndicho!

Mr. Ndicho: Mr. Speaker, Sir, I beg to discard it with the contempt it deserves, because it is completely frivolous and irrelevant. However, I beg to continue.

I have gone through this Amendments Bill severally. One of the areas that it left out, is the most explosive issue in this country, concerning land. I have also gone through the IPPG recommendations, in which it was agreed upon that, grabbing of public utility lands and plots will be stopped, and even those which are so contentious will be repossessed. But I have not seen it in the Bill to enable us make it law.

Mr. Kiliku: It was not meant for publication!

Mr. Ndicho: Mr. Speaker, Sir, hon. Kiliku says that it was not meant for publication.

The Assistant Minister, Office of the President (Mr. Sunkuli): On a point of order, Mr. Speaker, Sir. Is hon. Ndicho in order to mislead the House by saying that there was such recommendation when there was none? As pertains to the question of land, instead of hon. Ndicho reading severally this particular Bill, he should read the other Bill which is more comprehensive, and realise that the Commission that may be approved by this House, will have the

mandate of looking into land issues. He is therefore misleading the House.

Mr. Ndicho: Mr. Speaker, Sir, that is his opinion. My opinion is, we should have encompassed it in this Bill, especially this time when we are doing the most important job in this Parliament's history, of reforming the Kenya Constitution. However, I wish to take this opportunity to thank the President because, the day before yesterday, he directed that some plots in Thika should not be grabbed. We agreed on that and I am going to raise that matter.

The Assistant Minister, Office of the Vice-President and Ministry of Planning and National Development (Dr. Misoi): On a point of order, Mr. Speaker, Sir. Is it in order for hon. Ndicho to bring in extraneous matters instead of concentrating on the Bill as presented in the House?

Mr. Speaker: I have already warned the hon. Member for Ndicho--

Order! I am inclined to forgive Mr. Ndicho because the Chair has also made a mistake. Therefore, because both of us are human, I do withdraw the second warning. But the first warning stands. Thou must be relevant!

Mr. Ndicho: Mr. Speaker, Sir, could all the Members turn to page 1027. Section 5, which talks about nominated Members, states:-

"Subject to this Section, there shall be 12 nominated Members to represent special interests".

Mr. Speaker, Sir, my concern is which special interests these people will represent. These interests should have been spelt out. Otherwise, will there be 12 special interests with 12 nominated Members of Parliament?

Mr. Speaker, Sir, in my contribution, I said that we are going to have the invalids represented in this Parliament and the people who are going to have the audacity and the privilege of appointing these people should consider that fact.

Mr. Speaker, Sir, the other point that I would like to make is that this Constitution is very, very important. This Constitution is the one that made the forefathers of this country go to Britain to talk about it. There were some stalemates at Lancaster House as we were told by historians when the late Jomo Kenyatta and the rest faced some problems. Jomo Kenyatta had to threaten that he was going to send Mbiyu Koinange back to Kenya to come and declare a Universal Declaration of Independence (UDI). When the *Wazungus* heard that, they had to sit down and persuade Jomo Kenyatta to also sit down with them and have dialogue. That is the time that they agreed to come up with a Constitution that was delivered here in the year 1963. The people who went to Lancaster had one thing in mind. That was because there were European colonialists in this country who had oppressed Kenyans so much that Jomo Kenyatta and those other delegates had to go there and tell the British that, that Constitution was overburdening the Africans and we should have a Constitution that is commensurate with the aspirations of the Africans. That was the time that Jomo Kenyatta and the other leaders came with up that Constitution.

Mr. Speaker, Sir, this Constitution that we are amending today is very important because we should also look at the problems that we face today. We have neo-colonialism in this country. We have got another problem other than European colonialism and this is what I call Asian colonialism. Kenyans are oppressed by Asians today in the factories where they are working in. The Asian industrialists have done well for bringing investments into this country. However, that does not give Asians the ticket to oppress, underpay and to subject Kenyans to inhuman treatment just because they are working in those factories. We should have a Constitution that protects the Kenyan worker in the Asian factories as the late Jomo Kenyatta and his colleagues did, by going to Britain and brought a Constitution that defended Africans.

Mr. Speaker, Sir, I said yesterday that the Constitution does not require reforms to be amended. It is not an event; it is a continuous process. I hope that as we continue to develop this country, future generations will also be amending this Constitution to be commensurate with the aspirations of the people of that age. That is why it was very important for people to start calling for the review and reform of the Kenyan Constitution. It was very important not to call them names because what they were doing was like repeating history, as when the late Jomo Kenyatta and his colleagues said enough was enough.

Mr. Speaker, Sir, I personally feel dissatisfied with what we are doing in this Constitution. This is because what Kenyans expected to have changed in this Constitution is not satisfactory. That is why---

Dr. Lwali-Oyondi: On a point of order, Mr. Speaker, Sir. Is it in order for the Member for Juja to begin telling us what should be and what should not be contained in the Constitution when he himself refused to join us either in the NCEC or in the IPPG? Is he in order to come here and shed crocodile tears?

(Laughter)

Mr. Ndicho: Mr. Speaker, Sir, I wish to inform you that Dr. Lwali-Oyondi vowed that he is going to make sure that he distracts my contribution and it is not mandatory that I should go to the IPPG. What you were doing in the IPPG was outside this House. What you were doing is part of this House. I am a Member of this House and I have got a right to talk about it.

Mr. Speaker, Sir, I was saying that our children will come and find a Constitution and change it according to their aspirations at that particular moment. I would like to equate the NCEC with the disciples of Jesus Christ.

Hon. Members: Shame! Shame!

Mr. Ndicho: It is my opinion and those who do not want to hear it can go out. The disciples of Jesus Christ were doing a lot of mistakes, but Jesus Christ never insulted any one of them. Peter even took a sword and cut somebody's ear.

Mr. Speaker: What section of the Bill is this information contained in?

Mr. Ndicho: Mr. Speaker, Sir, I am just giving an example. I do not know why you are so harsh to me today, Mr. Speaker, Sir.

Mr. Speaker: Order, Mr. Ndicho! Mr. Ndicho, I am paid to be harsh to those who flout the rules of the House and the hon. Member for Juja is not an exception. So, thou shall not again have a swipe at Mr. Speaker.

Mr. Ndicho: Mr. Speaker, Sir, the Members who talked before me here talked about IPPG, NCEC and nobody questioned them. But when the Member for Juja is giving an example, he is interrupted. But, what I want to say is that the NCEC members are Kenyans. Let them be listened to. I was imagining that President Moi could be like Jesus Christ. When Peter had said that he was going to fish, Jesus told him to go back. Let these NCEC members be listened to. They are threatening that we are going to have civil war in this country. Some of us are not prepared to have that civil war. I want to thank hon. Nyachae for his contribution yesterday when he said that in any country there are those extremists.

An Hon. Member: Are you sure he said that?

Mr. Ndicho: That is what he said. You mean he did not say that?

The Minister for Land Reclamation, Regional and Water Development (Mr. Nyachae): On a point of order, Mr. Speaker, Sir. Is hon. Ndicho in order to repeat my speech instead of making his own speech?

(Laughter)

Mr. Ndicho: Mr. Speaker, Sir, you can rule that as a frivolous point of order. He said that and I thought that he is going to deny that there are extremists elsewhere. If the NCEC members are extremists, let them be listened to so as to avert the civil war. This country belongs to us and our children. So, all that I am saying is let them be listened to because they are not Ugandans. They will die and be buried here. They are not Tanzanians. They are Kenyans. Let them be listened to.

Mr. Mulusya: On a point of order, Mr. Speaker, Sir. Is hon. Ndicho not misleading this Parliament and the world at large by saying that NCEC has not been listened to? If people have been commenting on what the NCEC has said, how can they comment before having listened and heard what the NCEC has said? Is he in order?

Mr. Ndicho: Mr. Speaker, Sir, hon. Mulusya was an ardent member of the NCEC. When he left---

Mr. Sifuna: On a point of order, Mr. Speaker, Sir. In view of the fact that hon. Ndicho is repeating himself, would I be in order to move that the Mover be now called upon to reply?

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

The Attorney General (Mr. Wako): Mr. Speaker, Sir, I beg to reply to this very constructive debate, on the Second Reading of the Constitution of Kenya (Amendment) Bill(Bill No. 22). First of all, I wish to pay tribute to all those who have contributed to the debate in this House. All of them, even hon. Ndicho, did make constructive discussion on this particular Bill. I wish to thank hon. prof. Saitoti, the Leader of Government Business for seconding me. I also wish to thank hon. Kijana Wamalwa, the Leader of Opposition, for supporting this Bill, and other Members of Parliament who spoke---

Mr. Ndicho: On a point of order, Mr. Speaker, Sir. My point of order is that, the Attorney-General mentioned some names and said: "Even hon. Ndicho was supporting this Bill". I am not supporting this Bill; I am against it.

Mr. Speaker: Order! Order! Maybe, you have been misled. What Mr. Wako said was that you made useful comments. If you seriously want to disagree with him on that, I am willing to listen to you.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I would like to plead with hon. Members, and in particular hon. Ndicho, to listen carefully to what I have to say. I never said what Mr. Ndicho claims I said. All that I said was that even hon. Ndicho did make some positive contribution in his remarks on this particular Bill. I wish to thank the following hon. Members: hon. Musyoka, hon. Shikuku, hon. Ang'wenyi, hon. Wamae, hon. Biwott, hon.

Muite, hon. ole Sunkuli, hon. Raila, hon. Osogo, hon. Kapten, hon. prof Ouma Muga, hon. Shamalla, hon. Dr. Lwali-Oyondi, hon. Mathenge, hon. Misoi, hon. Nthenge, hon. Obwocha, hon. Sambu, hon. Mwiraria, hon. Nassir, hon. Murungi, hon. Gumo, hon. Mulusya, hon. Nyachae, and hon. Ndicho. They have all contributed towards this Bill. They all, in agreeing with me, represent different views in this House. This House has had a very exhaustive debate on this particular Bill. I wish to pay tribute to the IPPG spirit. It is, indeed, this IPPG spirit which has made the drafting and debate on this Bill possible. The founders of our Constitution made it a requirement that, in order for us to alter or amend the Constitution, we would require votes of not less than 65 per cent of all hon. Members. This was, indeed, to ensure that any amendment passed to this important document would have majority support. When I moved this Bill I said that a Constitution is a very important document. It really determines, in many aspects, the good and bad fortunes of a nation.

The Constitution, therefore, is at the very heart of a nation. It is the life blood of every nation. Therefore, a higher percentage than a mere majority is required to be able to alter it. To effect the amendment, both sides of the House must agree to it. In order to agree to it, they must be willing to sit down and discuss, consult and reason together. The spirit of the IPPG has its roots in our culture and traditions, where there was a system of elders of the society sitting together, discussing and reaching a consensus freely. That is the spirit that we, as a nation, must foster not only now but also in future. By passing this Bill, we are saying that Kenya will be a multi-party and democratic state. We shall ensure, by the passage of this Bill, that Kenya does not retrogress into a single-party system by inducement or coercion. The passage of this Bill will mean that all the future legislation must take into account the principle of a multi-party state. However, it is important to note that neither the Constitution nor any other legislation, important though they may be, shall ensure the survival of democracy.

Democracy is not only about having regular elections. Although that may be important, democracy is also as much an altitude of the mind. For democracy to take root, therefore, reliance cannot be placed only on the Constitutional and legal instruments, important although they are. For democracy to take root, the right type of democratic culture in brain, hearts and the minds of the leaders must take place.

Prof. Mzee: On a point of order. Mr. Speaker, Sir, I hope you have noticed that the hon. Attorney-General is reading instead of making the speech. Could you, please, ask him to comply with the Standing Orders? He should not read what he has prepared.

Mr. Speaker: I was actually not having my glasses on.

(Applause)

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, as I did inform you when I began to talk about this package of Bill, because of the importance of the Bill, and its relevance, I would be referring extensively to my notes and that is precisely what I am doing. I am a mere lawyer. I am not a professor like the hon. Member of Parliament. Therefore, for democracy to take root, it must be in the brain, hearts minds of the people and their leaders. The right type of a democratic culture includes the habit of fair play, tolerance, principled behaviour, the habit of restraint and moderation and the knowledge that as we exercise our rights, that exercise must be accompanied by awareness of responsibilities and duties that go with those rights.

Mr. Speaker, Sir, it is important, I want to emphasise, that this Constitution Amendment Bill be passed today. The reason being, as you know, only a few days ago we did pass the Statute Law (Repeals and Miscellaneous Amendments) Bill and it was conditioned on this Bill being passed. There are some aspects---

(Loud consultations)

Mr. Shikuku: On a point of order, Mr. Speaker, Sir. I am straining my ears to hear the speaker on the floor of the House. Could you use your powers to bring some silence in this House, so that we who are interested in hearing what the Mover is telling us should be given that opportunity to do so.

Mr. Speaker: Order! Indeed, Mr. Shikuku you are right. Even with Mr. Shikuku shouting "point of order" from where he was, I could not hear him. I want to hear every one, and I am sure every Member here present is entitled to hear what is going on. So, can we please as I have said, consult in silence?

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, as I said, it is very important that this Constitution Amendment Bill be passed because this House did recently pass the Statute Law (Repeals and Miscellaneous Amendments) Bill---

Mr. Nyanja: Mr. Speaker, Sir, I would like to adhere strictly to the rulings of the Chair. But please give me guidance as to how Members can consult in silence. I am defeated.

Mr. Speaker: As far as the hon. Member for Limuru and the hon Member for Juja are concerned, you can communicate in silence.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I know the hon. Member for Limuru knows how to communicate effectively in silence. Mr. Speaker, Sir, this House recently passed Statute Law (Repeals and Miscellaneous Amendments) Bill and some aspects of that Bill, are dedicated to the Constitution of Kenya (Amendment) Bill.

Mr. Speaker, Sir, we have, for example, Clause 4 which enables Clause 17(5) of the National Assembly and Presidential Elections Act to be effective. We have Clause 6 and in this Clause, in fact, many of the people who expressed some doubt on this Bill from the other side, did think that this Bill was not consistent with the IPPG resolutions in as much as the Bill did not specifically provide for the consultation by the Opposition parties in appointing ten additional Members. The position then was and is that, as far as the appointment of ten additional members was concerned, that was an administrative measure. I am glad to inform this House that at 8.53 a.m this morning, 30th October, 1997, His Excellency the President did appoint ten additional Members to the Electoral Commission, pursuant to the recommendation by the Opposition Parliamentary Parties which are in this House. So, the administrative aspect--

Mr. Raila: On a point of order, Mr. Speaker, Sir. The Attorney-General is talking of something which is very fundamental. He is saying here that at 8.00 O'clock this morning, His Excellency the President did appoint ten additional members to the Electoral Commission, nominated by the Opposition political parties represented in this House. The National Development Party of Kenya of which I am the party leader and Member of Parliament in this House was not consulted and it is therefore not actually a party to the ten names that have been submitted to this House.

(Applause)

Mr. Mulusya: On a point of information, Mr. Speaker, Sir. I want to inform the Attorney-General in response to the point of order raised by hon. Raila that there is strict definition of a Parliamentary party; a Parliamentary party in the sense of the Standing Orders, as it is, is that party which has more than seven Members and NDP has only one Member!

(Loud consultation)

Mr. Speaker: Order! Order! Order Members, I do not assume to take the position of the Attorney-General on the part of information given by the hon. Member for Kangundo, but on the part of the Chair, I think, he is informing history. There was a time when that was the position under the Standing Orders. That position does not obtain today. So, to the extent that Mr. Mulusya is a historian, he is correct; to the extent that he is informing the present, he is wrong!

(Laughter)

Mr. Mulusya: On a point of order, Mr. Speaker, Sir. I wish to correct the impression made by the Chair that the Member for Kangundo is a historian. The Member for Kangundo is a Land Economist, consultant and knowledgeable in land matters!

(Laughter)

Mr. Nyagah: On a point of information, Mr. Speaker, Sir. This is to the Attorney-General and he has kindly given that authority. I am, as I stand here, a very surprised human being. At the beginning of this week - I am doing this so that we can clear the air about the nomination of ten Members of the Opposition - we, as Members of IPPG, sat in the old Chambers. I, Norman M.G.K. Nyagah, suggested the theory in terms of the equation that we were going to use. Eventually, that was agreed upon. We then said that the political leadership in this country hon. Raila, hon. Kibaki included, the other leaders of Opposition, should sit down together and give us names. The names were given to the Attorney-General yesterday. It surprises me to hear that certain political parties were not consulted. But I have this to say: "What you plant, is what you harvest!"

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, it is, indeed, true that you reap what you sow---

Mr. Speaker: Order! Order. Dr. Otieno-Kopiyo, what is your point of order?

Dr. Otieno-Kopiyo: Mr. Speaker, Sir, I wish to confirm that even FORD-K as a party was not consulted

when the names were given to the Attorney-General. Only a clique of party officials who are tribalists submitted the names.

Mr. Ndicho: Mr. Speaker, Sir, I am equally surprised that ten names of new commissioners were submitted to the Government. We in FORD-ASILI agreed that we were going to sit down and consult each other to come up with our proposal. I am completely at a loss to learn even FORD-ASILI party was not consulted---

Mr. Speaker: Order! Order! Order, Mr. Mak'Onyango. All these points of order are irrelevant to the Bill. One thing the Chair cannot do, and is neither prepared or willing to do, is to arbitrate on inter-party political differences---

(Applause)

Mr. Speaker: These issues should not hinder matters before this House. Can the best solution be found and decided upon in a proper venue? Can we now deal with the matters before the House?

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, as I said, the passage of this Bill is very important and by the---

Prof. Mzee: Mr. Speaker, Sir, we are discussing an important Bill, the Constitution of Kenya (Amendment) Bill. So, the appointment of the new Commissioners is part and parcel of this Bill. I can assure you, Mr. Speaker, Sir, that if we are not careful, we are going to spark off problems. These names were proposed in a bar. This is the reason why there is no single muslim in that list. If we are going to accept it as it is and pass the Bill, then the repercussions will be very big. That is what I am warning.

Mr. Speaker: Order! Order. I am a total stranger to the assertion by the hon. Prof. Mzee that the new names of Commissioners forwarded to the Government was decided in a bar. I can say for sure that I was not in that bar. When this House is debating this Bill and approves it, it does not approve the names of the new Commissioners. That is already a fact under the Constitution, as it stands today. So, the passing or rejection of this Bill to the knowledge of the Chair, will have no effect whatsoever on what has already transpired under the old Constitution. That is the best I can do. There is nothing else you can ask from the Chair. I cannot arbitrate on political disputes. Proceed, Mr. Wako.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, the Constitution of Kenya (Amendment) Bill will enhance democracy and the protection of human rights. It will also improve the position of women in the society, since it will enable them to participate in the decision making processes at the highest level, such as Parliament.

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

(Applause)

Mr. Speaker: Order! Order! I want to bring to the attention of the House the fact that the procedure used in voting on a Question of the Constitution is a fixed majority. In a matter of changing the Constitution, the majority required is fixed by the Constitution itself, and the procedure is set out in Standing Order No. 61 (a), which reads,

"In every instance, where the Constitution lays down that a fixed majority is necessary to decide any question:

(a) The House shall not proceed to a division on that question unless and until a number of Members equivalent to such fixed majority is present at the time for directing the division."

This House is comprised of 202 Members, including the Ex-Officio Members, like the Attorney-General and Mr. Speaker. The Speaker and Attorney-General have no votes. So, for the purposes of this Standing Order, we are talking about 200 Members. According to the Constitution, two-thirds of the Members of the House are required to effect constitutional amendments. This fraction does not refer to those Members present but to the totality of the Membership of the House.

Therefore, two-thirds of 200, according to the very old mathematics, is 133.3. Hon. Members, I am informed that there is no one-third of a Member.

(Laughter)

There being no one-third of a Member, I will therefore, go to the nearest whole number, which means that the majority required and which represents two-thirds of this house is 133 Members. That is the minimum number required. So for me to direct a division, I must be satisfied that here, present and now, are 133 Members or above. I will, therefore, order that the Division Bell be rung and I will not direct Members to proceed to division, until I am satisfied that the number required by the Constitution is achieved in this Chamber.

I order that the Division Bell be rung.

(Applause)

(The Division Bell was rung)

Mr. Speaker: Order, hon. Members! I would like to know from the Sergeant-at-Arms whether we have the requisite number of hon. Members in the House. In the meantime, I would like to make certain corrections on what I had communicated earlier. I made a mistake by saying that there are 200 hon. Members in this House. It is true that, that is the capacity of the House, but we lost two hon. Members; namely, the Member for Tetu and the Member for Makadara. So, the Members who are present here and alive are 198. The next thing which I want to correct for purposes of record is what I said about the provisions of the Constitution. I referred to two-thirds. As a matter of fact, I am wrong. Under Section 47(2) of the Constitution, the requisite number is not less than 65 per cent, which is less than two-thirds. So, I was wrong. The Constitution is clear about this.

We shall now proceed into Division on the grounds that the House has the membership of 198 and that, we require 65 per cent of 198. That works out to 129 hon. Members. I am satisfied that the Members present are far beyond the requisite quorum. When I put the Question, you are not required to respond. Members who are in support of the Question will proceed to the right of Mr. Speaker and vote there. Those who are opposed to the Question will proceed to the left of Mr. Speaker and those who do not want to vote either way and those who wish to abstain will record their names with the Clerk at the Table and remain in the House.

Before you proceed to vote, the Tellers for the AYES are, the hon. S.P. Leshore and the hon. Peter Ndwiga. The Tellers for the NOES are the hon. J.J. Falana and the hon. L.S. Sifuna.

DIVISION

(Question put and the House divided)

(Question carried by 156 votes to 26 votes)

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

Tellers of the Ayes: Messrs Leshore and P.N. Ndwiga.

NOES: Messrs Achola, Akumu, Prof. Anyang'-Nyong'o, Messrs Gatabaki, Gichuki, Githiomi, Gitonga, Icharia, Karan, Mak'Onyango, Maore, Mbeo, Mohamed Farah, Muite, Prof. Mzee, Messrs Ndicho, Ndubai, Nyanja, Dr Odinga, Messrs Ogeka, Ojode, Onyango, Orenge, Dr Otieno-Kopiyo, Messrs Raila and Ruhii.

Tellers of the Noes: Messrs Falana and Sifuna.

ABSTENTION: Ms Mary Wanjiru.

Mr. Speaker: We will move on to the next Order.

*Second Reading*THE CONSTITUTION OF KENYA REVIEW
COMMISSION BILL*(The Attorney-General on 14.10.97)**(Resumption of debate interrupted on 14.10.97)*

Mr. Speaker: Prof. Mzee was on the Floor.

*(Several hon. Members left the Chamber
consulting loudly)*

Prof. Mzee: Mr. Speaker, Sir, would you, please, ask the hon. Members to leave in silence so that I can be heard?

Mr. Speaker: Yes, indeed! Silence!

Prof. Mzee: Mr. Speaker, Sir, as I was saying, this Bill was brought to this House so as to buy time for the President, so that he can continue using the old Constitution throughout the next Parliament. This is possible because it will take many years before we see the outcome of this Bill. I would like to point out one very important thing which is not specified in the Bill; the appointment of the Electoral Commissioners. In order to avoid repeating the mistake that was done in the appointment of these Commissioners, it would be important to bring these names to Parliament for a thorough vetting by a select committee of Parliament. This is something which is done in every country. When we make an appointment, that person comes under the scrutiny of the elected Members of Parliament.

Had the names of the Commissioners been first proposed to a select committee of Parliament, then there would not have been complaints on the Floor of this House. So, I am requesting the Attorney-General to ensure that those who are going to be appointed Ministers by the President, are vetted by Parliament. This is one way in which Kenyans will feel that they have participated in the appointment of their leaders and instituting of various bodies of this country.

Mr. Speaker, Sir, we are told that after the Commissioners to the Constitution of Kenya Review Commission have completed their work and after a select committee of Parliament has gone through the recommendations, we will require a 65 per cent vote to approve the recommendations made. I am wondering why we would require a 65 per cent vote? This is not an amendment, but a simple change like any other. The decision should be based on a simple majority of 50 per cent and not 65 per cent. It might be very difficult to obtain 65 per cent of the votes to approve what the Commissioners have recommended and what the select committee has recommended. So, only a simple majority should be required for this purpose. I do not see any reason why we should insist on having a 65 per cent vote. I am referring to Clause 16(5) which states:-

"The National Assembly shall consider the Commission's report and the select committee's recommendations thereon, and subject to sub-section (6), make such resolutions thereon as shall be appropriate, including a resolution for a Bill to alter the Constitution, but such resolution shall not be passed unless it has been supported by the votes of not less than 65 per cent of all the members of the National Assembly (excluding the *ex-officio* members)

This is an ordinary resolution. The fact that we require a 65 per cent vote means that we are giving an opportunity for the work which has taken three years to complete to be rejected by this Parliament. I do not see any reason for this, but probably the Attorney-General will tell me what he was thinking when he put Clause 16(5) in the Bill. When he said that the resolution has to be passed by 65 per cent of all the Members of the National Assembly, was he not thinking that it might be difficult to obtain the 65 per cent vote? In other words, if the House only gets a majority of 50 per cent or 51 per cent, the resolution will be thrown out. Is this what was in the mind of the Attorney-General?

The Attorney-General (Mr. Wako): On a point of information, Mr. Speaker, Sir. I will only partly inform the hon. Member that it is not true to say that the 65 per cent clause is there so that the recommendations of the Commission are rejected because it is difficult to achieve the 65 per cent vote. That was not there in my mind whatsoever. I believe that what may have been in the mind of the drafter is that we are dealing with the Constitution. Although the Motion is not a constitutional amendment, nevertheless, the recommendations to amend that Constitution, if they were going to pass through Parliament, we would require a 65 per cent vote. Consequently, it makes sense to

ensure that when this House is adopting those recommendations and if they get the requisite 65 per cent, there will be a measure of confidence that when the recommendations are now translated into constitutional amendments and they are brought into this House, they will sail through.

I want to deny categorically the fact that this clause was put there deliberately to defeat the very purpose for which the Commission was set up.

Prof. Mzee: Mr. Speaker, Sir, I am very glad that the Attorney-General has accepted the fact that the resolution is not meant to directly amend the Constitution, but to accept the recommendations put forward by the select committee. Then after the recommendations have been brought to Parliament, we will approve them like any other Motion from the select committee. It will be a simple Motion coming from the select committee to Parliament. After all that, the Attorney-General will go and draft a Bill which will amend the resolution. The Bill which is supposed to be brought to Parliament will require 65 per cent, but not the Motion from the select committee.

Mr. Speaker, Sir, the appointment of the Constitutional Review Commission, unlike the blatant shameful conduct of the Opposition party leaders we have seen today, who have appointed their relatives--- There are a number of relatives we have seen being recommended; tribesmen and friends. It should be noted that in these appointments, the Muslims, the Maasais, the Turkanas, the Samburus, the Luos and the Pokomos were totally left out. That is the reason why I insist that any appointment which is going to be made by the President should first be vetted by a Select Committee of this Parliament, like they do in other countries.

Mr. Nthenge: That is the meaning of the Bill we are discussing now.

Prof. Mzee: In this Constitution of Kenya Review Commission Bill, the Attorney-General could have easily said that the Members of the Constitution of Kenya Review Commission should be vetted by a Select Committee of Parliament and be passed. What I fear most--- All the time I am expressing fears because I am going to be proved right later on. All these people who call themselves supporters of the IPPG; and we have seen them today, are more active on the Opposition than on KANU. I do not know what the KANU people did, but these Opposition Members of Parliament here, who were supporting the IPPG, came out far much stronger than the authors of the IPPG itself. So, we have to correct things so that we do not repeat these mistakes.

Mr. Speaker, Sir, the other thing, and I am referring to the Commission expense--- With regard to Clause 17, we should be very careful and learn from the past experience. We have seen how the Electoral Commission operated and the Attorney-General knows it. Besides the salaries and other allowances, the commissioners claim and receive sitting allowance for meetings for every day of the year; in fact, for 366 days. Whether they meet or not, these claims are put forward. I could easily interpret that to mean that this is bribery. The Government is bribing the Electoral Commission by allowing the commissioners to claim sitting allowances where there are no minutes nor meetings. When a commissioner is probably somewhere in London, doing another job, he is claiming a sitting allowance in Kenya. This is the truth, and to avoid that---

The Attorney-General (Mr. Wako): On a point of information, Mr. Speaker, Sir. It is true that Electoral Commission has been claiming these expenses, but it is not true that the Government has been allowing it. If anything, the Controller and Auditor-General of the Government has raised the issue and, I would like to inform you that in the Statute Law (Miscellaneous Amendments) Bill, which has been passed, the proceedings of the Electoral Commission and the definition of what the meeting is, have been clearly set out. Therefore, I do hope that in future, we shall not have an abuse, where somebody claims sitting allowance for 365 days, in a year.

Prof. Mzee: Mr. Speaker, Sir, the anomaly is still going on. It is not being corrected!

QUORUM

Mr. Farah: On a point of order, Mr. Speaker, Sir. It is apparent that our fellow colleagues from the IPPG, both from the Opposition and from KANU---

An hon. Member: And the KANU IPPG!

Mr. Farah: And the KANU IPPG! They just came here to vote on this Bill as a bloc, with a flock instinct like sheep and then got away. Consequently, we do not have a Quorum.

Mr. Speaker: Well, you may be right on the question of Quorum, but you are completely wrong in insulting your colleagues. Mr. Farah, you must apologize to the Members for using that abusive language.

Mr. Nthenge: Mr. Speaker, Sir---

Mr. Speaker: Order! I must deal with Mr. Farah first. Mr. Farah, you cannot insult hon. Members! You must withdraw and apologize.

Mr. Farah: Mr. Speaker, Sir, I would certainly withdraw the words "a flock of sheep," but they certainly came as a flock of voting machines and they left. That is Parliamentary language!

Prof. Mzee: A "flock" is an unparliamentary term!

Mr. Speaker: Mr. Farah, that is insulting language.

Mr. Farah: Mr. Speaker, Sir, is "flock" unparliamentary? If it is, could we have the Standing Orders to confirm that?

Mr. Speaker: Order, Mr. Farah! I do not think that there is really any logic in you arguing about the obvious. When you call hon. Member "a flock"; a flock refers to sheep. When you refer to hon. Members as "voting machines," you know quite well that, there are no "honourable machines" here. So, what you do, hon. Farah, before I go to the other issue, is to comply. Withdraw those terrible words against hon. Members and then proceed.

Mr. Farah: Mr. Speaker, Sir, I beg to withdraw those words which certainly describe what you have seen, but because they are not Parliamentary, I withdraw them.

Mr. Nthenge: Can you apologize?

Mr. Speaker: Order! Order! There was an issue raised about a quorum. I must decide rather fast. Since the hon. Member has used an acceptable language. Do we have a quorum?

An hon. Member: No, we do not have a quorum.

Mr. Speaker: There is no a quorum. Ring the Division Bell.

(The Division Bell was rung)

Mr. Speaker: Order! We have a quorum now! Proceed Prof. Mzee!

Prof. Mzee: Mr. Speaker, Sir, to avoid the mistake of Commissioners sitting down and paying themselves huge sums of money, I think this Bill should have clearly specified terms and payments to avoid what happened with the Electoral Commission. Mr. Speaker, Sir, in the First Schedule Clause 2, it states:-

"The President shall consult as widely as possible, in the appointment of Commissioners under this Act, and shall seek a list of nominees for appointment from each of the following bodies: institutions, organizations amongst others".

This is not binding. These institutions should recommend names to be brought to Parliament for vetting. Then finally, the President announces their appointment. But it is only stated that the President should consult. There is no way we can be sure that consultations took place, or whether the advice during consultations was listened to or not.

[Mr. Speaker left the Chair]

[The Temporary Deputy Speaker

(Mr. Arte) took the Chair]

Mr. Temporary Deputy Speaker, Sir, in conclusion, I must say that the overall objective of bringing this Bill to Parliament is to create a level playing ground. It looks like this level playing ground will never be created in 1997. This is because the powers which the President has been given by the Constitution, and which needed to be trimmed down, will not be effected until the next term, which is the final term that President Moi will serve, before the results of this Commission become effective.

With those few words, I oppose the Bill.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, before I say something on this Bill, let me make one preliminary comment. A nation can have a very good Constitution without necessarily having democratic governance, if there are people in power who are not interested in democracy, but in plutocracy. They will have a democratic Constitution, but be plutocratic in practice. This is what we have in Kenya today.

Mr. Temporary Deputy Speaker, Sir, there are very good laws in these law books that are lying here. For example, the Prevention of Corruption Act is a very good law, but the Government has never taken anybody to court on it. This is because the chief custodians of the State are plutocrats. They believe in using political power for personal gains.

Mr. Temporary Deputy Speaker, Sir, when I lived in Chicago in the 1970s, I studied the United States Constitution, and even its philosophical foundation in the federalist papers. But the City of Chicago was governed by a political machine under Mayor Richard J. Daley of the so-called, Democratic Party. The elections in Chicago were far from being democratic, precisely because, the god-fathers of the city under the Mayorship of Richard J. Daley did not believe that democratic elections were part and parcel of preserving the political machine.

So, we may, indeed, pass minimum constitutional reforms, but so long as we have the Government in power,

we will never have free and fair elections in Kenya. This is because you cannot have free and fair elections where the economic power equation makes people so unequal, and where poverty is so rampant that a plutocrat can buy a citizen for a farthing.

Mr. Temporary Deputy Speaker, Sir, in thinking ahead of reforming the Constitution so that we can have a democratic constitution, we must first of all, think how we are going to transform this society, so that equity and justice exists into the fabric of society, and so that there is "a political culture" which stops people with the instinct to use power for personal gains, from getting into power. How can we do that?

Mr. Temporary Deputy Speaker, Sir, in 1972, because of lack of capital, the Kenyatta Government decided to establish the Ndegwa Commission, that allowed civil servants to engage in business. At that point in time, it made sense because we had a scarcity of human resources and entrepreneurs. So we needed to look for entrepreneurs among those few people who were educated and had a know-how. These were in Government and could use their knowledge for entrepreneurship. Thirty years later, when we have a plethora of management skills in this country and unemployment among university graduates, it makes no sense to still abide by the Ndegwa Commission Report. This is because, if the Ndegwa Commission Report is practised today, it means that somebody keeps his Civil Service position, but does not serve as a civil servant.

Mr. Temporary Deputy Speaker, Sir, he is, first and foremost, a business person minding his business elsewhere and leaving his chair in the Civil Service empty. But when he occupies that chair, it is for endseeking. So, the Government suffers; business suffers and the political culture is reduced to that of plutocracy. Therefore, we may think, indeed, of having a Constitution Review Commission, but unless we are first and foremost informed of the major problems that we have in society which a good constitution notwithstanding will still continue to be with us, then we are not going very far.

Mr. Temporary Deputy Speaker, Sir, we in the Opposition must realise that our first responsibility to the Kenyans is to get this Government out of power and to give positions of responsibility to men and women who will have the conscience to govern this nation in a truly just and fair method. It is those people who when they are in power can, indeed, preside over a Constitutional Review Commission that will be meaningful. But if Kenya is unfortunate enough to have those people on the other side coming back to power again, a Constitutional Review Commission notwithstanding, we shall still continue to be underdeveloped to the year 2020 which has been set by this Government as the year when we shall be industrialised. But I am looking at it very bleakly if there is no fundamental changes in the governance of this nation.

Mr. Temporary Deputy Speaker, Sir, in the Bill that we discussed and which we voted on the Constitution of Kenya Amendment Bill is closely related to this one. It is interesting that in the Memorandum of Objects and Reasons, the hon. Attorney-General gave the objects and not the reasons. If I had the chance to contribute I would have said so. This Bill has objects but absolutely no reasons. In this one, however, the reasons are stated. I want to refer to one of the reasons and see how far it augurs with the functions, powers and privileges of the Commission and commissioners and so on. On Page 548 where we have the Memorandum of Objects and Reasons, the Attorney-General states in paragraph 2:-

"The main objective and intent of the Bill is self-explanatory as spelt out in the long title read together with Clause 3 agreed that the Commission to be established shall enable Kenya and Kenyans to originate reform proposals to bring about a Constitution to stand the test of time."

This is a good reason. I wish he had been as wise in stating his reasons in the previous Bill as he has been in this one. This is because in the previous Bill he had absolutely no reasons and he knows it. There were objects, but no reasons. In this Bill, at least, a very good reason is given.

Mr. Temporary Deputy Speaker, Sir, I want to speak about these reasons. Will the Commission to be established enable Kenya and Kenyans to originate reform proposals to bring about a Constitution to stand the test of time? If you are trying to originate reform proposals that will stand the test of time, the machinery set out for originating those proposals must be capable of doing so. The litmus test of this Commission and the Attorney-General must convince this august House that this Commission will fulfil that reason that it will allow Kenya and Kenyans to originate reform proposals to bring about a Constitution to stand the test of time.

Mr. Temporary Deputy Speaker, Sir, one of the contentions of the National Convention Assembly and I would like Kenyans to enter into dialogue with this--- I would not like Kenyans to go into the culture of obeying like dogs and of criminalising discussion. I think the proposal on the National Convention Assembly discussion should be looked at as proposals of constructive citizens of Kenya and not of adversaries. In this process of establishing the Commission that will allow Kenyans to originate reform proposals and bring about a Constitution that will stand the test of time, let us listen to everybody. One of the things that the National Convention Assembly has proposed and, I think, this is a proposal--- I can disagree with all other proposals that might have been there, but I think it is important to look into one proposal. Is it more effective to seek the origination of proposals through a Commission or is it more

effective to seek the origination of proposals through a convention assembly which would allow Kenyans and Kenya a greater latitude in originating proposals that will stand the test of time? This is the question that the Attorney-General and this House should ask themselves. Let us not assume *prima facie* or beforehand that the other proposals will not do their job better. Let us look at their rationale.

Mr. Temporary Deputy Speaker, Sir, from the point of view of economies of efficiency, obviously, a commission composed of fewer people going around the country is easier to manage. From the point of view of representation of Kenya and Kenyans from whom these proposals should be originated, a convention assembly may be more effective. So, you really have to make up your mind between efficiency of management and effectiveness of representation. I think that one can marry the two. Indeed, in this Bill, one could have married the two and said that both can be used. For example, were we to say that at every county level of the Republic, especially since this Bill also proposes the strengthening of local authorities and representation of people at the grassroots, assemblies of representatives of the people would sit over a period of time themselves also putting together their ideas about constitutional reforms and those assemblies would then articulate with this Review Commission, the principle of effective representation and the principle of effective management in the process of collecting these views would be married.

(Loud consultations)

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, could I be in order if I asked the House, particularly the Attorney-General, to pay attention to what I am saying, and could the Assistant Deputy Speaker, hon. Wetangula, take his seat properly in the pews and stop squatting like a *Mkavirondo*? I seek protection from the Attorney-General, hon. Anyona and hon. Wetangula because they are the people who should be listening to me but they are holding a cabal.

Mr. Temporary Deputy Speaker, Sir, the Attorney-General is now in order and I can continue speaking. I was telling the Attorney-General that he has to make a decision between effective management of the collection of views through a commission and effective representation. I think that should be reflected here. I think it is something that is missing here in exactly how these reasons that the Attorney-General states in the Memorandum of Objects and Reasons would be implemented. But let me go further and look at part 3 which I think is extremely important. On Page 537 (d) which he says without prejudice to the generality of paragraph a, b and c and these are the functions:-

"To examine and recommend the compositions and functions of the organs of state to which the Executive, Legislature and the Judiciary and their operations aiming to maximise their mutual checks and balances and as much as possible secure their independence."

Mr. Temporary Deputy Speaker, Sir, it is conventional wisdom that a democratic state is composed of three organs of Government. But we know that in examining these three organs of Government and they exist in almost any state that calls itself democratic, but they function differently, particularly where we have had a presidential authoritarian state like ours.

Mr. Temporary Deputy Speaker, Sir, in examining and recommending the compositional factor the Commission should be conscious of that. The extent to which the emergence of presidential authoritarianism has completely subverted the checks and balances principle, behind having three organs of Government. That is something which is very important which should be the responsibility of this Commission. One of the things which have been examined - and there is plenty of literature on these - is the emergence and consolidation of presidential authoritarianism in this Republic. Even after we have had a comprehensive review of the Constitution, and have had a beautiful Constitution established, unless the political culture left behind by the authoritarian presidential system is eroded, this thing will not - even in a perfect Constitution - enhance democratic governance in this country.

I gave you the example of Chicago City. There was a balance of all these things, but the city had an authoritarian Mayor for so long. Chicago was one of the most plutocratic and dictatorial cities you could ever think of. One day I passed through a "No Entry" road at night and, being a black person, the police arrested me and took me to the police station. I was booked in as a convict while police contacted the Federal Bureau of Investigation (FBI) and the Criminal Investigations Agency (CIA). I was then released after paying a deposit of \$30, which was a lot of money for a student. There was no law that allowed the police to do that kind of a thing, but they had some protection from Mayor Richard J. Daley. The equivalent for Mayor Daley in this Republic is hon. Daniel arap Moi because of his authoritarian system of Government.

These are the realities that we must face. Unless and until that culture of presidential authoritarian system of governance is eroded from this Republic, however beautiful these checks and balances are, we shall still have bad governance in this country. One of the things that I think should have been put here for the Commission to look at is how a new nation like Kenya, which has a democratic Constitution, can avoid the emergence of consolidation of a

presidential authoritarian system. It has something to do with the political culture. Indeed, a positive political culture for democratic governance can only be really developed, if the people in power have some vision and commitment to develop it. Somehow, that visional commitment can be induced by having certain characteristics in the Constitution that encourage it.

The Americans did it through a prolonged debate in the federalist papers. Some of those principles in the federalist papers did go into the American Constitution. So, there are certain values in the Constitution that any American Government cannot go against. We need to have certain values in our new Constitution which are so fundamental and sanctimonious that no President or Government will come into power and subvert them. Such non-commitment to certain values, defended by the institutions of the State and a strong political culture, need to come out in this process of reviewing the Constitution. The Constitution should not be regarded as just a technocratic document. It is a document that should contain a lot of inspiration.

Mr. Temporary Deputy Speaker, Sir, since 1992, and even before then, we have had a lot of debates in Kenya. We have had people pontificating about the values of society and making suggestions about what kind of political culture we need to have. I am glad that in providing for this Constitutional Review Commission some room is made for research. I hope that there will be a research body which will collect people's views and will actually encourage debates. One of the things which is so disheartening about Kenya today, especially since this Government has been in power for so long, is that it is so anti-intellectual and so anti-debate. I have never seen a day when three Ministers have gone to the Intercontinental Hotel to debate any issue for the last 15 or 20 years. The last of that genre of debate disappeared when people like Tom Mboya were assassinated. Since then, we have had mere morons as heads of society. We have people who have absolutely no commitment to ideas.

Mr. Temporary Deputy Speaker, Sir, I would have liked the Attorney-General to have given by today at least 20 lectures in the faculties of law of our universities. He could have published his lectures on legal transformation in the Republic of Kenya in a democratic way. But if you challenge him, he will have nothing to tell you.

Mr. Temporary Deputy Speaker, Sir, for how many years was hon Angatia a Minister for Health? What kind of health do Kenyans need in terms of values, but not in terms of how many dispensaries should be put up, say in Vihiga? That is a technocratic thing. So, we must, when this review Commission is going on, get leadership from Government in terms of ideas. If Government cannot lead in terms of ideas, it has no reason being there as a Government. We are always very encouraged when we see on CNN the US President making brilliant speeches on television. Here in Kenya, you can wait for donkey years before you listen to any brilliant speech on television by the Front Bench. If you are having a review Commission, well, that is an excuse you can have, but why do you have it when you know it is serving very few areas? It must begin from somewhere. If you are going to have a review Commission one of the commitments we must have, when this Commission begins working is a culture of discussion.

Mr. Muite: On a point of order. Mr. Temporary Deputy Speaker, Sir. Is the hon. Member for Kisumu Rural in order to say that we can go for donkey years without seeing on television speeches by the President of the Republic of Kenya when, in fact, the President of the Republic of Kenya is on television and radio every day making speeches?

(Applause)

Prof. Anyang-Nyong'o: Mr. Temporary Deputy Speaker, Sir, every time I have had the misfortune of watching and listening to Mtukufu Rais, but those are not speeches, they are utterances because they do not make sense. They are so disjointed. If you can play it on tape, you find that the words are so disjointed. A sentence is started and before you get the distantive words, he is in another sentence. If you want to make a sentence that makes sense, there must be some tentative words that leads you from one idea to the other. Then you call that a speech. That is the truth.

If we are going to have a great nation in the year 2000 and over, we have to get leaders that inspire this nation. This nation is not a kiosk. This nation is a nation of millions people. It has a very highly educated population with very well developed management skills, but they need to be harnessed to begin to work. Unless we are honest with ourselves we will never develop. Singapore, developed because they had inspirations from like Lee Kuan Yew in 1969. At that point in time we had a capable Minister of Government the hon. Tom Mboya who was inspiring us Lee Kuan Yew, but instead of allowing him to lead, he was assassinated. That is the difference between Kenya and Singapore. If Kenya had not assassinated Tom Mboya in 1969 and had not frustrated hon. Joseph Murumbi from being the Vice-President, this country would be as developed as Singapore today. Here is a man of ideas as the Vice-President, hon. Murumbi, who resigned 16 times under the late Kenyatta. He resigned 16 times because he was so frustrated. The authoritarian Presidency had started then. Hypocrisy and sycophancy had arisen then and men of ideas were harassed by the Government and Kenya has hardly had men of ideas in Government since 1969.

The Attorney-General is a friend of mine. He is a very highly educated man from Alliance High school,

Dar-er-salaam University and elsewhere, but he cannot exercise those ideas in this Government.

The Minister for Commerce and Industry (Mr. Angatia): On a point of order, Mr. Temporary Deputy Speaker, Sir. We are getting worried because the speaker is misleading the House in giving the impression that only him can decide who is a man of ideas all this time and that only him who knows what should have been said. Ministerial Sessional Papers come out of ideas and they are tested in public and people answer when a Sessional Paper comes out on aids and people are invited to bring ideas and the Minister has his own ideas and then he tables it here. These ideas originate from people. We have Sessional Papers on industrial transformation. I have even shared ideas with the hon. Member. Those are ideas. Unless we are in a dreaming world or a world of theory, what he is saying cannot develop this country. I wonder whether he is not misleading us.

Prof. Anyong-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I appreciate hon. Angatia's contribution, but I think there is a slight misunderstanding. When hon Angatia was a Minister for Health, he complained that he was being frustrated in the Ministry, for not exercising his ideas. He is on record and he knows that. We are trying to defend him by giving him political space. It is very interesting and there is a saying in the United States of America that when the slaves were freed they refused to move from their places of bondage. They were so afraid of exercising freedom. This is, you can see in hon. Angatia. We are trying to free him and he does not want to escape to freedom. That is what happened to the slaves.

Mr. Speaker, Sir, that is what happens. Tom Mboya piloted Sessional Paper No.10 in 1965. That did not stop him from writing *Freedom and After*, *Freedom and Nationhood* and other things. It is not in Sessional Papers where your ideas are needed most because those are good here in Parliament. But for the Kenyan people, it is those ideas that go to the public, especially during a review Commission like this one. I am not saying that I am the only one, I am just frustrated that I would like to have more people, especially from the other side, participating in the "industry" for the production of ideas, because that is the way we will get to industrialization by the year 2020. Please, hon. gentlemen from the other side, should realize that this is "kilio cha watu ambao wameathirika sana". Because they are looking for ideas from you, they can come in Sessional Paper, but they should be exercised more in the public. Hon. Andrew Ligale has not been here, but I can see that the Attorney-General has set here a very good thing in the Memorandum of Objects and Reasons. He says and I will repeat why I am saying this: "That, the Commission to be established shall enable Kenya and Kenyans, to originate, reform proposals to bring about a Constitution to stand the test of time". How are you going to do that, if you are frustrating the production of ideas, hon. Andrew Ligale? You learnt English properly and you are a highly educated man. Of course, you enjoy reading books, novels and so on. When you read them, share them with people. I am saying that over the last twenty years, because of the existence of authoritarian presidency, in this country the production of ideas has suffered. Mediocrity has settled at the top of society and unless in our next phase of establishing a Constitution we do not guard against the settlement of mediocrity on top of the society in the name of presidential authoritarian, we will never develop. Otherwise, we would have been competing with Singapore today, if we had not "assassinated ideas" in 1969. It was a very important event in our history and we cannot forget it.

The Attorney-General (Mr. Wako): On a point of information, Mr. Temporary Deputy Speaker, Sir. I do agree with the hon. Nyong'o that we need to have ideas as somebody said "Let a thousand flowers bloom" Now, as regards the example he is giving of Singapore, although it has some ideas, studies have shown that in the new states of Singapore, Korea and so on, in order to reach that economic take off, ideas have been coupled with guided democracy. If we talk about Singapore and Korea---

The Temporary Deputy Speaker (Mr. Wetangula): Mr. Wako, in Singapore, was it guided or stifled?

The Attorney-General (Mr. Wako): I would rather call it "guided democracy". So I would like him to tie this "guided democracy" concept, with what he is calling "Presidential authoritarianism". Is he in order to quote the Clause in the Review Commission, which is there and which was precisely put there to examine the type of things that he is talking about?

Prof. Anyang'-Nyong'o: On a point of order, Mr. Temporary Deputy Speaker, Sir. I agree it was "guided democracy" in Singapore, but the difference between Singapore and Kenya in terms of presidential authoritarian regime is that in Singapore, they had somebody who could guide. But in Kenya, we had nobody who could guide. That is the difference. In that "guided democracy", ideas were allowed. The Singaporean Institute of International Affairs welcomed a lot of economies and so on. If you read the literature on debate about how to create a proper "language culture" in Singapore, the people who were invited and produced ideas in the Singaporean Board of Economic Development, it is different from Kenya. From 1969, it has been a steep road down to mediocrity and lack of discussion, even within the so-called "guided democracy". The man who could have brought about guided democracy was assassinated in 1969.

Mr. Temporary Deputy Speaker, Sir, this is now lacking because the man who could have guided and given the country a democratic culture was killed. Those are the facts of our history. In any democratic revolution, there

must be a few individuals with ideas to guide that. If you do not have people with ideas, forget it. It is important that we tell these truths in our nation, so that people can know how to choose. Mwalimu Julius Nyerere once said: "To plan is to choose." We must choose to go forward.

Mr. Temporary Deputy Speaker, Sir, without prejudice to the generalities of paragraphs (a), (b) and (c), one of the other functions that the Commission is supposed to do is to examine and recommend improvements to the existing Constitutional Commissions, institutions and offices. It should further recommend the establishment of additional ones to facilitate constitutional governance and respect for human rights in Kenya, as an indispensable and an integral part of the enabling environment for the economic, social, political and cultural development. I must recommend the Attorney-General for the good English---

Dr. Kituyi: You commend him!

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, Yes, I commend him. That is a good point of information from my friend, hon. Dr. Kituyi. I must commend the Attorney-General, Mr. Amos Wako, for the good English he has used to phrase the new clauses. But one thing that is left out here, is the respect for the principle of citizenship. A modern democratic republic is based on the idea that all citizens are equal; no more, no less. One of the things that had been flouted, since Independence, is the principle of citizenship in this country. This is one of the reasons why we were proposing that section 82 be amended to include respect for gender equality, which at that point in time, was not regarded as an important principle. Mr. Temporary Deputy Speaker, Sir, one of the things that we have suffered from, even in terms of economic development, is a situation where a whole section of the Republic of Kenya was declared an Outlying District or *Shifita*-infested area. For the last 30 years, no economic development has taken place there, as if those people were not citizens. Unless we have enshrined in our Constitution the respect for the principle of citizenship, you can talk about human rights and many other things, but the abuse will continue. The nation should be based on the rights of citizens. To be a Kenyan citizen, you must have something in common with other citizens. If that one was a conscious commitment, we would not have 13 million Kenyans living below the poverty line. This is because, to be a citizen of a modern bourgeois democratic republic, an individual must enjoy a certain minimum standard of living. That is why you have social welfare projects in the developed countries. This is because, they believe that even if you are out of job, as a citizen, you need to enjoy a certain minimum basic standard of living to qualify as a citizen. Even if a Republic like Kenya may not at the present time have the resources to render that kind of services, that principle should be enshrined in our Constitution. This becomes particularly, handy when the Attorney-General, Mr. Amos Wako, says this about the amended Constitution: "Bring about a Constitution to stand the test of time." In other words, we do not want to go back to the Constitution and review it again in the year 2020. Now, it is important to realise that a Kenyan citizen must have a certain minimum standard of living. That should have been enshrined in our Constitution right from the beginning.

Mr. Temporary Deputy Speaker, Sir, the other thing which is very important is the respect of human rights as an indispensable and integral part of the enabling environment for economic, social and political and cultural development. Even, the Attorney-General, Mr. Amos Wako, agrees with me on this assertion. Currently, the poor economic planning and development is caused by lack of such enabling environment. That environment is not there, precisely because of shoddy Government practice. For example, as I speak, the ADC land in Muhoroni has been subdivided and allocated to KANU Members of Parliament who are now selling that land. This is being done, so that they can get the money for campaigns. Surely, Mr. Speaker, Sir, that is not a good economic environment. We can even mention names of some of these beneficiaries. I know of one person who went to a land valuer in Kisumu and said he had been allocated 100 acres of land in Muhoroni which he wanted to sell. What happened in 1992 is that those people were given many citizenship forms to sell to Asians in order to get money for campaigns.

What they have done this year is that, they have got the Agricultural Development Co-Operation (ADC) land in Muhoroni, divided it and---

The Minister for Local Government (Mr. F.P. Lotodo): On a point of order, Mr. Temporary Deputy Speaker, Sir. Will Prof. Anyang'-Nyong'o substantiate his claims by naming those who were given citizenship forms to sell to Asians in order to get money for the 1992 campaigns?

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, even if I do not refer to 1992, I can substantiate in respect of the 1997 remarks. Mr. Philip---

An hon. Member: On a point of order!

The Temporary Deputy Speaker (Mr. Wetangula): Let him substantiate first!

The Minister for Local Government (Mr. F.P. Lotodo): On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member should substantiate the remarks he made with regard to the year 1992.

Dr. Kituyi: On a point of information, Mr. Temporary Deputy Speaker, Sir. I wish to inform hon. Anyang'-Nyong'o that, among the people who were allocated public resources or promised allocation of these resources as an incentive to stand for elections on a KANU ticket in 1992 was one Francis Polisi Lotodo. The land he

was allocated included the Municipal market and the Railway Station in Kitale. After elections, he found he could not make a fortune from what he had been allocated.

(Applause)

The Minister for Local Government (Mr. F.P. Lotodo): On a point of order, Mr. Temporary Deputy Speaker, Sir. I am sure you are familiar with Kitale Town. Could hon. Kituyi say exactly which part of Kitale I was allocated? I have never applied for any piece of land in Kitale, Nakuru or Eldoret. He should say exactly where in Kitale I was allocated a piece of land.

Dr. Kituyi: Mr. Temporary Deputy Speaker, Sir, I did mention exactly where he was allocated a piece of land. The piece of land he was given was part of the first allocations to be cancelled by the newly elected officials of the Municipal Council after the 1992 elections. In fact, he had been allocated a piece of land without his knowledge. The piece of land included part of the Railway Station and the old Police Station. It also touched on the Municipal Market in Kitale. This was in addition to the land which was allocated to him in Malindi.

The Temporary Deputy Speaker (Mr. Wetangula): You mean he did not know that he was allocated land, or he did not know where the land was?

Dr. Kituyi: Both.

(Laughter)

The Minister for Local Government (Mr. F.P. Lotodo): Mr. Temporary Deputy Speaker, Sir, will the hon. Member say when I applied for those pieces of land? I have never applied for any piece of any land anywhere in this Republic.

Dr. Kituyi: Say whether you were not given a piece of land---

The Minister for Local Government (Mr. F.P. Lotodo): Mr. Temporary Deputy Speaker, Sir, if he is unable to say exactly where the piece of land is, I think he had better withdraw his remarks. In fact, the Railway Station at Kitale has no empty space. You also know where the old Police Station is. It is not adjacent to the Kitale Railway Station.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I was going to substantiate my remarks with regard to the Agricultural Development Co-operation (ADC) land in Muhoroni.

The Temporary Deputy Speaker (Mr. Wetangula): You still have not substantiated on his demand that---

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, about the citizenship certificate?

The Temporary Deputy Speaker (Mr. Wetangula): Yes!

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I will have to look at my records, because I do not want to---

The Minister for Local Government (Mr. F.P. Lotodo): No!

Prof. Anyang'-Nyong'o: But you were! You can say no, but you were given citizenship forms to sell. It is a fact that people were given citizenship forms to sell in 1992.

The Minister for Local Government (Mr. F.P. Lotodo): Mr. Temporary Deputy Speaker, Sir, let him tell us where I was in 1992. I was not here.

Prof. Anyang'-Nyong'o: I did not say it was you.

(Laughter)

The Minister for Local Government (Mr. F.P. Lotodo): Mr. Temporary Deputy Speaker, Sir, what is the hon. Member talking about? I think he is crazy!

The Temporary Deputy Speaker (Mr. Wetangula): Prof. Anyang'-Nyong'o, it is public knowledge that Mr. F.P. Lotodo was not a Member of this House in 1992.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I did not say that he was a Member of this House by then.

The Temporary Deputy Speaker (Mr. Wetangula): I think we can assure Mr. F.P. Lotodo that it is public knowledge that he is a reasonably clean man.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I would like to request hon. Lotodo, who is a very good friend of mine, to withdraw the statement that I am crazy. I do not think I am crazy. Mr. Lotodo, do you really think I am crazy?

(Laughter)

I do not think I am crazy. Even your silence means that you have withdrawn. Thank you very much.

Mr. Temporary Deputy Speaker, Sir, I was going to substantiate my statement with regard to the Agricultural Development Corporation (ADC) land in Muhoroni. The ADC land in Muhoroni has been parcelled out and given to politically-correct individuals to sell and raise money for campaign purposes. The hon. Philip Rotino approached a land agent in Kisumu and offered to sell his piece of land to him. This land agent told me so. Now, I would like the Commissioner of Lands to come out openly and tell Kenyans what happened to ADC land in Muhoroni. In a like manner, about four or five weeks ago, when I wrote an article in the *Sunday Nation* saying that some land belonging to the Kenya Railways Corporation had been given out to politically-correct individuals without proper advertisement and that the Exchequer had, therefore, lost money in the so-called privatisation process, the Investment Secretary, Treasury, published an article in the newspapers and denied what I had said. On 17th October 1997, hon. ole Ntimama put up a notice in the Kenya Gazette declaring some of the houses which belonged to the Kenya Railways Corporation national monuments, not realising that the houses had already been sold and demolished. So, we have a Kenyan Gazette notice declaring these houses national monuments when Professor Musuva, when he was the head of the Kenya Railways Corporation, had already disposed of these assets, without advertising their sale in the Kenya Gazette.

Mr. Temporary Deputy Speaker, Sir, what the Investment Secretary, Mr. Mitine, was denying was actually proved when hon. Ntimama declared 40 houses in Nairobi and Mombasa as monuments and national heritage when they had already been taken and demolished. And who got them? It is the politically-correct individuals. The houses are found along Juja Road and each stand on half an acre piece of land. And because the houses were built with such good colonial architecture, the Minister for Home Affairs and National Heritage wanted them preserved, not realising that they had already been taken over by politically-correct individuals and demolished. This is a situation where the left and right hands do not know what each one of them is doing. So, if we are to have an even environment for economic, social, political and cultural development, we must have an enabling Constitution. Hon. Ntimama was trying to defend our cultural development when he said that the buildings at the Kenya Railways Corporation were of architectural value and, therefore, must be preserved. But because we have a very disabling environment, we cannot have the desired economic, social, political and cultural development in our country. So, I really agree with the hon. Attorney-General that we should have a Constitution which will make this happen. We must recognise the fact that in the present set up, the environment is so disabling that we shall have to do a lot to recapture our cultural heritage like this colonial architecture which has been completely ruined by this culture of political plutocracy. As I said earlier on, unless we get rid of this presidential authoritarian system, we can write this good Constitution and continue losing our cultural heritage as has been shown by what Professor Musuva did at the Kenya Railways Corporation - selling off houses and land belonging to the Corporation at throw-away prices and, in some cases, at no price at all, without following the correct Government procedure.

The correct procedure is that the sale of these assets should have been advertised in the Kenya Gazette so that every Kenyan could have the opportunity to buy them. This is one of the things that are wrong with the privatisation process in this country. The sale of such assets is not done transparently and the laws of the land are not followed. Privatisation has been a way through which a few individuals pocket public assets and become richer by the day so that by the time the Government has "sold off" public assets, we shall have a small clique of people in this country who are so rich that even if we have a good Constitution, they will use their economic power to dominate this country.

So, one of the things that any new Government in this country must do, is to create an enabling environment which will stop the few plutocrats from enjoying the apple strings and cover of the presidential authoritarian regime which use wealth to subvert economic, social, political and cultural development of our nation.

Mr. Temporary Deputy Speaker, Sir, let me go to the third point. Without prejudice to sub-paragraph---

The Temporary Deputy Speaker (Mr. Wetangula): It might be a good idea to stop there. You should be here on Tuesday 4th November, 1997 to carry on with your contribution.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Wetangula): Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until Tuesday, 4th November, 1997, at 2.30 p.m.

The House rose at 6.30 p.m.