

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 25th September, 1997

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### ORAL ANSWERS TO QUESTIONS

*Question No.641*

#### FIRST AFRICAN CHIEF IN TRANS NZOIA

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

- (a) who the first African Chief was when the Trans Nzoia District was proclaimed a district, the ethnic group he came from, and who his assistant chief was;
- (b) whether the ethnic group referred to in "a" above is now extinct; and,
- (c) if the answers to "a" and "b" above are in the negative, what arrangements the Government has put in place to resettle the community.

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

*Question No.390*

#### REFUSAL TO HAND OVER THE LATE MATAMBA'S DOCUMENTS

**Dr. Lwali-Oyondi** asked a Minister of State, Office of the President why the chief of Ongata Rongai in Kajiado District has refused to hand over the particulars, that is, identity card, NSSF card, banking book and burial certificate, of the late Mr. John Odinga Matamba to his widow, Mrs. Helida Odinga Matamba.

**Mr. Deputy Speaker:** Is anybody here from the Office of the President?

**An hon. Member:** But hon. Sunkuli is there!

**Mr. Deputy Speaker:** Hon. Sunkuli, do you have the reply to this Question? You better run if you are going to answer this Question!

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Deputy Speaker, Sir, please allow me to sort out my answers.

**Mr. Deputy Speaker:** We will then defer the Question for a moment. Let us move on to the next Question.

*Question No.536*

#### SETTLEMENT OF BANITA SISAL ESTATES SQUATTERS

**Bishop Kimani** asked a Minister of State, Office of the President when he will settle the squatters in Banita Estates of Ndunguri location.

**The Assistant Minister, Office of the President** (Mr. Sunkuli): Mr. Deputy Speaker, Sir, I beg to reply. Investigations carried out revealed that there are no squatters in Banita Estates. However, there are workers contracted by the Estates, who reside there.

**Bishop Kimani:** Mr. Deputy Speaker, Sir, these people are landless, despite the fact that the Assistant

Minister says that he has done investigations and they are workers. These people were born there, and their great grandfathers also lived there. They are landless, very poor and unemployed. Could the Assistant Minister consider allocating these people land?

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, if the hon. Member can give me more particulars of the people who are genuinely aggrieved, I am prepared to have their grievances redressed and ensure that they are settled. If the hon. Member, in his own time, gives me the list of these people, I am prepared to look at it.

**Bishop Kimani:** Mr. Deputy Speaker, Sir, since the Assistant Minister seems very positive that these people could be settled, I will try and bring him the list.

*Question No.524*

INTRODUCTION OF SUGAR BILL

**Mr. Deputy Speaker:** Is hon. Busolo not here? We will leave his Question until the end. Let us move on to the next Question.

*Question No.566*

SHORTAGE OF ISLAMIC EDUCATION TEACHERS

**Mr. Farah** asked the Minister for Education:-

- (a) how many Christian Religious Education (CRE) teachers there are in the country, and what the teacher/pupil ratio is for christian children in public schools;
- (b) how many Islamic Religious Education (IRE) teachers there are in the country, and what the IRE teacher/pupil ratio is for muslim children in public schools; and,
- (c) whether the Minister is aware that the majority of muslim children in the country are instructed in christianity because of the shortage of IRE teachers, and if so, whether he could remedy the situation.

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

*Question No.620*

NON-PAYMENT OF DUES TO FORMER  
EMPLOYEES OF EA FINE SPINNERS

Is hon. Raila not here? We will leave his Question until the end. Let us move on to the next Question.

*Question No.366*

PAYMENT OF NSSF BENEFITS TO MRS. MUTHAMA

Is hon. Nthenge not here? We will leave his Question until the end. Let us move on to the next Question.

*Question No.587*

PAYMENT OF SALARY ARREARS TO MR. ASIMETO

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

- (a) whether he is aware that Mr. Harrison M. Asimeto, who was posted to Kakamega Forest Station on the 18th of April, 1997, as a Forest Assistant III, has not been paid his salary; and,
- (b) If the answer to "a" above is in the affirmative, when Mr. Asimeto will be paid his salary and accrued arrears.

**Mr. Deputy Speaker:** Is anybody here from the Ministry of Environment and Natural Resources? We will leave that Question until the end then. Let us move on to the next Question.

*Question No.609*

CLOSURE OF KFA PETROL STATION

Is hon. J.N. Mungai not here? We will leave his Question until the end. Let us go back to Question No. 641 for the second time!

**Mr. Moiben:** Mr. Deputy Speaker, Sir, for the third week running, I beg to ask Question No.641.

*Question No.641*

FIRST AFRICAN CHIEF IN TRANS NZOIA

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

- (a) who the first African Chief was when the Trans Nzoia district was proclaimed a district, the ethnic group he came from, and who his assistant chief was;
- (b) whether the ethnic group referred to in "a" above is now extinct; and,
- (c) if the answers to "a" and "b" above are in the negative, what arrangements the Government has put in place to resettle the community.

**The Assistant Minister, Office of the President (Mr. Sunkuli):** Mr. Deputy Speaker, Sir, I would like to seek the indulgence of the House. This is because I have been trying to get a written answer to this Question. But I would like to promise the hon. Member that if he does not mind asking it for the fourth week on Tuesday, I will give him an answer.

**Mr. Moiben:** I do not mind, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** In that case, the Question is deferred until Tuesday.

*(Question deferred)*

Let us move on to Question No.390 for the second time.

*Question No.390*

REFUSAL TO HAND OVER THE LATE  
MATAMBA'S DOCUMENTS

**Dr. Lwali-Oyondi** asked a Minister of State, Office of the President why the chief of Ongata Rongai in Kajiado district has refused to hand over the particulars, that is, identity card, NSSF card, banking book and burial certificate, of the late Mr. John Odinga Matamba to his widow, Mrs. Helida Odinga Matamba.

**The Assistant Minister, Office of the President (Mr. Sunkuli):** Mr. Deputy Speaker, Sir, with apologies, I again beg the same indulgence.

**Dr. Lwali-Oyondi:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister seems to have taken into his mind just to beg for indulgences, and not to answer Questions. This Question has been here for quite a long time. It was here yesterday---

**Mr. Deputy Speaker:** What is your point of order?

**Dr. Lwali-Oyondi:** My point of order is this: When is he going to answer my Question? My Question was here yesterday. Is he in order to beg indulgences instead of answering Questions?

**The Assistant Minister, Office of the President (Mr. Sunkuli):** Mr. Deputy Speaker, Sir, Dr. Lwali-Oyondi is a doctor and I am sure he should be kind enough. This is because I always answer his Questions. I will answer this particular Question on Tuesday.

**Mr. Ndicho:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister in the Office of the President is notorious for refusing to answer Questions, hence, interfering with next week's Order Paper and he is also going to make many Members miss the chance to ask their Questions. He is not giving any reasons at all for not answering Questions directed to his Ministry. Is he in order to take this House for a ride as he has always done?

**Mr. Deputy Speaker:** Nobody is ever in order to take the House for a ride. The Question is deferred to Tuesday.

*(Question deferred)*

We will move on to Question No.524 by Mr. Saulo Busolo, for the second time.

**Mr. Busolo:** Mr. Deputy Speaker, Sir, I am sorry for coming into the House late.

*Question No.524*

INTRODUCTION OF A SUGAR BILL

**Mr. Busolo** asked the Minister for Agriculture, Livestock Development and Marketing, whether considering the public concern over the sugar crop, he could initiate a Sugar Bill to provide for the regulation and control of sugar industry in Kenya.

**The Assistant Minister for Agriculture, Livestock Development and Marketing** (Mr. Muoki): Mr. Deputy Speaker, Sir, I beg to reply.

In order to address the constraints affecting the sugar sub-sector, my Ministry has already initiated a Sugar Bill. A comprehensive document has now been prepared after the necessary consultations between the various stakeholders. The draft Bill will soon be submitted to the Cabinet before it is finally tabled in Parliament. Some of the major salient features on the proposed Bill include the following:-

- (i) The restructuring of the Sugar Authority into an apex body---

*(Hon. Members consulted loudly)*

**Mr. Magwaga:** On a point of order, Mr. Deputy Speaker, Sir. People in the corner are consulting so loudly that we cannot hear what the Assistant Minister is saying---

**Mr. Deputy Speaker:** Order! Order! May I appeal to hon. Members to consult in low tones.

**Mr. Angwenyi:** On a point of order, Mr. Deputy Speaker, Sir. We are hon. Members and not people.

*(Laughter)*

**The Assistant Minister for Agriculture, Livestock Development and Marketing** (Mr. (Mr. (Mr. Muoki): Mr. Deputy Speaker, Sir, in view of what has been raised, I will repeat my answer.

In order to address the constraints affecting the sugar sub-sector, my Ministry has already initiated a Sugar Bill. A comprehensive document has now been prepared after necessary consultations [**The Assistant Minister for Agriculture, Livestock Development and Marketing**] between the various stakeholders. The draft Bill will soon be submitted to the Cabinet before it is finally tabled in Parliament. Some of the major features on the proposed Bill include the following:-

- (i) The restructuring of the Kenya Sugar Authority into an apex body to take account of new responsibilities arising from privatization of the sugar factories,
- (ii) Determination of production levels, import requirements and marketing strategies in order to protect our local industry from unfair international competition and,
- (iii) Various measures aimed at ensuring self-sufficiency and if possible sugar production for export to save and earn the country foreign exchange.

**Mr. Busolo:** Mr. Deputy Speaker, Sir, whereas I appreciate that answer, I do take into consideration the fact that we have heard many such good answers in the past, but when it comes to practice, nothing is done. The Assistant Minister says that a number of stakeholders in the sugar industry have been consulted. Could he tell us who these stakeholders are and whether he can confirm or deny the fact that the views of these stakeholders have taken long to be implemented because the sugar industry is being used as a conduit to collect money for the KANU campaigns for the forthcoming General Elections?

**Mr. Muoki:** Mr. Deputy Speaker, Sir, I am sure the hon. Member is aware of the process the Bill undergoes before it is brought into this House. It has to be prepared, go through the Cabinet and, finally, it is tabled here. On the part of the consultations, I think they have been done. We have consulted the farmers, some millers and the people concerned in the Government and in the marketing area. So, all these views are incorporated in this Bill which will be useful to every Kenyan.

**Dr. Kituyi:** Mr. Deputy Speaker, Sir, notwithstanding the apparent contradiction between a Government which is seeking to privatize the sugar industry and talking about production targets in liberalized production of sugar; notwithstanding the fact that this Government is preparing a Bill when its life is about to expire and aware that it cannot bring it to Parliament for deliberation; and even wanting to forget the fact that for five years, the sugar industry collapsed under the weight of greedy well-connected individuals because of importing sugar without paying duty, could the Assistant Minister tell this House, having enumerated the considerations that they have, what mechanisms,

within the Bill that is being prepared, can be used to stop all these major thieves from dumping sugar into Kenya without paying duty?

**Mr. Muoki:** Mr. Deputy Speaker, Sir, that was more of a speech than a question. I did say that there are salient features and other issues being addressed concerning the sugar industry. These are the issues addressed in the Bill and it is not a question of the Government trying to control this and that.

On the issue of the life of this Government expiring and all that, I think the country will always be there and for the hon. Member's information, KANU will win the General Elections and form the next Government!

**Prof. Ouma:** Mr. Deputy Speaker, Sir, the sugar industry has been unstable for some time and that has sent economic shockwaves to Nyanza Province and Western Province. I am sure the Ministry has considered these things. Could the Assistant Minister tell us, in his view, what are the key problems which have destabilized this industry and how will this Bill solve those problems?

**Mr. Muoki:** Mr. Deputy Speaker, Sir, I think that is a very good question. I would like to say that for an industry to be successful, we need effective research, production and marketing.

**Mr. Orenge:** Mr. Deputy Speaker, Sir, I am asking this question as a follow-up to the answer which the hon. Assistant Minister has given, particularly in section "(ii)" of his answer that the Sugar Bill is being drafted in order to protect our local industry from unfair competition. Already, there exists regulations under the Customs and Excise Act which impose duty on sugar and does not allow transit sugar to be off-loaded in the local markets. Since these regulations already exist and the Ministry and the Government, generally, is not putting them into effect and the sugar industry has ended up collapsing, to the gain of this Government because a lot of that money that has been raised from transit sugar is being pocketed by KANU to raise money for the elections, could the Assistant Minister tell us whether this Bill is going to regulate the industry? Even under the Customs and Excise Act, which is already in place, they are not able to protect the local industry.

**Mr. Muoki:** Thank you, very much, Mr. Deputy Speaker, Sir. I would like to say, first and foremost, that the issue of Customs and Excise duty, although a Government issue, falls under the Ministry of Finance. On the part of the sugar industry, I think the Ministry is committed to eradicating any international or local interference that may affect our industry and it is the wish of my Ministry---

**Dr. Otieno-Kopiyo:** On a point of order, Mr. Deputy Speaker, Sir. The gist of his answer is that there is a Bill coming to Parliament which will provide the sugar industry with protection. The Assistant Minister is being told that there are already laws that are meant to protect the sugar industry and those laws are not being obeyed. What is he going to do about that? That is what is being asked and he is evading the question by saying that the question should be directed to the Ministry of Finance. How is he going to impact upon the Minister for Finance now that he is avoiding that issue?

**Mr. Muoki:** Mr. Deputy Speaker, Sir, the question of having this Bill is in line with the fact that the sugar industry is being privatised, and this will take consideration of the key players in this industry for the success of the industry.

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

**Mr. Deputy Speaker:** Order! Next Question.

*Question No. 566*

SHORTAGE OF ISLAMIC EDUCATION TEACHERS

**Mr. Farah** asked the Minister for Education:-

- (a) how many Christian Religious Education (CRE) teachers there are in the country and the teacher/pupil ratio for christian children in public schools;
- (b) how many Islamic Religious Education (IRE) teachers there are in the country and the Islamic Religious Education (IRE) teacher/pupil ratio muslim children in the public schools; and,
- (c) whether he is further aware that majority of muslim children in the country are instructed in christianity because of the shortage of Islamic education teachers, and if so, if he could remedy the situation.

**The Assistant Minister for Education** (Mrs. Ndeti): Mr. Deputy Speaker, Sir, I apologise for not having been here the first time the Question was asked. I beg to reply.

(a) There are about 3,475 Christian Religious Education (CRE) teachers in public secondary schools in the country. It is not possible to work out the teacher/pupil ratio for CRE because the subject is optional to pupils. The Ministry would need a lot of time to ascertain the number of pupils studying optional subjects.

(b) There are about 230 Islamic Religious Education (IRE) teachers in public secondary schools. Just like the CRE, the IRE is also optional and, therefore, my Ministry cannot provide the teacher/pupil ratio for it.

(c) I am aware that some Muslim children who attend Christian sponsored schools are taking instructions in CRE, but this is by choice.

**Mr. Farah:** Mr. Deputy Speaker, Sir, my question was how many CRE teachers are there in the country in our public schools. It did not refer specifically to the secondary schools. But could the Assistant Minister tell us, if she is satisfied with the situation in which over eight million Kenyans here, who constitute a third of the population, have got a Christian to Islamic religious education ratio of less than six per cent? There are 3,475 CRE teachers but only 230 IRE teachers, and yet we have Muslims in all the schools in the country. Is she happy with that situation?

**Mrs. Ndetei:** Mr. Deputy Speaker, Sir, so far, there has been no serious complaint about this ratio issue, but if the Questioner is seriously concerned about the matter, the Ministry will carry out a thorough research in the matter and redress the anomaly.

**Mr. Farah:** Mr. Deputy Speaker, Sir, religious education is a compulsory subject in primary schools in this country. We have less than three per cent of the required Muslim teachers to teach children in IRE. Hence, because a child had to take one religion or the other, over 90 per cent of the Muslim children in primary schools in the country compulsorily have to take CRE. In view of that, given that there is freedom of worship in this country, and we do not want our children at that tender age, to be instructed in a religion that is not theirs, could the Assistant Minister, in conformity with our Constitution, say in this House today that religious education will no longer be compulsory in our primary schools? Could she state that it is going to be optional and that it is not going to be examinable as a compulsory subject?

**Mrs. Ndetei:** Mr. Deputy Speaker, Sir, teaching of IRE is more strict than CRE and apparently, the shortage of IRE teachers arises because some Muslim communities object to the idea of the non-practising Muslims teachers teaching IRE in the schools. But if hon. Farah is seriously concerned about the matter, the Ministry can do more research in the matter and, certainly, be able to make a statement on it.

**Mr. Shidie:** Mr. Deputy Speaker, Sir, since the Assistant Minister is aware that there is a shortage of IRE teachers, could she train more teachers such that Muslim students, at least, have access and the right to religious education?

**Mrs. Ndetei:** Mr. Deputy Speaker, Sir, the production of Muslim teachers is under the mandate of Kenyatta University. The ratio of production is 50 CRE to 15 IRE education. But we can train

**[Mrs. Ndetei]**

more teachers. I do not think it is a major problem.

**Mr. Farah:** On a point of order, Mr. Deputy Speaker, Sir. Teaching of religion in primary schools is compulsory. This is unconstitutional because this is a secular State and not a religious State. My question is: Could the Assistant Minister, forthwith, now direct that religious education should not be a compulsory subject in primary schools because, right now, it is compulsory? If the Ministry cannot provide sufficient teachers to instruct in all the religions, then they should not make it compulsory. It should be optional and not examinable in the KCPE. Could she do that because it is against the Constitution of this country?

**Mrs. Ndetei:** Mr. Deputy Speaker, Sir, at the primary level, the children normally go to attend the religious classes of their parents orientation. We do not want to produce a non-religious society as this would lead to a "dead" society within a short time.

**Mr. Deputy Speaker:** Mr. Raila's Question, for the second time.

*Question No.620*

NON-PAYMENT OF DUES TO FORMER EMPLOYEES  
OF E.A. FINE SPINNERS

**Mr. Deputy Speaker:** Is Mr. Raila still not here?

*(Question dropped)*

**Mr. Deputy Speaker:** Mr. Nthenge's Question for the second time!

**Mr. Nthenge:** Mr. Deputy Speaker, Sir, I beg to apologise for coming late.

*Question No.366*

## PAYMENT OF NSSF BENEFITS TO MRS. MUTHAMA

**Mr. Nthenge** asked the Minister for Labour and Manpower Development:-

- (a) whether he is aware that Mrs. Kamene Muthama, FM/No.041 453 81X, an ex-employee of Nguliva Estate, has not been paid her National Social Security Fund (NSSF) benefits since 1994; and,  
 (b) if the answer to "a" is in the affirmative, when Mrs. Kamene Muthama will be paid her NSSF benefits.

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

- (a) I am aware that the claim by Mrs. Kamene Muthama has been fully paid.

**Mr. Nthenge:** Mr. Deputy Speaker, Sir, why did the NSSF have to wait until a Question is put here before they take action? Could the Minister tell this House when and to whom the money was paid? The cheque numbers are given, but to whom and when was it paid?

**Mr. Masinde:** Mr. Deputy Speaker, Sir, we have not waited for the Question to be put before the payments are made. Payments were made in two instalments. The first instalment was made by cheque number 280287 and was paid on 4th of August, 1995, and the second instalment was made by cheque number 352434 and was paid on 2nd July, 1996.

**Mr. Nthenge:** Mr. Deputy Speaker, Sir, in his earlier reply, the Minister said that the claimants do not have to wait. The Question indicates clearly that this is a 1994 issue and the last payment was made in July, 1996. Is this not enough proof that if no Question is put, the ordinary poor people will never get their benefits? This defeats the whole purpose of having the NSSF.

**Mr. Masinde:** Mr. Deputy Speaker, Sir, the NSSF has come a long way to where we are now. Before, there were even delays of as long as two years. But I have already informed the House that the maximum delay so far now is four weeks. So, there is really tremendous improvement from the previous years.

**Mr. Nthenge:** On a point of order, Mr. Deputy Speaker, Sir. I asked the Minister the name of the person who received this money. Could we be told now?

**Mr. Masinde:** Mr. Deputy Speaker, Sir, at both times, the cheque was collected by the claimant, Mrs. Muthama, personally.

**Mr. Achola:** Mr. Deputy Speaker, Sir, could the Minister inform the House as to why it was necessary to make this payment in two instalments?

**Mr. Masinde:** Mr. Deputy Speaker, Sir, I am sorry. Could hon. Achola repeat his question? I did not quite hear the question.

**Mr. Achola:** Thank you, Mr. Deputy Speaker, Sir. I am wondering why it was necessary for the NSSF to make this payment in two instalments. Why was this necessary when we know that the NSSF is loaded with money which is given to certain corrupt Ministers very easily?

**Mr. Masinde:** Mr. Deputy Speaker, Sir, first of all, I deny that NSSF money is just dished out to Ministers. In fact, I do not know of any Minister who has been given NSSF money. However, usually the problem is caused by the claimants. The claimant in this case worked in two different places. From one place the returns were sent and she was paid for those returns. Then, we had to write back to a different employer to give us the details of the instalments that had been submitted as payments. After that we had to compile information so as to pay. So, the payment in two instalments was as a result of the employee having worked in two different places and not having given us the information at once.

**Mr. Deputy Speaker:** Question No.587, for the second time!

*Question No.587*

## PAYMENT OF SALARY ARREARS TO MR. ASIMETO

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

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

**Mr. Deputy Speaker:** Nobody is here from the Ministry, so the Question is deferred!

*(Question deferred)*

**Mr. Deputy Speaker:** Question No.609, by J.N. Mungai, for the second time!

**Mr. J.N. Mungai:** Mr. Deputy Speaker, Sir, I apologise for coming late.

*Question No.609*

CLOSURE OF KFA PETROL STATION

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

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

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

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

**Mr. Deputy Speaker:** Nobody is here from that Ministry, so the Question is deferred!

*(Question deferred)*

**Mr. Deputy Speaker:** I will give special dispensation to Question Nos.641 and 390 which I had already deferred, now that the Minister of State, Office of the President is here and ready to answer them. Hon. Moiben, you may ask your Question!

*Question No.641*

FIRST AFRICAN CHIEF IN TRANS NZOIA

**Mr. Moiben** asked the Minister of State, Office of the President:-

(a) who the first African chief when the Trans Nzoia District was proclaimed a District in 1920 was and from which ethnic group he was and who his assistant chief was;

(b) if the ethnic group referred to in "a" above is now extinct; and,

(c) if the answer to "b" above is in the negative, what arrangement the Government has put in place to resettle this community.

**The Assistant Minister, Office of the President (Mr. Sunkuli):** Mr. Deputy Speaker, Sir, once again I apologise and beg to reply now that I have the answer.

(a) Trans-Nzoia District did not have any African chief in 1920 as the Colonial Government vested its administrative duties on the police, district officers and commissioners-cum-judiciary.

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

**Mr. Moiben:** Mr. Deputy Speaker, Sir, I am most disappointed by that answer. If I had asked, for example, who the first European to sight in Mt. Elgon was, the Assistant Minister would have answered very excitedly. This is one of the ways Africans have been mistreated for a long time. No recognition is given to an African, even if you went to a very important office. Could the Assistant Minister promise to give a definite answer to this Question next week?

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, I think the hon. Member should be fair because he did not ask for the first chief. He asked for the name to the first chief in 1920. Of course, there are records of when certain chiefs were appointed, but in 1920 when Kenya became a colony, that was---

**Mr. Muite:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to mis-read the Question which is very clear? It is asking, when the first African chief was appointed after that district was created.

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, I think hon. Muite should read the Question properly. It reads: Who was the first African chief when Trans-Nzoia District was proclaimed a district in 1920?

Mr. Deputy Speaker, Sir, when we became a colony in 1920, the system of chiefs was not immediately implemented throughout the country.

**Mr. Moiben:** On a point of order, Mr. Deputy Speaker, Sir. The Question is: Who was the first African chief? Trans-Nzoia became a district in 1920. Could the Assistant Minister be serious and tell us who was the first African chief?

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, in 1920, there was no African chief in Trans-Nzoia District. The

operations of Government were co-ordinated by a man called Mr. A.M. Champion who was the first District Commissioner. He was appointed on 8th October, 1920. At that particular time, the institution of chiefs was not yet established for Trans-Nzoia. Subsequently, there were chiefs appointed.

Mr. Deputy Speaker, Sir, for the hon. Member's satisfaction, I would like to confirm to him that the first Bukusu chief was appointed in that area on 15th July, 1956.

**Mr. Moiben:** Mr. Deputy Speaker, Sir, while thanking the Assistant Minister for remembering the first European DC in 1920, it is most unfortunate that he could not remember that the last African chief before the Bukusu was appointed, was a Sabaot senior chief called Kosis arap Kembei in 1920, from the Kapsurum clan. Could the Assistant Minister promise to do a research and put history correctly? We have no mischief. We are simply asking for historical records.

*(Several Members stood up in their places)*

**Mr. Deputy Speaker:** Order! Order, hon. Members! I thought we should allow the Assistant Minister to respond to the point of order from the hon. Member, then you can rise on your own points of order.

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, I do not know exactly what the hon. Member would like of me. But, if I go back to the National Archives, I can give him a list of chiefs from 1921 to 1956 when Mr. William Wamalwa became the first Bukusu chief. In between, there could have been Sabaot and Maasai chiefs, because Maasais also lived there.

**Mr. Obwocha:** On a point of order, Mr. Deputy Speaker, Sir. I hope the Chair heard the hon. Member claim that the first chief was appointed in 1920 and the second one in 1956. Is this possible?

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, I do not know whether you are inclined to defer it for more research. The research might show that the Bukusu had their own chiefs and the other tribes had their own chiefs. These institutions were not in fact, African institutions. They were institutions that came subsequent to colonization.

**Mr. Moiben:** Mr. Deputy Speaker, Sir, it is correct that Mr. William Wamalwa became a chief in 1956, but before 1920, it was Chief Kosis arap Kembei, from Kapsurum clan and he remained in that office for 40 years. Could the Assistant Minister give us the correct history?

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, I am sure the hon. Member knows that before 1920, we were not part of the British Empire; we were a protectorate of the British Empire and, I think, that the institution of the chieftainship started to be recognised when we became a colony.

**Mr. Deputy Speaker:** Next Question!

**The Assistant Minister for Transport and Communications** (Mr. Saina): On a point of order, Mr. Deputy Speaker, Sir.

*(Hon. Saina raised his hand up)*

**Mr. Deputy Speaker:** Order! Order, hon. Saina! When you want to catch the Speaker's eye, you just stand up. You do not have to raise your hand but what is this burning point of order that you want to make?

**The Assistant Minister for Transport and Communications** (Mr. Saina): On a point of information, Mr. Deputy Speaker, Sir. While I was doing research on the history of Nandi, the community which refused British administration for 17 years, I found the name of that Sebei chief having been the first African chief appointed in Trans-Nzoia District. So, that part of history is relevant. That name is relevant and he is the first chief in Trans-Nzoia District.

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

**Mr. Deputy Speaker:** Order! Order! Dr. Lwali-Oyondi, you may ask your Question for the third time.

*Question No.390*

REFUSAL TO HAND OVER THE LATE  
MATAMBA'S DOCUMENTS

**Dr. Lwali-Oyondi** asked the Minister of State, Office of the President why the Chief of Ongata Rongai in Kajiado District has refused to hand over particulars, that is, Identity Card, NSSF Card, Banking book and burials certificate, of the late Mr. John Odinga Matamba to his widow, Mrs. Helida Odinga Matamba.

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

(a) I am not aware that the Chief of Ongata Rongai in Kajiado District has failed to hand over the documents belonging to the late Mr. John Odinga to his widow, Mrs. Helida Odinga Matamba.

**Dr. Lwali-Oyondi:** Mr. Deputy Speaker, Sir, we have a terrible Chief down there who has snatched the documents belonging to the widow's late husband and I am surprised to note that the Assistant Minister is saying here that he is not aware when there is a letter to that effect from the District Commissioner here and I can make it available to the Assistant Minister for his own examination. Much more surprising, is the fact that there is a letter to that effect from the Office of the President and here it is and yet the Assistant Minister is not aware.

*(Dr. Lwali-Oyondi waved the letter)*

Why is the Assistant Minister not aware?

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, I hope that hon. Dr. Lwali-Oyondi is not saying that the documents are of any use to the chief. The letter that hon. Dr. Lwali-Oyondi has given is a letter addressed to the DO, Ngong from the DC, Kajiado stating, in fact the complaint which was lodged by the widow to the DC. However, the response of the Chief is that he has never handled the documents of the deceased. This other letter is to the same effect except that this time it is a letter written from Harambee House to the DC and it is this letter that prompted the DC to write this letter. So, these letters are not admitting that the Chief has any of these documents and I am hereby saying that he does not have them.

**Dr. Lwali-Oyondi:** On a point of order, Mr. Deputy Speaker, Sir. I think this Assistant Minister is joking. I have given letters which have made his office aware that such a complaint exists and that the District Officer, Ngong knows all about it because he has even asked the Chief to hand over the documents. The Chief in turn, had agreed to hand over those documents, the ID card, the NSSF Card and other documents pertaining to this particular person. In fact, I have got correspondence between the widow and this particular chief. I think the Assistant Minister is not well informed and briefed. Can I ask him to go and do more research because this chief has even taken money that belonged to this particular widow and that is why he is dodging the question? I wish to also lay on the Table the correspondence between this particular widow, Mrs. Helidah Odinga Matamba with the District Officer. I have them here.

*(Dr. Lwali-Oyondi laid the documents on the Table)*

**Mr. Deputy Speaker:** Then what is your question or point of order?

**Dr. Lwali-Oyondi:** Mr. Deputy Speaker, Sir, my question is: Why should this chief refuse to hand over documents belonging to this particular woman when he is requested to do so even by his senior officers as indicated in the documents that I have laid on this Table?

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, while I really sympathise with hon. Dr. Lwali-Oyondi since he is really doing a noble job to help a widow, I do not know what I can do for him. This is because my investigations have revealed no evidence at all that the chief has those documents. The only thing that I can assure the hon. Member is that I will also tell the chief that he should hand over the documents. However, he says that he does not have them and that he has never handled them.

**Mr. Nthenge:** On a point of order, Mr. Deputy Speaker, Sir. The accused in this case is the chief. When did an accused say that he is the offender? He has to defend himself and that is why the Question has been asked. Can the Assistant Minister, therefore, go and investigate in a different way because the chief must deny making a mistake? This is natural? We are all assumed not guilty in a court of law and yet, after charges are proved, some of us are found guilty. So, the chief could be denying his mistakes.

**Mr. Sunkuli:** But the chief is innocent until he is proved guilty. I have no other way of knowing whether he has the documents.

**Dr. Lwali-Oyondi:** Mr. Deputy Speaker, Sir, one of the letters says that this Chief had promised in the presence of Mr. Gitau, the DO, that he was going to hand over those documents. Can the Assistant Minister carry out further investigations, on the DO, Mr. Gitau so that they can verify whether the chief's answer and defence are true or not?

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, yes, indeed, I am prepared to continue helping the hon. Member to get to the bottom of this problem.

#### QUESTIONS BY PRIVATE NOTICE

## CAUSE OF DEATH OF MR. MAKORI

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

(a) Is the Minister aware that the late John Makori, who was a tractor driver with Gachie Sawmills, was arrested on 6th July, 1996, and died on 18th July, 1996, at Molo District Hospital, chained to the bed after severe torture and spinal injuries inflicted in the police cells?

(b) Is he further aware that two police officers involved in the death of the late John Makori were arrested, but released without being charged?

(c) under what circumstances did the deceased die and why were the policemen involved in the death released without being charged?

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

(a) The late John Makori collapsed in the police cells on the 10th July 1996 and was taken to Molo District Hospital on the same day. He died on the 18th July, 1996 while undergoing treatment. According to the post-mortem report, Makori died of cardio-pulmonary arrest due to hepatic failure due to hepatitis.

(b) The police officers were released after the Rift Valley Provincial State Counsel advised that, there was no sufficient evidence to sustain a charge of murder after perusing the committal documents. The State Counsel directed that a public inquest be held on the same day and it is coming up for hearing on the 26th of September, 1997.

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

**Mr. Anyona:** Mr. Deputy Speaker, Sir, before I ask a substantive question, I would like the Minister;

(a) to produce the post mortem report

(b) to read it before the House and

(c) to table it, before I ask my next question.

**The Assistant Minister of State, Office of the President (Mr. Sunkuli):** Mr. Deputy Speaker, Sir, indeed I have a copy of the post mortem report, may be I may not be able to read the whole content but I wish to draw the attention of the hon. Member that when the doctor examined the body--- I will just summarise what he might have found, he found---

**Mr. Anyona:** On a Point of Order, Mr. Deputy Speaker, Sir, This is a serious matter where a Kenyan has been killed by the Government and I have asked him to read. I have not asked him to summarise, I am educated enough to know that.

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, I will read the legible part of it because they are written in doctor's handwriting.

"The outside body had a yellow colouration, there was no synosis, the nails on the toes were intact, there were multiple bruises both on the lower curve region," I do not know whether the hon. Member knows what that is, because I also do not know. "He had an old depressed scar on the lateral aspect of the right leg, there were multiple superficial bruises on both parts of the ribs, multiple superficial bruises on the lower part," Mr. Speaker, there is some unparliamentary language used there, but I must tell the hon. Member what it means is that, there were multiple bruises on the back side of the body, there were small superficial bruises on the--- I do not know what--- The left rib had superficial bruises and there were several other bruises which are noted on the body.

**Mr. Deputy Speaker:** How long is the document?

**Mr. Sunkuli:** I am just about to finish." The rest was normal, the chest was normal and in the cardiovascular system, no abnormality was detected. On the digestive system, the liver was grossly enlarged. The kidneys and the urinary bladder grossly appeared normal, the head had no injuries on the skull. In the Nervous system, the brain tissues and the spinal tissues were intact." The finding of the doctor was that "the cardio-pulmonary arrest secondary to hepatic failure due to hepatitis but the course of the hepatitis is not known. The segment of the liver and the right kidney, the whole of the them, were sent to the Government Chemist," and I just have a report from the Government Chemist upon examination---

**Mr. Deputy Speaker:** How long is that report?

**Mr. Sunkuli:** It is one sentence: "The kidneys now show extensive otorosis only." I hope the hon. Member can help me to know what the otorosis is, but this is a copy of the post mortem report.

**Mr. Anyona:** Mr. Deputy Speaker, Sir, it is quite clear and obvious that this answer was meant to mislead the House because, how does a heart attack cause bruises? The family has said that this man was tortured in police custody and indeed the post mortem report bears that out. Can the Minister now answer the rest of the question? Why were these policemen released, and when are they going to be arrested and charged?

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, the hon. Member will realise I have said that on 26th September this year, the judge is going to listen to the inquest, and if he finds that the two policemen or anybody else should be arrested, he will order so and it shall be done.

**Mr. Deputy Speaker:** Mr. Anyona!

**Mr. Anyona:** Mr. Deputy Speaker, Sir, the Assistant Minister is still begging the question. This question of inquest is an escape route for policemen when they murder people and we are not going to accept it plus all the panya routes that they use. It is clear that these policemen were arrested and charged. That is why committal documents were prepared. I thought it was the responsibility of the Attorney General, not some state counsel man who is bribed out down there in Nakuru, to have given the order that the proceedings should not go on. Why was it not the Attorney General, and he is there; why was it one of these small men, yet someone had been killed.

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, I do not want to answer for the Attorney General, may be during the comprehensive constitutional reform, many of these things will be changed. What I am saying is that the due process of law in accordance with the present laws actually took place. The department in charge of the police handed the police officers to the court and the court, upon perusing the committal documents, ordered the release of these policemen. We further said the Attorney General, on his part, ordered that there should be an inquest and the inquest will be held.

**Mr. Deputy Speaker:** Mr. Anyona!

**Mr. Anyona:** Mr. Deputy Speaker, Sir, the Assistant Minister is misleading the House. The answer says it is the state counsel who recommended that the state should not proceed with the prosecution. Now he is saying it is the court that discharged the accused. Which is which?

**Mr. Sunkuli:** Mr. Deputy Speaker, Sir, hon. Anyona may not know the process. If a person is charged with murder, he is taken to court but he is not required to answer a charge. The Attorney General prepares a document and recommends whether he sees that there is a case to proceed or the accused should be discharged. The Attorney General or state counsel actually recommends to the court and it is the court that discharges a person who is charged with murder, not just the police.

**Mr. Deputy Speaker:** Next Question! Question two by Private Notice, Mr. Saulo Busolo!

**An Hon. Member:** Point of Order!

**Mr. Deputy Speaker:** I am afraid I have called for Question two by Private Notice.

#### IMPLEMENTATION OF TEACHERS SALARY

**Mr. Busolo:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice:-

(a) In view of the imminent strike called for October 1st by the Kenya National Union of Teachers, could the Minister state why his office has failed to implement the latest recommendations of the Teachers Service Remuneration Committee as required of him by section 14(3) of the Teachers Service Commission Act?

(b) Could the Minister table the said recommendations?

**The Assistant Minister for Education**(Mrs. Ndeti): Mr. Deputy Speaker, Sir, I beg to reply.

The Ministry of Education has not failed to implement the recommendations of the Teachers Service Remuneration Committee. The Ministry has implemented what the Government can afford to pay at the moment as an interim relief measure while studying the serious financial implications contained in the recommendations of the committee. I cannot table the recommendations since the Ministry is still studying their financial implications on the economy as a whole.

**Mr. Busolo:** Mr. Deputy Speaker, Sir, it is not surprising that the Assistant Minister cannot answer part (b) of my Question when, as a matter of fact, it appears in this paper. There is nothing secret, I want the Assistant Minister to know. But as to part (b), this Assistant Minister is falsifying to this House the actual facts of the case. According to Cap 212 of the Teachers Service Commission, section 14(3), if I could seek your indulgence for the information of the Assistant Minister who may not be aware since she was just appointed recently, reads:

"Upon the receipt of any recommendations agreed by the Committee, the Minister shall, after preparing a draft order to give effect to those recommendations, and after consulting with the Committee with respect to that draft and considering any representation made by the Committee with respect thereto, make and publish in the Gazette an order directing the remuneration of teachers in the Teachers Service shall be determined in accordance with the provision thereto."

This is also in accordance with the precedent set by Justice Cockar in a case of KNUT with the Ministry of Education in 1969, where Justice Cockar held that, "The Minister cannot alter the recommendations as per this Cap." Why is that this Ministry is now trying to play with a rule of which they themselves are part and parcel of? That is the

question I want the Assistant Minister to answer. Why is the Ministry of Education playing with the rule it set up itself?

**Mrs. Ndetei:** Mr. Deputy Speaker, Sir, the Minister is not trying to break the rule because under that section, he cannot alter the recommendations. But we realise the recommendations far exceed the provisions of the estimates by K£3 billion. The Recurrent Budget for the Ministry is only K£1.6 billion. What is in the recommendations is an extra K£3 billion and the Government cannot afford that at the moment.

**Mr. Gatabaki:** Mr. Deputy Speaker, Sir, the gracious Assistant Minister is misleading this House. The Ministry of Education has the largest workforce doing one of the remarkable jobs. Given that education is a fundamental right for Kenyans, having realised the importance of education and importance of paying the teachers, why has this Government allowed the IMF to stop funding this country by engaging in corrupt activities? Can the Government of President Moi accept negligence of 23,000 Kenyans for running this country corruptly?

**Mrs. Ndetei:** Mr. Deputy Speaker, Sir, other than not understanding the question, I am not aware that we have got any corrupt people we have employed in the Ministry.

**Mr. Muite:** Mr. Deputy Speaker, Sir, there is a very serious issue here. The Industrial Court has given a judgement saying that the Minister for Education has no discretion and has no power once a committee has made recommendations in terms of Section 14 of Teachers Service Commission (TSC), it is not a question of whether the Government can afford or not. The law is that that scheme must be implemented. Here, the committee recommended a scheme of service. Can the Assistant Minister say very specifically whether this Government is going to obey the law or breach the law and allow the teachers to go on strike? That is the specific question we would like answered.

**Mrs. Ndetei:** Mr. Deputy Speaker, Sir, the recommendations far exceed what is available for this particular project.

**Mr. Busolo:** On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister cannot tell this House that the recommendations far exceed what is there. This document which is from the Teachers Service Commission, the title is "Recommendation of Teachers Service Remuneration Committee (1997) to the hon. Minister for Education. It says:-

"The Teachers Service Remuneration Committee, established under Section 13 of the Teachers Service Commission (TSC) Act Cap.212, revised 1968, has carefully deliberated on the salary remunerations and allowances for all the teachers employed by TSC, and all the members of the Committee have agreed on these recommendations. The recommended effective date of implementation is agreed to be 1st July, 1997".

Mr. Deputy Speaker, Sir, on that Committee were hon. Dr. Toweett; Chairman; then from KNUT Katumanga, Adongo, Ng'ang'a, Mutulu; Kang'ali and Kegode; TSC, Sammy Kyungu, the Director of Education is represented, Mr. Idris Farah, Senior Deputy Secretary, Ministry of Education, is represented; Edward Kimari, representative from the Ministry. So, the Ministry had very high representation. How can the Assistant Minister come here and say that his officers' recommendations exceeds what the Minister probably had told them to do? This is dated 22nd July, 1997.

Mr. Deputy Speaker, Sir, the teachers work very hard in this country. They deserve a fair share of the national cake. The Ministry should not run away from these recommendations. I will table this for his information, it is in the *Daily Nation* of today.

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

**Mrs. Ndetei:** Mr. Deputy Speaker, Sir, this same Parliament approved only K£1.6 billion for the Recurrent Expenditure for this Ministry. We cannot afford to pay an extra K£3 billion because we do not have it.

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

**Mr. Deputy Speaker:** Order! I am afraid we are already five minutes past Question Time and I allowed you all the indulgence.

Next Order.

#### POINT OF ORDER

INDUSTRIAL POLLUTION" IN NAIROBI  
NATIONAL PARK

**Prof. Ouma:** Mr. Deputy Speaker, Sir, I stand on a point of order to seek a Ministerial Statement on a very serious situation which I have seen myself today. I am referring to my hon. friend, the Minister for Environment and Natural Resources.

Mr. Deputy Speaker, Sir, tourism in this country is collapsing because, at the Coast Province, we have got "political banditry"; but that is not the problem of the Minister for Environment and Natural Resources. I have seen with my eyes over the last three months, but especially today, I spent three hours in the National Park with wardens and the Director of KWS. I have seen a form of "industrial banditry" which will make this National Park collapse. I have seen a river four kilometres long; a river of effluence. I have seen sleepy zebras which drunk it and they can hardly move. I have seen dead birds. I have seen the largest dam in the National Park is completely polluted and I saw a thousand animals by its side waiting to drink the effluence. When the park people talk to Mr. Shah and Mr. Ravji Shah of Kapa Oil Refineries, they just treat these people as little school boys before a prefect. I have spoken to this Shah through the phone and he thinks that I am just another school boy.

Mr. Deputy Speaker, Sir, we have got the right to protect the natural resources of this country.

*(Applause)*

Mr. Deputy Speaker, Sir, I will not accept bribery and I know what I have been told and I refused.

Mr. Deputy Speaker, I am asking the Minister for Environment and Natural Resources to save this country from this type of banditry. Can we have a stern Ministerial Statement on what he is going to do, not only against Kapa Oil Refineries, I have seen chemicals and oils flowing into the dam and other "industrial bandits" from Athi River, Export Processing Zone and all these areas? I spent three hours with these people in the park because I love this country. If you love it, what are you going to do?

**The Minister for Environment and Natural Resources** (Mr. Kosgey): Mr. Deputy Speaker, Sir, I am not aware of the allegation the hon. Member has just made. But I will issue a comprehensive Ministerial Statement, if need be next Tuesday.

#### FEES CHARGES IN PUBLIC SECONDARY SCHOOLS

The Assistant Minister for Education (Mrs. Ndeti): Mr. Deputy Speaker, Sir, I would like to respond to the point of order dated 17th July, 1997 from hon. Anyona on students expulsion on account of non-payment of fees and fees charges in public secondary schools.

Mr. Deputy Speaker, Sir, on 21st December, 1996, I issued the fees guidelines to all public secondary schools in the country for both boarding and day schools. I advised boarding schools to charge a sum not exceeding Kshs13,500 per year and day schools to charge an amount not exceeding Kshs5,000 per year. I also advised them on development contribution not exceeding Kshs2,000 per parent per year. I instructed field officers and district education boards to ensure that the fees guidelines were implemented, monitored and a reviewed constantly to ensure that no students drop out of school.

These fees guidelines were based on a countrywide survey, and in addition, the Government has been allocating bursaries to assist meeting fees obligations for poor and bright children in secondary schools. Of the last five years, the bursary allocations have been as follows--- In this current Budget's allocation, the figure is now Kshs500 million, when it begun in 1993, with only Kshs153 million. The details of the fees structure is also attached which totals the same figures as I had mentioned earlier. Since I issued these fees instructions, I have been receiving complaints from some parents about fees charges which are above my guidelines and I have in turn directed my officers in the Ministry to investigate and get the reasons for these high fees charges. I have been receiving reports from time to time on the progress of the implementation of fees guidelines, and I have established that any increase on the fees charges above my guidelines are as a result of a consensus of meetings held by Boards of Governors (BOGs) and the Parents Teachers Associations (PTAs). I have given the Board of Governors the mandate to manage public secondary schools, and I have been confident that both BOGs and PTAs would take the interest of the child at heart and ensure the welfare and the future of the child is taken care of including any decision on fees and other charges, to ensure that it does not adversely affect the education of the child.

I have, in addition, advised schools to avoid sending children to their homes for the balance of fees because it is time consuming, just as much as I have advised parents to ensure payment of fees on time to enable schools to run efficiently and effectively. Regarding the expulsion of pupils including the Form Four Students, my Ministry has ruled against this practice and, in any case, only my Director can expel students. However, it should be appreciated that students with fees arrears can convey the message to the parents and guardians during the exit, half-term and holidays to avoid time wastage.

Mr. Deputy Speaker, Sir, my Ministry has plans for another fees survey to establish the fees charges in various schools so that necessary interventional measures can be put in place. I would require information from such a survey to be able, to enlist the schools involved in high fees charges.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Anyona:** Mr. Deputy Speaker, Sir, that is a very nice sounding statement which says nothing. The prescription of fees is a statutory provision in the Education Act. If the Minister prescribes fees, then there is no option but to stick to the fees prescribed. Could the Assistant Minister now explain whether she, he or they, have departed from the provisions of the Act? Could she also explain, if they have ruled against expulsion, why Form Four students, including my own son, were expelled and what are they going to do about it?

**Mr. Deputy Speaker:** Mr. Sunkuli!

**Mr. Anyona:** On a point of order, Mr. Deputy Speaker, Sir. I sought clarification and the Assistant Minister is required by our rules to respond!

**The Assistant Minister for Education (Mrs. Ndetei):** Mr. Deputy Speaker, Sir, the Ministry has mandated the BOG, PTA and the parents in that school, to determine what should be charged in that school. We should also bear in mind that different schools have got different requirements for their development plans. The Minister cannot strictly tie schools so that they cannot develop. The Ministry is against the expulsion of Form Four students, and it is only the Director who can expel students.

RESPONSE TO COMPLAINT AGAINST THE  
COAST DEPUTY PROVINCIAL COMMISSIONER

**The Assistant Minister, Office of the President (Mr. Sunkuli):** Mr. Deputy Speaker, Sir, yesterday hon. Prof. Peter Anyang'-Nyong'o made a statement to the effect that when he visited Mombasa with hon. Charity Ngilu, they were mishandled by the Deputy Provincial Commissioner (DPC), Mr. Hassan Haji. I would like to make a very brief response to that.

On the material day, Tuesday, 23rd, September, 1997, hon. Prof. Anyang'-Nyong'o and hon. Ngilu, accompanied by journalists and their supporters visited the PC 's office in a rowdy manner. Although the PC, Mr. Sirma, was not available, his Deputy, Mr. Haji, offered to meet them. While they were in Mr. Haji's office, hon. Ngilu took out an open letter addressed to His Excellency the President and which she wanted the DPC to hand over to the President. While in the DPC's office, the two and their supporters used a lot of invective and abusive language in their address to the DPC. The DPC, upon perusing the letter that hon. Ngilu read, he found that the letter was worded in invective and I will lay the letter on the Table of the House for hon. Members to judge whether this letter was written in a polite manner or not. It was in that context that the DPC referred to this letter as "trash".

*(Mr. Sunkuli laid the letter on the Table)*

**Prof. Anyang'-Nyong'o:** Mr. Deputy Speaker, Sir, would it not be in order for the Assistant Minister to read that letter so that the hon. Members can judge for themselves whether the language used by the DPC is a language befitting a public servant? Moreover, the DPC was meant to be a messenger. The letter was written through the PC. It was not in his duty to pass judgement on the letter. That notwithstanding, it would be much better, in the name of fairness, for the Assistant Minister to read the letter so that Members of Parliament can make up their minds.

**The Assistant Minister, Office of the President (Mr. Sunkuli):** Mr. Deputy Speaker, Sir, I have already laid the letter on the Table of the House. But I want to inform the House that this letter was handed over in this particular form.

**An hon. Member:** No! No! Read it!

**The Assistant Minister, Office of the President (Mr. Sunkuli):** There was no envelope and I want to draw the attention of this House that hon. Anyang'-Nyong'o and hon. Ngilu know the best way to address the letter to the President or where to deliver it. I do not understand why they can take an unsigned open letter and give it to a junior officer in Mombasa, when they could have easily handed it over to the Office of the President. The intention of this particular letter was not to get any useful information but just to perpetrate this particular invective and to annoy the DPC for no particular reason. Actually, after reading this letter, I also do not see how else to describe it as, except trash.

HARASSMENT OF MIRAA TRADERS

**Mr. Maore:** On a point of order, Mr. Deputy Speaker, Sir. On 30th July, 1997, I did rise on a point of order seeking a Ministerial Statement from the Office of the President regarding the excesses of the DC Garissa, who was harassing the miraa traders and banned them from trading in the commodity within and outside Garissa. So we wanted

to know from the Office of the President whether we are having another colony in Garissa, where the DC is setting his own laws and rules to ban things which are not banned elsewhere in the country and up to this day, the Office of the President has not responded.

**Mr. Deputy Speaker:** Did they promise to give a statement?

**Mr. Maore:** Yes, Mr. Deputy Speaker, Sir. I did show you the relevant copy of the HANSARD.

**The Assistant Minister, Office of the President (Mr.Sunkuli):** Mr. Deputy Speaker, Sir, I have not seen that copy of the HANSARD, but I want to assure the hon, Member that there is no colony in Garissa, but the Statement will be given.

**Mr. Deputy Speaker:** Next Order?

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

**Mr. Deputy Speaker:** Order! Order! I suppose I understood it, but---

**Mr. Maore:** Mr. Deputy Speaker, Sir, let him give us a Ministerial Statement!

**Mr. Deputy Speaker:** Order! Order! Hon. Maore, under our rules, the Chair can only facilitate a Minister who promises to give a Statement, to give it. I cannot order him to give the Statement on the a particular day, but we will facilitate him to give it as early as he can, even on Tuesday next week.

Next Order?

**Mr. Sambu:** On a point of order, Mr. Deputy Speaker, Sir. Last week, I asked a Question, but the Minister could not deliver an appropriate answer. He promised to bring a satisfactory answer to the House, but he has not done so.

**Mr. Deputy Speaker:** Order! Order, hon. Sambu! I do not think I was in the Chair that day, The Speaker you are referring to must hve been hon. Kaparo himself or somebody else who was in the Chair. Also, you know very well the points of order which arise after Question Time, by practice under Standing Order No.69, have to be notified to the Speaker in advance. We do not proceed on the basis of "ambushes", I plan the time of the House on the understanding that there are so many points of orders, I promise to allow them. So, I am afraid your point of order is a little out of place. If you intended to raise that point of order, you should have contacted me earlier in my Chambers, or if it was that burning, even while I was in the Chair. A few of those who have raised them now, approached me while I was in the Chair.

Next order, Mr. Attorney-General.

## BILL

### *Second Reading*

#### THE STATUTE LAW (REPEALS AND MISCELLANEOUS AMENDMENTS) BILL

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

Mr. Deputy Speaker, Sir---

**Mr. Mak'Onyango:** On a point of order, Mr. Deputy Speaker, Sir. In view of the importance of the Bill just being read now and the fact that has to do with reforms, and given that reforms are larger than political parties, larger than this Parliament, could it be, for the purposes of clear understanding of the different sides of this House, that there are those hon. Members who are for this particular Bill and those who are against, could the allocation of time for contribution, be such as to reflect the two sides or the different schools of thought?

*(Applause)*

**Mr. Deputy Speaker:** Order! Order! Mr. Mak'Onyango, that is a frivolous point of order. I think at this point, I have to make certain things public. I expect hon. Members to behave with good faith at all times. A group of Members, including hon. Mak'Onyango, who are against the reform proposals, did write a signed statement to Mr. Speaker. I think it is important that the House knows this, saying, that they would wish that the Chair recognises two sides when recognising hon. Members who will be contributing to this Bill; those hon. Members who are pro-reform proposals and those who have stood against the proposals. The hon. Mak'Onyango came to see me earlier this afternoon in the Chair, and I told him that I had seen the document, and I will make appropriate decision on it. It does not require you to raise it here.

I want to state for the avoidance of doubt, by practice, we recognise hon. Members who want to contribute to the debate on alternative basis between the Government side and the Opposition side. My implication, your request is asking the Chair now to depart from that cardinal rule and invent a new rule. I will not do that. But beyond that, let me assure hon. Members, that both on the Government side and on the Opposition side, we do, in practise of the Chair, ensure that we try as much as possible to recognise representatives of all blocks of opinion. That is the furthest we can go!

(Applause)

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, this is the first of the three Bills and Motion containing recommendations out of the---

**Mr. Anyona:** On a point of order, Mr. Deputy Speaker, Sir. We are embarking on a very important debate and I think it is important that we are on a clear understanding from the very beginning. If I understood the hon. Mak'Onyango right, he was talking about sufficient time. My understanding is that on a Bill like this, there is no time limitation. An hon. Member can speak even for one week as long as he or she does not repeat himself. In addition to the ruling that you have made, which is the traditional practice of this House, is it not true that any hon. Member who gets a chance to speak, including hon. Mak'Onyango, has the Floor for as long as he is relevant?

**Mr. Deputy Speaker:** Mr. Anyona, I want to assure you that, as far as the Chair is concerned, this is a Bill like any other Bill and it will be subject to the rules and conventions of the House when it comes to debating Bills.

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

**Mr. Deputy Speaker:** Order! Order, hon. Members! I discharge a *quasi* judicial function from the Chair and I have to take cognisance of such tendencies. I hope we will not be engaging into filibustering. If that is the case, you will understand that I intend to suppress to filibustering?

**Mr. Raila:** On a point of order, Mr. Deputy Speaker, Sir. I am sure this is not frivolous. The point is---

**Mr. Deputy Speaker:** The judge will be the Chair.

**Mr. Raila:** Mr. Deputy Speaker, Sir, the point which the hon. Mak'Onyango was raising is very different from the point which the hon. Member for Kitutu Masaba is raising; the hon. Member who is given to "playing the role of the devil's advocate" in the House.

The issue we are trying to raise here is that last time when the report of the IPPG was tabled before this House, we did ask Mr. Speaker to allocate equal time to opposing views on that particular issue. We were told that the Chair was going to take cognisance of the fact that there were divergent views on the issue, but at the end of the day when the actual allotment came, only those hon. Members who were supporting the Motion were given a chance to speak except for only two hon. Members. This is a very important issue and that sufficient time should be given to both sides of the House to contribute.

(Applause)

**Mr. Shikuku:** On a point of order, Mr. Deputy Speaker, Sir. I think some of us qualify to be called honourable Members. When an honourable Member stands up and tells untruth, that only those pro-reforms were given a chance and none from the opposing side was given a chance to air his views, it is not true because I was here---

**An hon. Member:** No!

**Mr. Shikuku:** Mr. Deputy Speaker, Sir, under Standing Order No.68, when an hon. Member is on his feet, others are supposed to be silent. They have been here four years and they have not understood that. What do we do when an hon. Member just tells us untruth because I was in this House, and hon. Farah, hon. Karan and hon. Shidie who were all opposed to the Motion spoke? Can we take this and can we still consider that Member as honourable?

**Mr. Deputy Speaker:** Order! Order! I think hon. Members must always be honourable. As far as the Chair is concerned, this is a Bill like any other Bill before the House, and the usual rules and conventions applicable to debate before the House will apply here. I do not see the cause for any special fear by any special group within the House. Proceed, Mr. Attorney-General.

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

**Mr. Deputy Speaker:** Disallowed! I have disallowed your point of order at this time.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I will crave for your leave to refer extensively to my notes. This is the first of the three Bills and Motion containing recommendations of the Inter-Parties Parliamentary Group (IPPG), and I will continue to refer to IPPG in the course of my contribution, which were adopted by this august House on Tuesday, 16th September, 1997.

As it is the first of the three Bills and Motion, Mr. Deputy Speaker, Sir, permit me to make some three general observations. The first one is that history is the beginning of political wisdom. When the history of this country will be written, in terms of the transition from one party to a multiparty democratic state; in terms of forging a political culture, the events of the last few days will feature prominently. What have we, as a nation learnt? I believe, we have learnt that even in a multiparty state, we can all sit down to discuss and reach a consensus. It has been said that the origin of African democracy lay in oral discussions. The elders sat under a tree and talked until they agreed. There was always that quest for a consensus through discussion. In the traditional society, it was free discussion and a consensus was arrived at freely. I emphasize the word "freely", in reference to discussions and consensus. Of course, that concept was at one time, in the course of the African history abused because it was used to justify the establishment of a one party state. But it did not work because it was not practised the way it had been practised in our traditional African society. In other words, under a one party state, there was no free discussion and there was also no free consensus. What was there was an imposed consensus and therefore, it failed. The last few months have showed us that such concepts can indeed, work in a multiparty state. Political systems are a reflection of the national character and history of a people. It is the convention, tradition, custom and what James Connard(?) defined as: "A small hard-core of common agreements that gave the inner strength to democracy, whatever the form." That is why a country such as the united states of America and the United Kingdom are both democratic and multiparty and yet, they have different political systems taking into account their histories and cultures. It does appear to me that for democracy to thrive in Africa and indeed, Kenya, Africa must take into account its own history and culture by putting in place structures that will promote and protect democracy. We should, therefore, look again at this concept of consensus and see how it can be applied in a multiparty democracy.

Mr. Deputy Speaker, Sir, the IPPG has shown us the way. The role of elders in the traditional society is now being played by Members of Parliament in a nation state. Therefore, in the nation state, the Members of Parliament can be considered as elders of the Kenyan nation state. In so saying, I do recognise that even within this Parliament, there are some people who really qualify to be elders, for example, His Excellency the President, who is the longest serving Member of Parliament, hon. Kibaki, hon. Shikuku, hon. Achieng-Oneko, hon. Nthenge, the Leader of the Official Opposition and the sole Member of the Kenya Social Congress. All these are leaders but I am now talking about Members of Parliament as a whole, in this House. They can be regarded as elders of the Kenyan state, deciding the future course of the country. I, therefore, hope that in future discussions, a way will be found to capture this concept and apply it in a multiparty democratic state, so that matters that affect the nation and our societies can be freely discussed and a consensus freely reached.

Mr. Deputy Speaker, Sir, the second point which I want to make by way of a general comment, is that this in fact, is the only way in which we can avoid the breakdown of the society. We all see, in this age of communications, riots even in the most developed countries. One can say, for example, that the type of riots we saw in Los Angeles - the burning of houses and so on - had happened in a developing country such as Kenya, that would have meant a total disintegration of the Kenyan society. But a developed country such as the united states of America or Europe are able to sustain that, because they have very strong shock absorbers. They have the economic power and strength but more important is the fact that, they have well established traditions which underlie that society - the national ethic. Therefore, we in developing countries in Africa such as Kenya; where our societies are fragile both in terms of economic power because we are still fighting a war against poverty, ignorance and disease; and in terms of establishing traditions as a Kenyan society, we have to be very careful because we cannot afford the type of riots that occur in developed country. We have to be very careful to nature our fragile democracies and economy. To me, this is best achieved by everybody realising that if we put our heads together as Kenyans, we can find solutions to most of the problems that deface this society. I therefore appeal for unity in diversity. I appeal for that small, hard-core of common agreements surrounded by a rich variety of differences.

Mr. Deputy Speaker, Sir, the third general point which I would like to make is that, it is because of the foregoing principles which were applied in the spirit of the IPPG that I am able to present this Statute Laws (Repeal Miscellaneous Amendment) Bill as amended, and you have on the Order Paper, the proposed amendments which emanated from the IPPG discussions.

It looks at the proposals that will show that the amendments contained in the totality of the Bill, touch 28 different Acts of Parliament, all of them with far reaching consequences. Therefore, I believe it is the most comprehensive Statute Law Miscellaneous Amendments Bill that we have had since Independence. Let me hasten to add that it may be the most comprehensive Statute Law Miscellaneous Amendments Bill that we have had since an entity called Kenya came into existence.

In the drafting of this Bill, I would like to state that various opinions were taken into account. The draft of the National Convention Executive Council (NCEC) had been submitted to me in May, 1997. The same draft was submitted to the Head of the Civil Service on 23rd July, 1997. The same draft, I believe, was laid on the Table of this

House on the Budget Day, on 18th June, 1997. That draft, the Statute Law Miscellaneous Amendment Bill, as drafted by the NCEC has been taken into account. The other reports and submissions of organisations such as the Kenya Episcopal Conference, the National Council of Churches of Kenya, the Muslim Community of Kenya and others, have also been considered. I did acknowledge the contributions of all these organisations, when the Statute Law Miscellaneous Amendments Bill was published on 31st July, 1997, by way of a press release, which was reported in the press. So, what I am trying to say is that nobody is being excluded. The views of all are being, and were, in fact, considered.

When you examine - and here I just want to be honest - the Government's own original Bill, the Bill drafted by the NCEC and the Bill as it is now, with the contribution of Inter-Parties Parliamentary Group (IPPG), I would be the first one to admit that the draft, which includes the recommendations of the IPPG, covers far much more ground than the Government's own draft published on 31st of July, and the draft of the NCEC. I think this is because of the principle of consensus. I think the two earlier drafts were drafted in an atmosphere of some confrontation. But when the people sat together, they discovered that actually, what brings them together in unity is far much more than what divides them. Consequently, they were able to come up with far reaching recommendations for amendments, than either of the two Bills. That is why I do recommend the principle of consensus. I do take that a way be found where these principles can be incorporated in our constitutional and legal framework and in our national psyche, so that this nation can move forward in peace and unity.

If the proposed amendments are effected, they will definitely enhance the people's enjoyment of their rights, and in particular, the people's enjoyment of their freedom of expression, association and assembly, which are the bedrock on which democracy is founded. These are the most basic ingredients to the flowering of democracy in any state.

Mr. Deputy Speaker, Sir, I now go to the Bill. I will, first of all, deal with those Bills which have been repealed. This Bill repeals the Vagrancy Act, Chapter 68 of the Laws of Kenya. The Vagrancy Act provided for the detention of beggars, and thereby, criminalising poverty. A vagrant was defined as a person having neither lawful employment, nor lawful means of subsistence; a person with no fixed abode, and a person who cannot give a satisfactory account of himself. So, if the police got hold of you and you could not give a satisfactory account of yourself, then you were thereby committing an offence. Therefore, it was really criminalising poverty. We are saying that this Bill must be repealed because no Kenyan should be deemed to be committing an offence, merely because he is poor.

The second Bill being repealed is the Outlying Districts Act, Chapter 104, of the Laws of Kenya.

**Mr. Muite:** On a point of order, Mr. Deputy Speaker, Sir. It is a matter of importance that the Chief Law Officer of the Government, talks about the Acts that he is repealing, and not the Bills. He is not repealing Bills and yet, he has kept on talking about Bills being repealed. He is repealing Acts of Parliament!

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, I stand corrected if I said Bills. I should have said Acts of Parliament. The first one which is about to be debated in this House is not the Vagrancy Bill, but it is the Vagrancy Act, Chapter 58 of the Laws of Kenya.

The other Act to be repealed is the Outlying Districts Act, Chapter 104 of the Laws of Kenya, which came into force, I believe, before any one of us in this House was born, and maybe some of our parents were not born. It came into force on 1st of November, 1902. Its purpose was to provide for the closing of districts and parts of districts to travellers. In a closed district, no person was to enter, except:

- (a) The native of the district.
- (b) Public officers in the course of their duties.

By the repeal of this Act, we are asserting the freedom of movement throughout Kenya, as guaranteed by the Constitution.

The third Act to be repealed is the Special Districts Administration Act which came into force on 29th May, 1934. By repealing this Act, we are providing for a uniform regime of maintaining law and order throughout the country. The three Acts to be repealed were clearly outdated and served no useful purpose in the modern society of Kenya. The repeals of these laws, as you are all aware, have been demanded by all Kenyans.

Mr. Deputy Speaker, Sir, the next Act which I want to tackle is the Public Order Act. It came into force on 13th June, 1950. This Act, together with the Chiefs Authority Act which I will touch on later on, have been the most quoted legislation when it comes to the legislation which is inimical to democracy and to full realization of the freedom of assembly and association. This is because of its licensing procedures for political meetings. Apart from the procedure itself, the complaint has been that, that procedure was grossly abused.

In fact, I am aware that there are some court decisions, particularly in Zambia and Tanzania, which have a similar legislation and which say that the licensing procedure under this Act is ultra vires the Constitution.

**An hon. Member:** What about the courts?

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I would like to go into the history of these Acts. Our courts have not had a chance to decide on the constitutionality or otherwise, of the Public Order Act. I know that there are a number of cases pending in courts on this issue. They are yet to be determined, but by the passing of this amendment, it will not be necessary now for our own courts to decide on the issue. The Zambian court decision was only last year and so was Tanzania. I think it is helpful to go into a bit of history on legislation. You maybe aware that all of us have been concerned about the licensing provisions of the Act. The Government has also been concerned. The Government which published the Peaceful Assemblies Bill which replaced the licensing procedure waived notification procedure. However, that Bill was criticized on the basis that the implementing authority continued to be the Provincial Administration. It was also criticised on the basis that the grounds of objection of the notification were very wide and, therefore, critics said that the problem we had about the abuse of authority would still continue under this Bill. The Bill was withdrawn in favour of the draft as it appears in the Bill drafted by the NCEC, which as I stated earlier on, was received by me in May, this year. The amendment that we have to the Public Order Act in the Bill, as drafted by the Government, is actually subject to minor modifications lifted from the draft by NCEC. Apart from the fact that what we added on to that amendment was really a clear definition of what constitutes an "excluded meeting", I am now recommending to this House that this draft Bill, as amended by IPPG, is very good and it is a considerable improvement to the previous drafts. I will show it in a moment.

If you turn to the Order Paper, page 508, you will find that we have added two new categories to what is called "excluded meeting". An "excluded meeting" is a meeting which does not require any notification whatsoever. On to that category of "excluded meeting" we have added section "e" which reads as follows:

"Any meeting of the organs of a political party, convened in accordance with the Constitution of the party and held exclusively to discuss the affairs of the party".

So, any meeting of an organ of a political party does not require to give any notification.

*(Applause)*

We have also included section "f" which reads as follows:

"impromptu "meet-the-people" tours by Members of Parliament."

You can see the definition of public meeting. We have also made clear that a "public meeting" is a meeting held in public, not in a private house or a private residence. We have now made that very clear in that definition. A public meeting is public by the mere fact that it is being held in a public place.

The regulating officer in the Bill as owned by the Government was the officer in-charge of a police division. We now have a regulating officer being the officer in-charge of a police station. That has been amended.

We have also restricted the discretion of the regulating officer under the Bill which gave him the leeway to decide whether he should give a three days notice or 21 days notice. We have now deleted the entire discretion and limited the upper limit of the notice to 14 days. So, at least, three and at most, 14 days.

Along with the repeal of that subsection, we have deleted the powers that the police officer had to control the extent to which music or human speech or any other sound maybe amplified. That has been deleted in that subsection.

In accordance to the recommendations of the IPPG, we have now put the time limit of meetings at between six o'clock in the morning and six o'clock in the afternoon. That still appears on page 509.

Mr. Deputy Speaker, Sir, in the Bill as published, which was also in the Bill of the NCEC, power was given to the police to intervene and stop a public meeting. Of course, some of those powers are necessary, but the objection was that the powers had been given both to the police officer and to the administrative officer. We are now repealing the words "in administrative officer" so that the power to intervene in a public meeting and stop it will only be vested in the police. The administration will not be able to intervene. I did agree with the NCEC on this, and it appears on page 502 of the Bill. That power can only be exercised, where there is a clear presence or imminent danger of a breach of peace or public order. That power was in the NCEC draft and also in our draft, and it is a power which is consistent with international standards in this regard. It is a power which is even there as far as law enforcement officers are concerned in the United Kingdom and in the Unites States of America. The police must have that power to be able to intervene where there is a clear presence or imminent danger. In the UK, we have many cases, for example the case of Duncan versus Jones. In USA, we have many cases, for example the case of Piena (?) versus New York and Thomas versus Collins.

Mr. Deputy Speaker, Sir, we have deleted a section in the original Bill which created an offence against the use of insulting words at a public meeting. That has been deleted because it is felt that the penal code is adequate to cover those aspects. I said earlier that as far as excluded meetings are concerned, there was no need for notification. However, it is recognised that the convenors of an excluded meeting may request the police to cover them. Therefore,

there is that new Clause 12 which says:

"The organizer of any excluded meeting may request the regulating officer that the police be present at such meeting to ensure the maintenance of law and order."

The additional Clauses 13, 14 and 15 are merely to cover that ground. In Clause 14, it is stated:

"The regulating officer shall keep a public register of all notices received under sub-section (2)."

This is because one of the grounds on which the regulating officer can object is the fact that on the register, another person had given notification for a meeting at the same venue and at the same place. Obviously, you cannot have two meetings at the same venue and at the same time. To cross-check that, we shall have a public register so that when you have given notification and it says that another meeting is due to be held at the same day and same place, you are able to inspect that register.

Clause 15 is just to give the right to any person during working hours to inspect the register under that sub-section.

So, those are the major amendments that have emanated from IPPG which I think are additional and make even the previous drafts better.

Mr. Deputy Speaker, Sir, I will now go to the Preservation of Public Security Act. Section 4.2(a) of that Bill has been deleted. Consequently, no person will be detained in this country without trial.

*(Applause)*

**An hon. Member:** Halleluyah!

**The Attorney-General** (Mr. Wako): It is precisely because I felt that some hon. Members may want to detain me afterwards, so I made sure this is power was deleted from this Act. I would like to say that since August, 1991, the President has not used these powers at all. So, what we are doing is to affirm the current position that the President has not, all this time, in spite of all the problems, detained any person.

**An hon. Member:** What problems?

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, it is not therefore correct to allege that the powers of the President have remained intact as a result of these proposals. I think the IPPG has definitely whittled the powers of the President in this regard. The other provision we have added is that no person can be restricted even to his house or wherever, simply on account of his or her political beliefs or activities. Again, we have made that clear and it is there.

Mr. Deputy Speaker, Sir, I would now like to come to the Chiefs' Authority Act.

**Dr. Otieno-Kopiyo:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Attorney-General to mislead the House that the powers of the President in respect of detention have been absolutely removed when Section 4.2.(b) still allows the President to restrict movement of persons? It does not specify where the person could be restricted. It could be in his/her house or in a jail.

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, we are talking about detention without trial. I think the best thing for you is to read it very carefully. That power has also been further amended that one cannot be so restricted on account of his or her political beliefs or activities. You will have your time to contribute.

I now come to the Chiefs' Authority Act, an Act which commenced on 24th March, 1937. The amendments to that Act are on page 521. The Government has substantially accepted most of the proposals of the NCEC regarding amendments to the Chiefs' Authority Act, and they are incorporated in the Bill as originally drafted.

Mr. Deputy Speaker, Sir, the IPPG has made more repeals on the powers of the chief. In fact, so much so that it is now correct to call it "The Chief's Act". Therefore, one of the proposals is to delete the word "Authority" from the title of chiefs.

**Mr. Michuki:** On a point of order, Mr. Deputy Speaker, Sir. I am seeking a clarification from the Attorney-General whether it is in order for him to state that the NCEC presented those amendments to him, when the NCEC's proposal was to repeal the Chief's Act entirely?

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, I have the NCEC proposals here, if the hon. Member wishes to check for himself.

**Mr. Shikuku:** Read for him!

**The Attorney-General** (Mr. Wako): Mr. Deputy Speaker, Sir, since I have a lot of time, I can read it out for him. Their amendments on the Chief's Authority Act on page 23, does not recommend repeal. When I say here that, this is what was contained in the Bill, I am saying the truth. In my position, I cannot mislead this House. The perception that NCEC recommended repeal is not correct. This is on page 23 of the document they presented to me, and I can even show you the covering letter of the reply that came to me. It states that Sections 6 and 7 of the Chief's

Authority Act should be repealed and Sections 10 and 11 to be amended. They only repealed Sections 6 and 7 and only recommended amendments on Sections 10 and 11. All other sections of the Chief's Authority Act remain intact. That is why I am saying that when the Government was now reviewing the Chief's Authority Act, we thought that some of those proposals were excellent and incorporated them in the Bill. That is why I am saying that the IPPG has even made more repeals; so much so that, they have deleted the word "Authority" from the title. I stand by what I have said.

*[Mr. Deputy Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, for example, Section 3 of the Chief's Authority Act has been repealed. It was neither repealed in my Bill nor the NCEC's Bill, but it is now repealed.

**Mr. Orengo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not want to interrupt the hon. Attorney-General. I think being in your position, the House is entitled to full disclosure because you were not given only the draft Bill, but the resolutions of the National Convention Assembly which met at Limuru. That contains the full recommendations of the National Convention Assembly as opposed to the NCEC. I think, even if you are reading that document - which I do not want to object to - the public is entitled to full disclosure. Do not just present what you think is good for your case and leave out the others which you think are not good for your case.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I think these Bills came to me in my capacity as the chief legal advisor under the handwriting of the key officers who wrote:-

"We have now reduced the resolutions of the Limuru Conference into these Bills".

Mr. Temporary Deputy Speaker, Sir, I remember, when hon. Orengo tabled these Bills here, he said that he had made the task easier for me, because he had already drafted the Bills and my job was merely to present them to this House. If I had followed that - which I tried to in this Bill - then, we would not be covering these other sections which have been repealed pursuant to the IPPG recommendations. That is all I am saying; factual.

**Mr. Shikuku:** On a point of order, Mr. Temporary Deputy Speaker, Sir. There was a point of order raised to the effect that those were not the resolutions of the NCEC, but all I know is that whether in NCA or NCEC, we were dealing with the draft Bills of NCEC. We were not dealing with the resolutions. That should be made clear.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, all I am trying to demonstrate is that each and every person in this House has made a contribution to these amendments. It has been an all-inclusive thing. The NCEC and the Government played their part, but the IPPG have even gone further than what we did.

Mr. Temporary Deputy Speaker, Sir, Section 3 which said that the powers conferred and duties imposed upon Liwalis---

**Mr. Raila:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not intend to interrupt the Attorney-General, but the impression that is being created here that the IPPG went beyond the recommendations of NCEC is not quite correct. Could the Attorney-General tell us the fate of Sections 6,7 and 11 which are not contained in the amendment that he is proposing here?

**The Temporary Deputy Speaker** (Mr. Wetangula): Order, hon. Raila! That is obviously a counter argument, not a point of order.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, Section 3 provides that the powers conferred and duties imposed upon Liwalis and Mudirs by this Act, shall only be exercised by such Liwalis and Mudirs as are specially appointed in the stake of the Coast Province and within the limits of their respective jurisdictions. That has now been repealed.

Mr. Temporary Deputy Speaker, Sir, Section 8, Sub-section (2) now makes it obligatory where a chief has arrested somebody to, without delay, be taken to the nearest police station. Section 9 which gave chiefs the powers to compel attendance before the courts has been repealed. Section 10, Sub-section (a) has been amended to confine those powers in respect of prohibiting or restricting consumption or possession of intoxicating liquor to young persons. I may at this juncture also say that paragraph (k) Section 10 limits the powers of the chief to issue orders for certain purposes.

Mr. Temporary Deputy Speaker, Sir, paragraph (k) which gave the chief the power to prohibit or restrict excessive dancing by persons, or public performance of any dance of indecent or immoral character, or of such nature as it is likely to lead to immorality, has been repealed.

Section "M", which gave the chief the powers to regulate the collection and receipt of money or property from persons has been repealed.

Section 11 (a) which gave the chief the power to prevent the evasion of any duty or legal duty has been repealed. Sub-section (b) which gave the chief the power to regulate the movements of persons from the jurisdiction of one chief to another has been repealed. This, of course, was in itself, in my view, *ultra vires* to the provisions of the Constitution on the freedom of movement, but that has now been repealed.

Sub-section (e) has also been repealed. Sub-section (g) which gave the powers to a chief to require the provision of baggage animals at current rates of payments for the use of Government servants on tour and for the transport of urgent Government stores has been repealed.

Sub-section (l) which required persons to plant any specified crops for the support of themselves and their families when the area concerned is suffering from a shortage of foodstuffs has been repealed and many others.

Mr. Temporary Deputy Speaker, Sir, we now come to Section 12 whereby the words "able-bodied adult male" have been deleted and the word "persons" substituted in place thereof.

Under Section 15, the following persons shall be exempted from the provision of Section 13 and from any other order issued thereunder: "Any person under the age of 18 or over the age of 45." It is repealed that the age should be increased to 50.

Under Sub-section (e), the person to order the exemption was an administrative officer was the Chief. But now we want to say that it must be a medical officer because it is only a medical officer who can declare somebody unfit on health grounds rather than just an administrative official.

I will try to go through them quickly, but I am quite sure that you will afterwards peruse them. Sections 17 (1) and (2) have been repealed. Sub-section (1) said:

"Whenever an administrative officer considers that for the purpose of proper and good governance of such an area for which any chief has been appointed it is necessary or desirable that any order or orders should be issued for any of the purposes enumerated in 10, 11, 12 and 13, he may direct the chief to issue and enforce such an order or orders as aforesaid as the administrative officer may deem proper".

Sub-section (2) says that if any chief neglects to issue any order which he may be directed to issue as aforesaid, the administrative officer may himself issue the order or orders. That has been repealed so that we are now just left with sub-section (3) which provides:

"Whenever an administrative officer considers that any order issued by a Chief should not have been issued or should not be enforced, he may direct the chief to cancel the order or to refrain from enforcing the order."

Section 18 has been repealed. It really makes it an offence for somebody to refuse to obey a chief's order and one is subject to a fine not exceeding Kshs150 or in default of payment to imprisonment for a term not exceeding two months or more. Under the new Section 18, we are removing the custodial sentence so that a person may be ordered to work under extra-mural penal employment for a period not exceeding 14 days.

**Hon. Members:** Read the entire section!

**The Attorney-General (Mr. Wako):** Let me read the entire section. It states:

"Any person who, without lawful excuse, disobeys or fails to comply with any lawful order issued or given by a chief or an assistant chief under this Act shall be guilty of an offence and if he is found guilty of that offence---."

**Mr. Michuki:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I think it is within our Standing Orders that any section of an existing law that is to be amended must be included within the Memorandum of Objects and Reasons. Whereas the Attorney-General has included Section 10 of Cap 1 (2) (8), he has not included the wording of the existing Section 18 of the law for the purposes of guiding these Members in looking at the amendments that he is talking about. Where is Section 18 within the Memorandum of Objects and Reasons?

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, subject to your ruling, I believe Standing Orders 96 and 104 will guide you on this matter. The particular order that the hon. Member is referring to applies when one is publishing the Bill. But as you note, these are additional amendments subsequent to the publishing of the Bill and, therefore, are permissible under Standing Order 104 which deals with the Committee Stage. We have put them here and as you note at the very beginning, because these are the amendments which I will introduce at the Committee Stage.

**Mr. Gitonga:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Attorney-General in order to talk about lawful orders without indicating at all what these lawful orders that he is talking about are?

**Mr. Ndicho:** Just throw some light on them!

**The Attorney-General (Mr. Wako):** Sorry. The lawful orders are in Sections 10, 11 and 18 as amended. In those sections, a number of orders that a chief would have made, as I have just explained, have been deleted. So, if an order is made and then somebody disobeys, then this provision applies and, whereas, before somebody could have

gone into custody, now, we are saying that it is no use for people being put into custody. Our prison population is at any time very, very high. We are saying that such a person must be given an order to serve the community for at most 14 days.

**Mr. Shikuku:** Mr. Temporary Deputy Speaker, Sir, we have talked about this issue, specifically in case of an emergency, for example, if there is a natural disaster or where a whole tree falls on a road, the chief will, at such a time, mobilize the youngsters and people who are not over 50 years of age, to remove the tree from the road. If you disobey the chief in carrying out that order in an emergency situation, then you are liable to be imprisoned for 14 days. You should not be subject to a custodial sentence, instead you should do duties such as mowing grass at the chief's centre or weeding the compound.

**Dr. Kituyi:** On a point of information, Mr. Temporary Deputy Speaker, Sir. I wish to inform the hon. Attorney-General on the matter raised by hon. Raila about section 7 which had been recommended for repeal by the NCEC. We could not recommend to him to include that section, the section which provides for an assistant or chief to employ any person or persons subject to his jurisdiction to carry out his duties because, already in the Bill established by the Attorney-General, at page 511, that section is repealed.

*(Applause)*

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, I am very much obliged. Section 19 of the Act is repealed. This section states that:

"Whenever the Minister finds that any person, being a member of a tribe or community for the use and enjoyment of which land have under any law, for the time being in force involved been reserved is, otherwise, and by virtue of a valid contract or other lawful authority cultivating or occupying any land outside the land so reserved, whether the land has been cultivated or occupied, is within or without the land so reserved, the Minister may by order make such person be removed from such land".

So, Mr. Temporary Deputy Speaker, Sir, that Section is being repealed.

Mr. Temporary Deputy Speaker, Sir, what is most important is the concept that we must have a code of conduct for chiefs. That is introduced in the new Section 20. Section 20(1) says:- "No chief shall -

- (a) engage in the activities of any political party or act as an agent of any such party; or
- (b) in the performance of his functions or the exercise of his powers under this Act:-
  - (i) subject any person to torture or to any other cruel, inhuman or degrading treatment;
  - (ii) enter or search any private premises save with a warrant duly issued by a magistrate; or
  - (iii) demand or solicit donations or collections in a manner likely to suggest that such donations or collections are a pre-condition for any service; or
- (e) maintain a cell or other place of confinement of persons."

Mr. Temporary Deputy Speaker, Sir, we have also said in Section 20(2):

"Without prejudice to the provisions of subsection(1), the Minister may, in rules, prescribe a code of conduct to govern the conduct of chiefs in the exercise of their powers and the performance of their functions under this Act."

Mr. Temporary Deputy Speaker, Sir, for the first time in the legislation, we have introduced this concept of a code of conduct for chiefs, in fact, for public officers. I will be commenting more on this again when we come to the Police Act and the Administration Police Act.

Mr. Temporary Deputy Speaker, Sir, the entire Part III of the Chiefs Authority Act is repealed.

**Mr. Gatabaki:** On a point of order, Mr. Temporary Deputy Speaker, Sir. While we recognise that the code of conduct of the chiefs is very comprehensive indeed, I was not participatory to the IPPG, but something cropped up and the code of conduct is extraordinary. I note the punitive aspect, in case of default. In case they default or continue committing offence---

**The Temporary Deputy Speaker (Mr. Wetangula):** If you look at the Act, you will have an answer to what you are asking. Carry on, Mr. Attorney-General.

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, much obliged.

Mr. Temporary Deputy Speaker, Sir, Part III which has been repealed deals with the provisions relating to famine relief and this is covered else where in our legislation.

Mr. Temporary Deputy Speaker, Sir, I have detailed the repeal contained in the Bills as originally drafted, but the repeals as recommended by IPPG plus the repeals in the Bills as originally drafted, as I said earlier, makes it logical that the word "authority" be removed from the title.

Mr. Temporary Deputy Speaker, Sir, this repeal and what has remained of the Chiefs Act will facilitate

democratic governance under the rule of law. We see that the powers of the chiefs have been restricted considerably and, therefore, the areas of abuse of those powers have been that much reduced. We have also removed provisions which were clearly *ultra vires* the Constitution such as regulating the movement of persons.

Mr. Temporary Deputy Speaker, Sir, if I may quickly go through the Police Act on page 514. The proposed amendments to the Police Act were neither in my original Bill nor in the NCEC Bill. But we now have a new Section 14A(1) which says:-

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

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

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

Mr. Temporary Deputy Speaker, Sir, here we are making it very clear to the Police Force that in the exercise of their functions, they must observe this particular principle.

I may take this opportunity, Mr. Temporary Deputy Speaker, Sir, to inform this august Assembly that the Commissioner of Police together with my office and the Ministry of Foreign Affairs and International Co-operations of the UK Government, have now finalised a manual to train police officers in human rights aspects of their work. We intend, in the very near future, to have a crash programme starting at command level, going downwards, to undertake teaching them these aspects of their work. It will now be emphasised that any training course that they undergo must also include human rights aspects of their work. They must be made familiar with the United Nations Code for the law enforcement officers whose provisions are very clear. So, we hope that with that, and coupled with this and in addition to giving the police the necessary money and so on, to perform their duties--- will see an improvement in the performance of the police as they carry out their work.

Mr. Temporary Deputy Speaker, Sir, just quickly in passing, I wanted to refer to the Administration Police Act--- I will read you section 10(4) of the Act which reads--- This particular one is actually in the Bill itself, the Administration Police Act. It is not covered under the IPPG, it is on page 510 of the Bill. You will see that we are repealing sections 10(4) and 12(3). Hon. Members would like to know what we are repealing, which is as follows: Under section 10(4), it prohibits any person from being entitled to damages or compensation for any loss or damage suffered by him by reason of action taken in pursuance of this section. That is the section which deals with Administrative Police Officers carrying out their work. So, if in the course of their duty, a person was injured, a house burned or any property damaged, then this section says that the people who has suffered will not be entitled to compensation. The other section, 12(3), is being repealed also. And it states that:-

"No officer shall be liable for loss or damage resulting to a vehicle or for any injury to the occupant of the vehicle as a result of the driver of that vehicle failing to obey an officer acting under Sub-Section (2)."

That is the section which deals with the power to erect barriers along the road. So, we are saying that these sections must be repealed so that the police officers are reduced to the level of everybody else. If you can prove negligence or recklessness on their part, in the course of the performance of their duties, then you will be entitled to receive damages.

Mr. Temporary Deputy Speaker, Sir, I then come to the Penal Code which is at page 511. What I would like to say is that both the Government's Bill and the NCEC's Bill did not envisage deleting sedition as an offence but we tried to humanise the offence by deleting the objectionable parts. If you look on page 514, you will see that sections 56 and 57 have been repealed. Section 56 deals with the definition of what is seditious intention, and Section 57 provides for the seditious offenses which includes provision for the seizure or securing of the printing machine which has been used in printing seditious materials or publications.

Mr. Temporary Deputy Speaker, Sir, sections 56 and 57 are now being repealed. What this means is that, we shall not have the offence of sedition in the Penal Code. Consequently the powers of the Attorney-General---

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

**The Temporary Deputy Speaker (Mr. Wetangula):** Order! Do you want Mr. Gatabaki's information?

**The Attorney-General (Wako):** I will have it later, within the corridors.

Consequently, the power of the Attorney-General in giving consent to prosecute the offenses relating to sedition does not arise and hence the need to delete section 58. So, sections 56, 57 and 58 have been repealed, and we no longer have the offence of sedition in the Penal Code.

Mr. Temporary Deputy Speaker, Sir, under the recommendations of the IPPG which dealt with administrative actions to be taken, it was recommended that the Attorney-General reviews all cases of all persons currently serving

jail or facing trial on matters of sedition or participating in unlicensed meetings. I can confirm and assure this House that, I have already begun that exercise and that, all cases which are pending before the court, arising from this offence which is being repealed, will be terminated.

*(Applause)*

I would like to inform this House that, this is not the first time I have undertaken this exercise, I undertook it in May 1995 and, I issued a Press Statement on 31st of May, that year. That is why I am bringing this point out. I may not know all the cases which are pending before the court because some of them may not even have come me for consent. So, if any hon. Member is aware of any such case, let him or her bring that case to my attention.

**Mr. Gatabaki:** On a point of order, Mr. Deputy Speaker, Sir. I deserve to be heard!

**The Temporary Deputy Speaker (Mr. Wetangula):** Order, Mr. Gatabaki! You only need to stand up and say you are on a point of order. You do not have to lecture the Chair that you deserve a point of order. The Chair has a discretion either to give you or not to give, and this time, I am not giving you. Proceed, Mr. Attorney-General.

*(Applause)*

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, new to the IPPG recommendations are recommendations dealing with Section 52 of the Penal Code, which relate to prohibited publications---

**Mr. Gatabaki:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I stand in this House as a victim of these laws and my colleagues on the other side are never victims of this law. I am a Member of Parliament and a victim of what is going on. The hon. Attorney-General mentioned that from May, 1995, he has entered a *nolle prosequi* in sedition cases. He is misleading this House. Since 1995, I have been attending mention for sedition cases up to now, so, he is misleading the House. The sedition laws are still oppressive to me and to millions of other Kenyans.

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, the correct position is that in May, 1995, I did terminate all the cases. I also did issue a Press statement to the effect that in future, this law will be strictly applied, not in the wider sense of the Penal Code, but one or two paragraphs of the Penal Code. I did state that and in future, hon. Members should be careful not to fall within the restricted meaning of the Sedition Act. The hon. Member of Parliament fell within that restricted meaning and was, therefore, charged again. But now that the entire law is being repealed, as I told this House, I am implementing the recommendations of the IPPG.

*(Applause)*

**Mr. Otieno:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I would like to inform the hon. Attorney-General that he did mention very well that it was part of the recommendations that all cases pending, should be brought to his attention. It was also the recommendation of the Committee that people serving jail sentences under all sections of the laws that have been repealed, should equally have those sentences reviewed. So, we need your undertaking on record, and that since you may not know all of them, the public should draw your attention to all.

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

*[Mr. Deputy Speaker took the Chair]*

**The Attorney-General (Mr. Wako):** I think, that is well spoken. It is true and I confirm it and give that assurance. The section that was not dealt with under the Bill, the part which has been dealt with under the IPPG proposal is Section 52 of the Penal Code which deals with prohibited publications, on pages 511 to 514. Without going into all those many words set out in those pages, the amendments, if enacted will ensure that a publication can only be prohibited under the following conditions:-

(a) The publication can only be prohibited on the grounds of public security, public health or public morals. For example, as you can see in Section 52, we have deleted the phrase; "The administration of justice or the maintenance of the authority and impartiality of the Judiciary so to do". We have deleted that because we feel that, that should not lead to a publication being prohibited because there are other provisions of the law, which deal with those publications. We have also added another ground which the Minister must consider, that is, it must be reasonably justifiable in a democratic society before he can carry out that order.

(b) Under the existing law, if the Minister made the order to prohibit a publication, then all the past and all future issues of the publication were also prohibited. Therefore, if any person was in possession of the publication, he

automatically became an offender under this Penal Code. In so far as it related to past publications, that section was, in my view, *ultra vires* the Constitution. We are now repealing that so that if it comes necessary to prohibit a publication, it is only that issue and not all the past or future issues of the publication.

The recommendations were that we review all prohibited publications in the past and it is, indeed, a very long list. I know a number of hon. Members including hon. Muite and hon. Murungi, have asked one or two Questions relating to certain publications and why they are still being prohibited. So, it was recommended that a Board be set up to review not only all the past publications, but also, to advise the Minister on the exercise of his powers under this Act, and that the Minister is obliged to carry out that advice.

Mr. Deputy Speaker, Sir, the Board will have to go through all the previous publications and as I have said, they are very many. It is only about three weeks ago when my friend did send me a magazine called *African and the World*, which contained a very innocuous article by that great Pan-Africanist, Dr. Kwame Nkrumah, only to find that, that publication was a prohibited publication sometime way back in 1965. Also, the librarians at some of our universities here, both public and private, have wanted to have access to this Act, so that they do not keep in their libraries publications which are prohibited. That obviously, is inimical to knowledge. Some of these prohibited publications, in my view, have a historical value, and there is no need any more for them to remain on the prohibited list. But this Board is going to look into all that.

Mr. Deputy Speaker, Sir, this Board is set out on page 512 of the proposed amendments. The Minister, of course, for these type of matters, is the Minister in-charge of internal security. The Board will be called: "Prohibited Publications Review Board". It will be composed of the Attorney-General or his representative, the Commissioner of Police or his representative, the Director of Medical Services or his representative. The Director of Medical Services has been included because a publication can be prohibited on public health grounds, so, he has to be there. Also included are two persons from the religious community because a publication can be prohibited on public moral grounds. Then there will also be two other persons of integrity, good character, good standing.

The powers of the Board as set out on page 513 are:-

(a) To review all publications prohibited under this section at the commencement of this sub-section and advise the Minister as to whether such prohibition should be lifted.

(b) To advise the Minister generally on the exercise of his powers under this Section.

Mr. Deputy Speaker, Sir, I would like to draw your attention to page 514, Paragraph 8 which says:

"The Minister shall be obliged to act in accordance with the advice given by the Board under this section."

Mr. Deputy Speaker, Sir, I now want to move on to the Kenya Broadcasting Corporation.

**Mr. Gatabaki:** On a point, of order, Mr. Deputy Speaker, Sir. I was not part of the IPPG process but I have got an interesting fact to point out, for example, the composition of the Board. There should be direct appointment of the Members of the Board of Directors by the President just like that of the Electoral Commission. The Minister should not be allowed to appoint members of the Board because he can put sycophants in that Board and they will do what has been done before. This Board will not be independent at all!

**Hon. Members:** So, what is your question? Just sit down!

**Mr. Gatabaki:** Mr. Deputy Speaker, Sir, could you protect me from the noise of these sycophants?

**Mr. Achieng-Onoko:** On a point of order, Mr. Deputy Speaker, Sir. I think you must have heard the hon. Member refer to hon. Members of this House as "these sycophants."

**Mr. Deputy Speaker:** I did not hear that.

**Mr. Achieng-Onoko:** It is unfortunate if you did not hear that.

**Mr. Deputy Speaker:** Order, hon. Gatabaki. There are no sycophants here, there are only hon. Members.

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, I now wish to move to the Kenya Broadcasting Corporation, which is covered on page 524. These are new clauses being inserted; they were not in the original Bill. These are new provisions. There will be three new paragraphs in the Kenya Broadcasting Corporation Act which will read as follows:

"The Kenya Broadcasting Corporation Act will now be under a statutory legal duty to keep a fair balance in all respects in the allocation of broadcasting hours as between different political view points.;

"In consultation with the Electoral Commission, during the campaign period preceding any presidential, parliamentary or local government election, allocate free air time to registered political parties participating in the election to expound their policies. In the next subsection (1) (j), the expression: "Campaign period means the period within the initiation of an election under the provisions of the relevant laws pertaining to the election and the eve of the polling day."

Mr. Deputy Speaker, Sir, I now move to the Societies Act--

**Mr. Ndicho:** On a point of order, Mr. Deputy Speaker, Sir. We are really feeling very good when the Attorney-General is going through this Bill. Now that he has said that it should be legal for the KBC to allocate free airtime, he should not have left it open for the news editor or the person allocating the airtime at the KBC. He should have indicated how many minutes each party will get.

**Mr. Deputy Speaker:** That is a point of argument.

**Mr. Ndicho:** I am arguing because he should have indicated how much time each party will be allocated.

**The Attorney-General (Mr. Wako):** I now move on to the Societies Act, page 518.

Mr. Deputy Speaker, Sir, section 4 of the Societies Act is being amended. The purpose of this section is to give a time limit within which the Registrar of Societies must make a decision on the applications which go before him.

As you know, the Registrar of Societies registers all types of societies that go before him, be they welfare, religious or political parties. This section is giving the time limit within which to make a decision. It says:

"The Registrar shall consider every application for registration of a society or for exemption from registration and shall communicate his decision thereon to the society within 120 days of receipt of that application."

Mr. Deputy Speaker, Sir, I am very much aware that the Registrar of Societies has got many pending applications before him, some running into years. That is admitted. Under the administrative reforms recommendations, it was recommended that the Registrar of Societies considers all applications for registration of political parties and either register or refuse; and if he refuses, he must state the reasons for refusal. That was to be done as a matter of urgency and consequently, the Registrar of Societies was in Geneva on a Copyright Conference which is due to end at the end of next week, but I have had to send somebody to inform him at that conference to come and deal with this issue. I know that he is now going through the files and his decisions will be decided and communicated within a couple of days.

Mr. Deputy Speaker, Sir, the other amendments deal with reducing the penalties for the various offences mentioned there. I would like to go into all that. We may have seen that generally, there has been a deletion of such words as "if it appears to him, he can make a decision." We are deleting all such phrases and substituting with "either has reasonable cause to believe or has reasonable grounds to make that decision." In other words, we are trying to restrict his wide discretion in these matters.

Mr. Deputy Speaker, Sir, the other section is Section 15, which deals with appeals.

**Mr. Gatabaki:** On a point of order, Mr. Deputy Speaker, Sir. This is a very interesting suggestion. In Section 4 there are 120 days. Can we have an undertaking from the Attorney-General, that this nation will know the fate of SAFINA tomorrow?

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, obviously, the Questioner is ignorant of the provisions of the law in this regard. Section 15 deals with the appeals from the decision of the Registrar of Societies to the Minister. Here, we are now saying that such appeals, in case of political parties, will go straight to the High Court. Previously, all the appeals came to the Minister, and then to the High Court. But the recommendations are that the appeals, particularly those relating to the registration of political parties, should go straight to the High Court. The other applications should pass through the Minister before they go to the High Court.

The reason is that many of the people who apply for other types of welfare societies and even one man or two-man religious bodies, to be registered, cannot really afford the high costs. Therefore, most of them may be cleared at the Ministerial level, which is least expensive, because the Minister does not charge any money. He just considers the applications and makes his decision.

**Mr. Obwocha:** On a point of information, Mr. Deputy Speaker, Sir. It would be beneficial to the House, for the Attorney-General to assure this nation that if the societies or parties that have requested for registration in his office are not registered within the provisions of what we have requested, then there shall be a provision for independent candidates in the coming General Elections.

**Mr. Deputy Speaker:** Is that a point of information?

**Mr. Obwocha:** Yes! I am just informing him so that he can assure us.

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, what I can assure this House is that decisions are going to be made and communicated within a couple of days; at any rate, before the end of next week.

**Mr. Orenge:** On a point of order, Mr. Deputy Speaker, Sir. Hon. Obwocha has risen on a point of information, to which the Attorney-General acceded. He did not refuse the point of information, and it relates to a very important issue, as to whether or not the issue of independent candidates is going to be considered in the coming legislation, if not this one, but in the Constitutional Bill. Could he tell the House whether that is the position or not?

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, what I can tell this House is that it will not be considered because the decisions relating to the registration of political parties are going to be made within a specified

time.

If you look at the bottom of page 520, it deals with the Public Holidays Act, and I would like to deal with it now, since it is the most convenient time. The Public Holidays Act is being amended so that on the day that we have the General Elections, it will be a public holiday under the Public Holidays Act. This has been recommended by the IPPG.

Mr. Deputy Speaker, Sir, I now turn to the National Assembly and Presidential Elections Act on page 529. I think the most that I can do now is to go through the proposed amendments. In the title to the Act, we are adding the words; "The conduct of the Electoral Commission and of Political Parties" participating in elections in Kenya. We are adding that because as you can see later on, we have a code for the commissioners, and we are also going to have a code for the conduct of elections. They are all part of the schedule to the Act. So, we thought that it should also appear in the title of the Act. We are also adding new sections and the terms and conditions of service of officers appointed under this Section shall be determined by the Commission in consultation with the Treasury. I think that is self explanatory.

(iii) Notwithstanding the provisions of the Police Act, a police officer assigned duties during the conduct of an election, shall be deemed to be an election official for the purposes of this Act, and subject to the direction and instruction of the Commission. There have been allegations that at times, the police officers assigned during that time, do not obey the Electoral Commission officers, and the Commission is powerless to give them directions. In order to assert the independence of the Electoral Commission, it is here provided that during election time, when police officers are assigned those duties, they will be deemed to be electoral officers and, therefore, subject to the direction and instruction of the Commission.

Section 3 is an enabling section under which the code of conduct under the procedure of the Commission will be set out in the schedules to the Act. The amendments to Sections 12 and 13 are to give effect to the IPPG proposals, that as soon as the elections are called, then the Electoral Commission must take charge, from then until after the elections. So, there are substantial amendments to Section 12 (1). For example, the existing Section 12 (1) reads---

**Mr. Michuki:** On a point of order, Mr. Deputy Speaker, Sir. Maybe, it is a point of order on contradiction in terms. Although the amendment the Attorney-General has been speaking on does recognise the existence of the Police Act, he has just explained that the Commissioner of Police will be responsible for the overall direction of the Police Force. He is now bringing an Act which overrules what he has just said because he states: "Notwithstanding---".

The Attorney-General is now bringing an Act which overrules what he has just said. Is this not an issue that will bring contradiction and confusion, having given all the powers to the Commission and then withdrawing them in another Act?

**The Attorney-General (Mr. Wako):** Mr. Deputy Speaker, Sir, that is an opinion, but we gave careful thought to this because, on the one hand the police has its power to maintain law and order and on the other hand we have the Electoral Commission which has a constitutional responsibility of conducting general elections. My interpretation is that it does not necessarily contradict what I said because it is the Commissioner of Police who will, in exercise of his powers, deploy the police officers to the polling stations where the elections will be conducted or deploy officers to accompany ballot boxes, either prior to or after elections. It is only during that time of election, that the police officer will be exercising his powers. In other words, his role will be to assist the Electoral Commission.

We are saying that, once the police officers get there, they should be subject to obeying the instructions of the Electoral Commission because they will now be within the jurisdiction of the Electoral Commission at a place where the Constitution says: "The Electoral Commission has the sole responsibility to conduct elections---". But it maybe a point of argument. You may mention it during the contribution and if you have any more suggestions they will be welcomed. The whole idea here is that the Commissioner of the Electoral Commission must be seen to be in charge of the electoral process, particularly at the polling stations during the day of the elections. They must be in charge. We do not want a police officer to go there and say that he cannot obey a presiding officer or the Commissioner of Police gives contrary instructions within a polling station. It must be known by everybody that the Electoral Commission is in charge of that polling station. If you have any ideas, please, preserve them until you make your contributions. We shall be willing to look into them to see how we can improve on this matter.

**Dr. Lwali-Oyondi:** On point of information, Mr. Deputy Speaker, Sir.

**The Attorney-General (Mr. Wako):** Another time. Let me just finish up because time is flying.

Mr. Deputy Speaker, Sir, you will read Sections 12 and 13 and compare them with the provisions of the Bill. I have told you what the intention is. For example, Section 12 (1) says:

"Where a presidential election is to be held, the President or the person for the time being discharging the function of the Office of the President as the case may be shall within a period of nine days direct the Speaker---

That is all being deleted to ensure that the Electoral Commission is in charge. It is now being deleted and a new subsection (i) which is found on page 529 inserted. All those amendments, particularly Sections 12 and 13 are meant to give effect to that recommendation.

Another provision I want to draw your attention to is Section 16(2). This is a section which deals with the situation where an election court finds you guilty of an offence and disqualifies you from standing or even from registering as a voter for five years. I know that the wording of the Constitution is proper because it says: "For a period not exceeding five years". The Electoral Commission actually has a discretion to disqualify you for a shorter period, but because we are giving the maximum as five years and the five years run from the date when the election court files that offence - the consequence has been that, that person is disqualified from vying for a parliamentary seat in the next general election - we are now amending Section 16(2) to read as follows:

"During the remainder of the life of that Parliament".

In other words, that person should be able to stand in the next general election, but will not be able to stand in the by-election immediately following the hearing and determination of that petition. So, that is the purpose of that section.

Now the proviso is to enable those who are already serving to be able to stand. It reads as follows:

"Provided that a person disqualified as a result of a conviction or a report for an election offence prior to the dissolution of Parliament and the ensuing elections in the year 1997 shall cease to be so disqualified and, shall unless otherwise lawfully disqualified, be eligible to be nominated as a candidate".

The proviso is to deal with the retrospective decision in section 16(2).

There are also amendments to Section 17. There was a request that the Electoral Commission should be able to assist registered political parties in conducting their own internal elections. So, we have added a clause there to say:

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

Clause 17(4) is already happening, but we are just now giving it statutory backing. It reads as follows:

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

There is another amendment to this section which is not here, but will be reflected at the Committee stage. The last paragraph under Section 17 reads:

"If a person is nominated by a political party and is actually elected, he cannot be appointed to the cabinet of another party without the concurrence of his own party".

Part 6 of the existing Act deals with petitions and without going into the details because of the time factor, the major amendments on this are as follows:- One, the election petition courts will now, if this amendment succeeds, consist of only one judge instead of three judges. It will still be three judges where the nomination petition is in respect of the Presidential election. Secondly, for the first time, we are now allowing appeals from the High Court to the Court of Appeal. If it comes from the one judge election court hearing a challenge to the election of a Parliamentary seat, then it will, in the normal way, go to the Court of Appeal and be heard by the usual three judges of the Court of Appeal. But if it relates to the Presidential Election, then it will go to the Court of Appeal and be heard by a court consisting of five judges.

*(Applause)*

We also believe that with the one man judge, it will be possible to have the election petition heard closer to the area where it occurred and, thereby reduce expenses which are usually connected with bringing witnesses, maintaining and feeding them for the entire duration of the hearing of the case here in Nairobi. With one judge, it will be possible to send it closer to the area concerned.

We are also stating that the petitions in the High Court and the appeals in the Court of Appeal, must be heard on a priority basis. We are also, in connection with petitions, increasing the deposit required from Kshs50,000 to Kshs250,000.

**An hon. Member:** Shame!

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, Section 24 which requires the presence of the Attorney-General at the hearing of all petitions is being repealed. We think that, that is unnecessary now. Such presence was required, and in fact, he did defend the District Commissioners, but now that the Electoral

Commission is independent, and acts on its own, there is no need for the Attorney-General to be present at all times when the Election Court is hearing these cases. If there is anything which they want the Attorney-General to act on, they can always notify the Attorney-General to carry out further instructions. So, Section 24 is being repealed. In other words, I am whittling down my powers.

In Section 33, we are adding new provisions and it reads as follows:

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

(2) There will be an accounting officer of the Commission appointed under the Exchequer and Audit Act."

This is to give it operational independence.

Section 34(A) is the enabling provision for the Code of Conduct during elections. It will be a code of conduct which must be subscribed to or observed by every political party and every person, who participates in any election. No party will be able to participate in the election unless they subscribe to that Code of Conduct. We are also enabling the Electoral Commission, subject to the provisions of the Criminal Procedure Code, to hire officers who can prosecute their cases in court. That is the new sub-section Five in that Clause. So, those are the major amendments that we have under the National Assembly and Presidential Elections Act.

I would also like to inform you that we shall be proposing more amendments to the regulations under the Act, but that will come by way of a Motion in Parliament as required under the Act.

Mr. Temporary Deputy Speaker, Sir, if I may just go on now to the Schedules under the Act.

Mr. Temporary Deputy Speaker, Sir, we have a Second Schedule on the conduct of the members of the Electoral Commission. It is important that the members be non-partisan, men of integrity and reputable persons. I will not read everything, but Clause 1, states:-

"Every member of the commission shall serve impartially and independently".

Sub-section 1 states:-

"No member of the commission shall during the tenure of office be eligible for appointment or nomination to any political office".

Then, it goes on to impose duties on the members of the commission, not to compromise the credibility and impartiality of the commission.

Mr. Temporary Deputy Speaker, Sir, I wish to draw your attention to proposed regulation 2 (e), which states:-

"During the tenure of office, no member of the commission will be eligible to serve as a Member of Parliament or a member of the local authority and such ineligibility shall continue for a period of five years after ceasing to be a member with effect from the date of ceasing to be a member".

The other clauses talk about disclosure of conflicting interests. We have said that this code will also apply to the staff of the commission, save that clause which prohibits a person who has been a member of the commission from standing as a member for the five year period after he ceases to be a member.

Mr. Temporary Deputy Speaker, Sir, then we have the Third Schedule which deals with the proceedings of the Electoral Commission. It contains the usual regulations about when meetings should be called, how many should be called, how they can be called during an emergency situation and so on. The basic principle in sections 5 and 7 is the quorum. Section 5 states that:-

"The quorum for the conduct of business at a meeting of the commission shall be the majority of all members of the commission".

Section 7 states:-

"Unless a unanimous decision is reached, a decision on any matter before the commission shall be by concurrence of a majority of all the members".

Mr. Temporary Deputy Speaker, Sir, the two provisions tie in very well with the proviso to section 41 (11) of the Constitution.

Mr. Temporary Deputy Speaker, Sir, I am trying to rush this. I think Members will have ample time over the weekend to go through them very carefully. The Fourth Schedule is the provision of the Electoral Code of Conduct which must be subscribed to by political parties and any person standing for elections. Otherwise, you will not be allowed to stand. Section 3 states:-

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

Section 5 states:-

"Registered political parties and their candidates must give wide publicity to this code".

They must amongst other things in Sub-section (c):-

"condemn, avoid and take steps to prevent violence and intimidation;"

They must also in sub-section (d):-

"instruct their candidates, office bearers, members and supporters, of their obligations under this code"; and

Sub-section (e):-

"affirm the rights of all participants in the election".

Mr. Temporary Deputy Speaker, Sir, I think you will have time to go through it over the weekend. Maybe, I will have time to go to the Electoral Commission Penalties Act. There are two types here: There are people who will infringe this code. This is contained on Page 541 where it states out the type of penalties that may be imposed. These range from a common warning to a fine by the Commission to an order prohibiting the political parties from holding particular public meetings, from entering any specified electoral area, from erecting placards or banners or from publishing and distributing campaign literature and electoral advertising.

Then if the violations are so serious and so consistent that is necessary for the political parties to be banned from the elections, then it is not the Electoral Commission which will decide. The Electoral Commission must take the matter to court which will hear the view and it is the court which will make a decision on whether or not a political party should be banned from the elections. That is the most extreme case, but we have said "No, we must have at least two independent organs looking the issue." One should be the Electoral Commission which will decide that the violations are so serious that this party should be banned from participating in the elections. Once they have formed that opinion, then they have to go to court and prove their case in court and the other party will be given the opportunity to defend itself and if the court is satisfied, an order can be made to that effect.

Mr. Temporary Deputy Speaker, Sir, pertaining to the National Assembly and President Act, there are a number of amendments to the Local Government which come just before the amendments to the National Assembly and Presidential Election Act. There are many, but the whole purpose of those amendments is to transfer the responsibility of any matter relating to local government elections whether to form wards to conduct elections and everything else from the Minister for Local Government to the Electoral Commission who have the constitutional responsibility of conducting local Government elections as per Section 42 (a) (b) of the Constitution. That is the purpose of all those amendments and I do not have to go through them. You will see that whenever the word "Minister" appears, we have substituted it with words "Electoral Commission". That goes on throughout in all the sections that we have. So, I think I do not have to go through all those amendments.

Mr. Temporary Deputy Speaker, Sir, then we have amendments to the Election Offences Act. First of all under the Bill itself, on Page 509, we have new offences relating to voter registers and electors cards which is contained on Page 509 which states:

"Any person who without authority has a register of voters or makes one without authority, makes an electors' card and without authority, electors' card is found in his possession or utilises an electors' cards belonging to somebody else or so will be guilty of an offence."

The new offences are all contained above.

Mr. Temporary Deputy Speaker, Sir, then under the IPPG, Section 8, which relates to treaties is being repealed. Section 15 (2) is also being repealed. Section 15 (2) is the one which states that:

"There can be no prosecution for an election offence without the consent of the Attorney-General."

I do not want to have those powers. So, there are being deleted.

I have talked about the Public Holidays Act. Let me refer to the Adjudicature Act which is contained in the original Bill. It is being proposed to increase the number of High Court judges from 30 by 20 and the number of Court of Appeal judges by three from eight.

Mr. Temporary Deputy Speaker, Sir, the wording of the Judicature Act has been carefully worded. Whereas before, the Judicature Act said there shall be so many judges, now we have said "up to". We have said "up to" because we cannot overnight or even within a year or two dramatically increase the number of judges to 20. Court buildings and other infrastructure must be in place before we can increase those numbers.

Mr. Temporary Deputy Speaker, Sir, the reasons for increasing the number of judges have been well known. They are spelt out in the Mbithi Report of 1991. They are further spelt out in the Kotut Report. In fact, these figures we have are figures recommended by the Kotut Report way back in 1994. The Court of Appeal has said we increase the figure of 20 by seven. I thought for the time being, we increase it by three as we await the Constitutional Review process under which I hope the entire Chapter dealing with Judicature will be repealed and then we can think about that problem more systematically.

Mr. Temporary Deputy Speaker, Sir, already a number of law societies have appealed for the increase of judges. For example, the Mombasa Law Society would want an additional two or three judges in Mombasa. The Rift Valley Law Society want additional judges in Nakuru and Eldoret, Kakamega and so on. Everybody is pleading

for more judges. So, there is that need.

Mr. Temporary Deputy Speaker, Sir, then there is a need that we must hear, particularly the commercial cases, more expeditiously, so that both the local and foreign investors can have confidence that we have a system which can determine disputes without any further delay. Then there are further needs in future, even to have divisions such as criminal division, family division, commercial and so on.

Mr. Temporary Deputy Speaker, Sir, we have tried to increase jurisdiction of senior magistrates to take care of this problem, but often the problem has not been contained.

Mr. Temporary Deputy Speaker, Sir, I am pleased to report to this august House that in the very near future we are converting the Uajiri House which is up the hill into courts. By October or November, they should be ready for occupation by judges. I am also pleased to inform this House that a decision has been made by the Cabinet to have the former East African Community Building, which is now called the Income Tax Building, handed over to the Judiciary Department when the Income Department and the Customs Department are moved to the new tower block of the Central Bank Building, which is coming up along Harambee Avenue. It is a very solid building and a decision has been made that, it can also be converted into courts.

*(Applause)*

So, that is the purpose of these amendments.

Mr. Temporary Deputy Speaker, Sir, there are also amendments which deal with Kadhis Courts. We want to increase the number of Kadhis. This has been an appeal particularly by the Muslim community. The purpose of this amendment is to enable us to do that. But I want to take this opportunity to say that we have reviewed the Kadhi Court system. Previously, the Chief Kadhi of this country was below the rank of a district magistrate which is the lowest rank of magistrates. The Chief Kadhi was way below that rank. Now, the Chief Kadhi will be at the level of the Principal Magistrate.

We have also introduced hierarchy structure. Whereas, before it was the Chief Kadhi on his own and all other Kadhis at the same level, now, we shall have a Senior Kadhi, Kadhi Grade I and II. There are also some Kadhis who are knowledgeable and very good, in civil law. Some of them, in addition to hearing cases concerning Muslims' private law, will also hear criminal cases, when their schedule permits. So, the whole issue of Kadhis is an issue which has drawn the attention of the Government and the Judicial Service Commission is doing something about it.

Mr. Temporary Deputy Speaker, Sir, let me touch on the Prevention of Corruption Act. This is in the initial Bill on page 503. On page 503, we are converting the Anti-Corruption Squad--- Of course, I do not want to go deeper into the evils of corruption. I think they are well known to us. Let us go into how we can prevent this. We are converting the Anti-Corruption Squad into an independent body called; the Kenya Anti-Corruption Authority (KACA). We are saying that there will be a director and assistant directors who will hold office for four-year terms. We have provided for security of tenure of the director and assistant directors; a similar security of tenure which the Governor of Central Bank enjoys under the new Act.

Mr. Temporary Deputy Speaker, Sir, we have provided for an advisory board to advise the President on the appointment of these directors and it appears on page 508. We have said that the advisory board shall comprise seven members appointed by the President, all of whom shall be persons knowledgeable or experienced in law, monetary, accountancy, financial and fraud investigation matters. We are clothing this authority with additional powers which are not there, under the current Act and that appears on page 507. They will now have the power to inquire and investigate the extent of liability of any public officer in the loss of any public funds; investigate the conduct of public servants and, can even bring civil action to recover the amount lost and so on.

Mr. Temporary Deputy Speaker, Sir, we welcome additional comments on that particular issue. Quickly, on the Public Collections Act, which is being amended---

**Dr. Otieno-Kopiyo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I would like the Attorney-General to clarify to the House whether he said that the person who appoint most of the parastatal chiefs, who have been corrupt, is the same person who will appoint those who are going to investigate their corruption.

**The Temporary Deputy Speaker** (Mr. Wetangula): This is not Question Time hon. Otieno-Kopiyo, and that is not a point of order.

**The Attorney-General** (Mr. Wako): I am not aware of corrupt people being appointed.

*(Laughter)*

Tell me. In law, everybody is presumed innocent until proved guilty. Under the Public Collections---

**Mr. Shikuku:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I can see hon. Attorney-General

trying to rush through. Let him take his time and let us have everything lined up. He can continue next time; he does not have to hurry through. We want to hear everything.

(Applause)

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, there is the Public Collections Act. The Public Collections Act (Cap.106) is on page 515. The purpose of these proposed amendments to the Public Collections Act is really the same principle that governed the amendments to the Public Order Act. First of all, we are removing the licensing procedure and replacing it with a notification procedure. The notification procedure is set out on page 516. At least, three days before the commencement of such promotion, the promoter should notify the regulating officers. There are various regulating officers depending on the area covered by the collections:-

- (a) If, it is at locational level, the regulating officer will be the chief;
- (b) In the case of a collection intended to be promoted:-
  - (i) in two or more locations of the same division, the District Officer of the Division;
  - (ii) in two or more divisions of the same district, the District Commissioner of the district;
  - (iii) in two or more districts of the same province, the Provincial Commissioner of the same province; or
  - (iv) in two or more provinces or throughout the country, the Permanent Secretary of the Ministry responsible for provincial administration, the Office of the President.

Mr. Temporary Deputy Speaker, Sir, the only grounds for objecting to the notification are set out on page 517, and these are:-

- (a) If the regulating officer establishes that the promoter has been convicted of an offence involving fraud or dishonesty;
- (b) The regulating officer has reasonable grounds to belief that the collection is in aid of, or that the collectors are members of an unlawful society; and,
- (c) If the promoter is an undischarged bankrupt.

Mr. Temporary Deputy Speaker, Sir, the amendments to The Films and Stage Plays Act (Cap.22), remove the requirement of seeking licences in relation to stage plays and theatre. Now, there will be no need to apply for licences.

**Mr. Ndicho:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The Attorney-General has rushed through this issue of the Public Collections Act, and this involves the very contagious issue of Harambees. We hope that the Attorney-General takes his time instead of rushing through it. He should go slowly by slowly, so that he can give us an elaborate explanation of this issue. The way the hon. Attorney-General is talking now, he seems interested with the time. We still have next week, he can proceed on Tuesday.

**The Temporary Deputy Speaker** (Mr. Wetangula): The Chair has no control over the manner in which any hon. Member presents his case on the Floor of the House.

**Mr. Anyona:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I think the hon. Attorney-General has done a marvellous job this afternoon. I agree with hon. Members who are saying, he should not rush through this issue, because he is laying the ground and the foundation upon which, we can then built. We are of the view that the hon. Attorney-General should go to the bottom of these matters, like this one. We have not heard him about Harambees and there are aspects we said must be done in the long-term. I think they should be explained here.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, in view of the comment by hon. George Anyona, I will read the recommendations of the IPPG on the issue of Public Collections Act.

(a) It recommended that Sections 3 and 5 be amended to remove the requirement for a licence for public collections and to provide only for notification. That is what I have effected. I think I have explained to this august Assembly adequately on how that particular matter has been done.

(b) It was agreed that in the long-term, the Attorney-General should examine the Act *in toto* to harmonize it with the Public Order Act.

(c) The Committee further recommends that the Attorney-General should, in the near future, review the Act to avoid the abuse of public collections on Harambee basis.

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Wetangula): Order, hon. Members! It is now time for the interruption of business. The House is, therefore, adjourned until Tuesday, 30th September, 1997, at 2.30 p.m.

The House rose at 6.30 p.m.