

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 25th April, 2001

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-
 Sessional Paper No.2 of 2001 on the Liberalisation and Restructuring of the Coffee Industry.
 Annual Report and Accounts of Agricultural Finance Corporation for the year ended 30th June, 1998, and the Certificate thereon by the Auditor-General (Corporations).

(By the Assistant Minister for Agriculture, Livestock and Rural Development (Mr. Sumbeiywo) on behalf of the Minister for Agriculture)

Annual Report and Accounts of Kenya Industrial Estates Limited for the year ended 30th June, 1998 and the Certificate thereon by the Auditor-General (Corporations)

(By the Assistant Minister for Agriculture, Livestock and Rural Development (Mr. Sumbeiywo) on behalf of the Minister for Tourism, Trade and Industry)

Annual Report of the Local Authorities Transfer Fund (LATF) for the 1999/2000 financial year.

(By the Assistant Minister for Agriculture, Livestock and Rural Development (Mr. Sumbeiywo) on behalf of the Minister for Local Government)

NOTICES OF MOTIONS

SELECT COMMITTEE TO INVESTIGATE MINING CONTRACT/CONCESSION

Ms. Karua: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-
 THAT, in view of the public outcry over the mining contract or concession granted by the Kenya Government to Tiomin of Canada, this House resolves that the Government suspends forthwith the said contract or concession and sets up a Select Committee consisting of the following persons:-

Hon. M. Karua
 Hon. K. Maitha
 Hon. S. Kamolleh
 Hon. M.A. Galgallo
 Hon. D. Murathe
 Hon. P. Ndwiga
 Hon. P. Oloo-Aringo
 Hon. D. Mbela
 Hon. M. Kombo
 Hon. Dr. A. Ali

Hon. J. Angwenyi

And that the Committee shall investigate the said contract or concession with a view to ascertaining whether:-

- (a) It complies with international and local environmental standards.
- (b) Such contracts or concession offends international law and human rights instruments and in particular, the International Covenants on Civil and Political Rights.
- (c) The said contract or concession is for the mutual benefit of the people of Kenya and Tiomin Inc. and further, make appropriate recommendations to the House within nine months.

Mr. Deputy Speaker, Sir, this is a party-sponsored Motion.

ADOPTION OF SESSIONAL PAPER NO.2 OF 2001

The Assistant Minister for Agriculture, Livestock and Rural Development (Mr. Sumbeiywo): Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts Sessional Paper No.2 of the year 2001 on the liberalisation and restructuring of the coffee industry laid on the Table of the House on 25th April, 2001.

REGISTRATION OF CHURCHES/ RELIGIOUS ORGANISATIONS

Mr. Kiminza: Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, considering the big number of churches and religious organisations in the country; noting that all religious organisations are currently registered under the Societies Act; noting further the unnecessary delay in registering these organisations due to the large number of applications by persons wishing to register their societies, this House urges the Government to introduce an Act of Parliament which will deal purely with the registration of churches and other religious organisations.

ORAL ANSWERS TO QUESTIONS

Question No.054

WILDLIFE MENACE IN MWEIGA

Mr. Deputy Speaker: Dr. Murungaru not here? We will come back to his Question later. Next Question, Mr. Ochilo-Ayacko!

Question No.144

VEHICLE FOR KAMAGAMBO POLICE STATION

Mr. Ochilo-Ayacko asked the Minister of State, Office of the President:-

- (a) whether he is aware that Kamagambo Police Station has neither a motor vehicle nor a telephone facility; and,
- (b) what urgent action he is taking to equip the police station.

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

(a) I am aware that vehicle registration No. GK. 656L, Land-Rover, 109, attached to Kamagambo Police Station is presently grounded. I am also aware that the telephone line for Kamagambo Police Station was disconnected in 1998 due to non-payment of outstanding bills.

(b) The Land-Rover will be repaired and the outstanding telephone bill paid, when I am in a position to do so.

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, you can see how ridiculous that answer is. Since 1998, there have been no telephone services at Kamagambo Police Station. The nearest police station to Kamagambo Police Station is 30 kilometres away. Could the Assistant Minister tell us how much the outstanding telephone bill is and how much is needed to repair this Land Rover, that this very rich Government cannot afford?

Mr. Samoei: Mr. Deputy Speaker, Sir, the estimated cost of repair for the Land-Rover is Kshs200,000. This vehicle has been unreliable for quite some time because of its age. We are considering providing the police station with a new vehicle during the coming financial year. The outstanding bill on the telephone line, No.42084, is Kshs181,437.45. The money allocated for the whole district for telephone lines was Kshs300,000. We could not have

used all that money to settle a bill for one telephone line in one police station. We are making arrangements to settle that account.

Mr. Wamalwa: Mr. Deputy Speaker, Sir, the Assistant Minister's answer to this Question is a typical one, in a country where insecurity has become a real problem yet, when questions are asked, the Government displays a very *laissez-faire* attitude towards the issue of security. The repairing of the Land-Rover and paying for the telephone lines seems to be piecemeal and un-coordinated. Does the Government have a comprehensive programme to combat insecurity in this Republic as it is today? Or is it just going to react to situations as they arise?

Mr. Samoei: Mr. Deputy Speaker, Sir, the Government does have a comprehensive programme to combat insecurity in the country. That programme is well underway and we are making progress. The fact that we have not paid the telephone bill, or repaired the vehicle does not deter our police officers from combating crime and other menaces. In no way does it deter them from performing their duties.

Mr. Achola: Mr. Deputy Speaker, Sir, could the Assistant Minister explain to the House why no allocation was provided since these issues arose in 1998 and yet we have had two intervening financial years? Why has the Ministry not allocated enough funds to be able to fix this problem?

Mr. Samoei: Mr. Deputy Speaker, Sir, this issue has been considered alongside other issues. The monies allocated have not been sufficient to offset either the bill on the telephone line or repairs of the motor vehicle. Unfortunately, as much as I appreciate the concerns expressed by the hon. Member, our budget has not allowed us to provide for the settlement of this account.

Mr. Anyona: Mr. Deputy Speaker, Sir, this is an area where there are frequent occurrences of clashes and conflicts and the Assistant Minister is fully aware of that. It has been three years since telephones ceased to function in that police station but he says they have not made up their minds on what to do. In view of the sensitivity of the areas involved in this Question, could the Assistant Minister put some of these other things aside and provide a telephone service and a police vehicle to Kamagambo Police Station? If he does not do that, then he has no business telling us the Government has plans to deal with insecurity! If the Assistant Minister cannot do something as simple as providing telephone services and a vehicle, then he should forget about it altogether!

Mr. Samoei: Mr. Deputy Speaker, Sir, as Mr. Anyona has put it, this is a simple issue and we have not allowed a simple issue like this one to cloud our bigger view of combating crime. However, we undertake to consider his request.

Mr. Deputy Speaker: Mr. Minister, do you have an idea of how much your direct telephone line in the office costs per month? It is something more than this!

Mr. Samoei: Yes, I do. It is way below this!

Mr. Ochilo-Ayacko: Mr. Deputy Speaker, Sir, is the Assistant Minister aware that along Kisii-Migori Road, there are always incidents of thuggery at night? Vehicles are stopped by armed thugs and passengers are harassed. In the absence of telephone lines, the victims never get the opportunity to report such incidents to the police. Could the Assistant Minister confirm to this House that the issue of a telephone line at Kamagambo Police Station and the repair of this Land-Rover will feature in the Budget that is being prepared, so that the people of Kamagambo are adequately served?

Mr. Samoei: Mr. Deputy Speaker, Sir, I have already stated that we are considering replacing the old Land-Rover with a new one. As for the telephone lines, we are negotiating with Telkom Kenya to see whether we can pay much less than what we are paying now, then we can sort it out.

Question No.033

REINSTATEMENT OF MR. KALAMBA DZUYA

Mr. Maitha asked the Minister for Information, Transport and Communications:-

(a) whether he is aware that Mr. Jimmy Kalamba Dzuya, who had worked with Kenya Posts and Telecommunications Corporation (KPTC) for 23 years, was charged in a court of law and acquitted; and,

(b) what immediate action he has taken to have him reinstated and paid his dues.

Mr. Deputy Speaker: Anybody here from Information, Transport and Communications? We will come back to the Question later.

Question No.141

POWER SUPPLY TO INSTITUTIONS IN NITHI

Capt. Ntwiga asked the Minister for Petroleum Energy:-

(a) whether he is aware that electricity power lines with installed transformers have reached Kamwimbi Secondary School, Muki Society, Ndungiri 98 Farms and New Nkangani Society and that power has not been connected for usage by these institutions for some years now;

(b) why power has not been connected to these institutions; and,

(c) whether he could compel Kenya Power and Lighting Company to connect power to these institutions with immediate effect.

The Assistant Minister for Energy (Eng. Manga): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Yes, I am aware.

(b) The coffee factories have not been connected to power for the following reasons:-

(i) In Ndunguri Coffee Factory, motors have not been installed and wired. Also the contractor has not submitted completion certificate to the Kenya Power and Lighting Company.

(ii) Nkangani Coffee Factory internal wiring had not been completed, motors not installed and accordingly, the completion certificate has not been submitted to KPLC.

(iii) Mukui Coffee Factory completion certificates have not been submitted to KPLC.

(iv) Construction of power lines to Kamwimbi is in progress and about 90 per cent is already transacted.

(c) The KPLC will connect power and install meters to Ndunguri Coffee Factory, Nkangani Coffee Factory, Mukui Coffee Factory when contractors of these factories will submit completion certificate to the KPLC.

Capt. Ntwiga: Mr. Deputy Speaker, Sir, this is what we call misuse of Government resources by this Ministry. It is important to note that this Ministry is controlled by the KPLC. How could KPLC spend millions of Kenya shillings delivering power lines and installing transformers in the factories and yet they do not connect the power to the factories for usage? What was the urgency of carrying out work worth millions of shillings knowing very well that the factories had not done the internal wiring? Why should they misuse Government resources like this? Kwa nini?

Eng. Manga: Mr. Deputy Speaker, Sir, I quite cannot understand what the hon. Member is asking about. But I would like to state that the Ministry has never been controlled by Kenya Power and Lighting Company Limited. The Kenya Power and Lighting Company has nothing to do with the connecting process, wiring and putting motors within the factories. Once that is done the KPLC will actually perform its duty.

Mr. Mwakiringo: Mr. Deputy Speaker, Sir, now that the Assistant Minister has admitted that the completion certificates have not been submitted, what action have they taken as a Ministry to ensure that those certificates are submitted, for immediate connection of the power line to the factories?

Eng. Manga: Mr. Deputy Speaker, Sir, those factories belong to those people who have requested for the power supply. In actual fact, they have even paid for it. So, I do not know how the Ministry will force them to facilitate the connection.

Capt. Ntwiga: Mr. Deputy Speaker, Sir, that is the reason I am saying that the Ministry of Petroleum Energy is controlled by the KPLC. The Assistant Minister has not told the House why the KPLC carried out such a magnitude of work worth millions of Kenya shillings knowing very well that the certificates were not ready. That is why there is confusion everywhere. You are making our farmers suffer, having done internal wiring and there is no power. The Kenya Power and Lighting Company is your agency. I would like to know who is controlling who.

Eng. Manga: Mr. Deputy Speaker, Sir, I do not know what kind of a question he is putting across. However, the consumers, who are the owners of the factory, are supposed to fit in the motors and then the KPLC will connect them with power immediately.

Mr. Deputy Speaker: Eng. Manga, the question the hon. Member is asking is why the KPLC undertook a laborious exercise of putting the power lines and transformers when, in fact, the purpose for which that line was being taken was not realised.

Eng. Manga: Mr. Deputy Speaker, Sir, the KPLC did all that in order to supply the factories with electricity. But it is upon the owners of the premises to do the wiring.

Mr. Deputy Speaker: You were taking power there when there was no wire?

Eng. Manga: Mr. Deputy Speaker, Sir, it is upon the owner of the factory to do wiring. That is the regulation.

Mr. Deputy Speaker: I do not think that is in dispute. He is asking why you undertook that exercise knowing that the place was not wired.

Eng. Manga: Mr. Deputy Speaker, Sir, normally you do not start wiring unless you can have access to electricity power lines. So, you only do wiring when you get the power supply.

Mr. Deputy Speaker: No! No! I wired my house a long time before power came to my place!

Capt. Ntwiga: Mr. Deputy Speaker, Sir, I would like to inform the Assistant Minister that there are 49 coffee factories in my constituency. Because of the promise by the Co-operative Bank of Kenya that they were going to fund the installation of electricity lines, the owners of the factories did the internal wiring. It is not only these three factories. They are only waiting for the STABEX money in order to be connected. They have done it already, but the power line is not there. This is just an example. He has no excuse!

Eng. Manga: Mr. Deputy Speaker, Sir, those are wise people. They have done the wiring and are waiting for the power supply.

Mr. Deputy Speaker: Order, Eng. Manga! Talk to the microphone so that everybody can hear you!

Eng. Manga: Mr. Deputy Speaker, Sir, just like you have stated, that you wired your house and you were only waiting for power to come, those are wise people. They have wired their factories and are just waiting for the power supply. It is their duty to do the wiring and once electricity supply reaches that area, they will be connected.

Mr. Deputy Speaker: Next Question!

Question No.081

COFFEE PRODUCTION FROM LARGE SCALE FARMS

Mr. Michuki asked the Minister for Agriculture:-

- (a) how many large scale coffee farms are no longer producing coffee since 1992 and what their total acreage is;
- (b) how many tonnes of coffee they produced before the owners stopped farming coffee; and,
- (c) what plans he has to reinstate the lost production.

The Minister for Agriculture (Mr. Obure): Mr. Deputy Speaker, Sir, I beg to reply.

(a) A large scale coffee farm, or coffee estate, is that which is considered to have an area of 50 acres or above, planted with coffee. In this context, ten coffee estates, with a combined acreage of 573 hectares, have got out of coffee production since 1992.

(b) These coffee estates produced a total of 313 tonnes of coffee in 1992/93 before their owners stopped coffee production.

(c) Since 1992, when economic reforms were initiated, input costs have gone up resulting in higher cost of production. This increased cost of production undermined profitable production of coffee and seriously constrained the production capacity of the coffee planters.

With gradual removal of market controls, the declining profitability prompted a number of coffee planters to consider alternative enterprises with better returns for investment. For example, estates that were in close proximity to urban centres converted their land use to real estate and some even went into the business of horticulture and floriculture. There are other large coffee farms which have been run down owing to mismanagement or ownership disputes.

In order to reinstate the lost production, the Government has the following plans in place:-

The Government has, this afternoon, tabled in this House Sessional Paper No.2 of 2001 on the liberalization and restructuring of the coffee industry.

The Coffee Bill, 2001, reflecting major policy changes will be tabled in the next few days. The objective of the policy changes is to introduce greater efficiency in the industry, in terms of production, processing, marketing, payment system and coffee research. I am confident that these policy changes will provide the necessary motivation for increased coffee production.

Mr. Michuki: Mr. Deputy Speaker, Sir, I do not know where the Minister got those figures from. But after consulting some coffee management companies, I was told that around Thika alone, 5,000 acres, which is roughly 2,500 hectares were neglected. Could the Minister really confirm that he did not do enough research in ascertaining the extent to which this economy is not benefiting from coffee because of negligence on the part of land owners? Could the Minister also tell the House why he has not used the law in the national interest to ensure that production is properly maintained?

Mr. Obure: Mr. Deputy Speaker, Sir, I think the most important point here is that we are agreed in principle that there are coffee farmers who have abandoned the business of coffee production. The acreages I have come up with are a result of what I believe to be fairly a good research. But more importantly, I think the emphasis should be on what plans we have to resuscitate this particular industry.

The current Coffee Act gives the Government powers to ensure that nobody, for example, uproots his coffee. But at this time and age, we think that it would be counter-productive to enforce that law because of our state of

development and in particular, the democratisation process. I think it is high time we had a complete review of that law and provided the necessary motivation that will attract farmers to continue producing coffee.

Mr. Wamae: Mr. Deputy Speaker, Sir, I think you are surprised as we are by the answer given by the Minister. If you drove around Kiambu, Ruiru and Thika you would see many coffee farms which have been abandoned. They cannot be only 573 hectares. Could the Minister go back and find a proper answer to this Question? I think he has been given the wrong information.

Mr. Obure: Mr. Deputy Speaker, Sir, I understand the concern expressed by Mr. Wamae, but I am not sure that, that will take us anywhere. It is really the basis of collecting data and statistical information. I assume the kind of farms Mr. Michuki is interested in are farms in excess of 50 acres. If we are talking about those kinds of farms that have fallen out of production, they are small farms. There are many small farms which may have gone out of production.

Mr. Anyona: Mr. Deputy Speaker, Sir, this is the second time the Minister is admitting and saying in this House that the law is being broken and no action is being taken. Whatever the circumstances, I believe the law requires that for change of user - I believe Mr. Michuki is well advised because he changed usage of his coffee farm to a different use - it requires that the Government must give consent. Is the Minister telling us that the Government actually gave consent to this or is it free for all so that any day any number of farmers can wake up and abandon coffee farming?

Mr. Obure: Mr. Deputy Speaker, Sir, I know what Mr. Anyona is talking about, but we all appreciate that times are changing. I would, at this time, rather provide incentives to farmers rather than force them to go into production of a crop that is not profitable to them.

Mr. Deputy Speaker: Could you ask the last question, Mr. Michuki?

Mr. Michuki: Mr. Deputy Speaker, Sir, I suppose the Minister agrees that there was a time when this country used to produce between 120,000 tons and 130,000 tons of coffee per year. These developments have taken place at a highly unfortunate period. Is the Minister, for example, aware that in Japan, where the young people have a very high purchasing power, the consumption of coffee is growing at the rate of 25 per cent per annum? He should take very quick action in order to have a share of that market for Kenya.

Mr. Obure: Mr. Deputy Speaker, Sir, I am aware of the worldwide developments relating to coffee. I am also aware that at one time, we produced 128,000 tons of coffee, but this later dropped to 56,000 tons. However, last year, we produced close to 100,000 tons of coffee. The problem right now is the question of production costs and that of the prevailing coffee prices in the world market. In the Kenyan situation, the emphasis should be on producing high quality coffee, which attracts the best prices. That is what we should aim at rather than producing large quantities of the commodity. That is exactly what we are trying to do. We are aware of the existence of the coffee market in the east, particularly in Japan. We have instructed our marketing agents to move in that direction, so that we can exploit that market.

Mr. Deputy Speaker: Dr. Murungaru's Question for the second time!

Dr. Murungaru: Mr. Deputy Speaker, Sir, before I ask my Question, I would like to apologise for coming late.

Question No.054

WILDLIFE MENACE IN MWEIGA

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

- (a) whether he is aware that there have been perennial conflict between farmers and wildlife, particularly elephants, in Kamatongu Sub-Location of Mweiga Location, in Kieni Constituency, owing to game ranching by a number of business establishments in the area;
- (b) what immediate action he will take to ensure that wildlife is kept away from shambas particularly at this time when Kieni residents are still suffering from famine inflicted by the recent drought; and,
- (c) what strategy the Minister has to resolve this recurring problem permanently.

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

(a) I am not aware that there has been perennial conflicts between farmers and wildlife in Kamatongu Sub-Location of Mweiga Location, in Kieni Constituency.

(b) In the event that wildlife proves to be a menace, the Kenya Wildlife Service will consider translocating some of those animals which can be translocated.

(c) The permanent solution, if the said conflict is at all there, will be to fence the ranches in the area.

Dr. Murungaru: Mr. Deputy Speaker, Sir, I take great exception to the casual manner in which this Question has been answered.

Mr. Michuki: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to say

that he is not aware of an issue raised in this Question when he has "spies" in the field? He has the Assistant Chiefs, Chiefs and District Officers (DOs) in that area.

Mr. Deputy Speaker: Order! Order! Mr. Michuki, you have been here long enough to know that, what you have raised is not a point of order!

Dr. Murungaru: Mr. Deputy Speaker, Sir, as Mr. Michuki has put it, I am surprised that the Assistant Minister can say what he has said. Merely a week ago, the area DO convened a meeting of local residents, and the ranchers in question, to address this particular issue. My constituents are still in the grip of a devastating famine occasioned by the recent drought. We expect a bumper harvest this season, but we are afraid that it might not be the case because of a herd of more than 200 elephants from Mount Kenya Forest that are rampaging the constituency as they go to lick salt in the areas I have mentioned. I have informed the Assistant Minister that the elephants---

Mr. Deputy Speaker: Order! I am not interested in your speech; I am interested in your question! Could you ask it?

Dr. Murungaru: Mr. Deputy Speaker, Sir, I am trying to make the Assistant Minister aware of the developments in the field.

Mr. Deputy Speaker: You have chosen the wrong the time and forum. Ask your question.

Dr. Murungaru: Mr. Deputy Speaker, Sir, now that I have made the Assistant Minister aware of the fact that some ranchers have established salt licks in the midst of a settlement area, what immediate action does he intend to take to get the elephants out of those ranches so that farmers in that area can harvest whatever is left in the field?

Mr. Samoei: Mr. Deputy Speaker, Sir, since the hon. Member has taken the trouble to inform me of this particular situation, I would ask him to let his constituents report the matter to the Kenya Wildlife Service (KWS) personnel. If it is proved that there is, indeed, a human/wildlife conflict in that area, we will act to the extent of translocating the troublesome wildlife to other areas to facilitate farming activities by the people of Kieni.

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, my constituency happens to border that of Dr. Murungaru. What he is talking about is true. This is a deliberate act by the Government to terrorise our people just because they belong to the Opposition. Could the Assistant Minister confirm or deny that the said human/wildlife conflict started in 1992 with the advent of multipartyism?

Mr. Deputy Speaker: Could you ask your question?

Mr. Kiunjuri: Could the Assistant Minister confirm or deny that the Government is using elephants to terrorise our people and cripple us financially in the same way former President Nyerere of Tanzania used T-nines to terrorise Ugandan soldiers?

Mr. Samoei: Mr. Deputy Speaker, Sir, the Government does not own elephants. Wildlife is held in our national parks for the benefit of Kenyans and their posterity. I am not aware of the scheme the hon. Member has alluded to. I said that we are willing to take action on the rogue elephants, if they are there.

Mr. Deputy Speaker: Let us proceed to Mr. Maitha's Question, for the second time.

Mr. Muiruri: Can I ask the last question, Mr. Deputy Speaker, Sir?

Mr. Deputy Speaker: You should be the last person to ask the last question.

Mr. Maitha: Mr. Deputy Speaker, Sir, before I ask my Question, I would like to remind you that I have not received the written answer to it.

Mr. Deputy Speaker: Ask your Question!

Question No.033

REINSTATEMENT OF MR. KALAMBA DZUYA

Mr. Maitha asked the Minister for Information, Transport and Communications:-

(a) whether he is aware that Mr. Jimmy Kalamba Dzuya, who had worked with the Kenya Posts and Telecommunications Corporation (KPTC) for 23 years, was charged in court of law and acquitted; and,

(b) what immediate action he has taken to have him reinstated and his dues paid.

Mr. Muiruri: On a point of order, Mr. Deputy Speaker, Sir. On Thursday last week, Question No.1 by Private Notice---

Mr. Deputy Speaker: Order! Order, Mr. Muiruri! You can only stand on a point of order to raise such a matter after Question Time.

Mr. Muiruri: Mr. Deputy Speaker, Sir, the matter I am raising relates to a Question by Private Notice.

Mr. Deputy Speaker: But we have not even started Questions by Private Notice.

The Assistant Minister for Information, Transport and Communications (Mr. Keah): Mr. Deputy Speaker, Sir, I would like to apologise for two things. First, when the Question was asked, I was not here. I was trying to get the correct answer to it. Secondly, Mr. Maitha has not received the written reply to the Question. So, I will go through it slowly.

Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that Mr. Jimmy Kalamba Dzuya was acquitted by the trial court on 14th July, 1995 in Mombasa Criminal Case No.2781/90.

(b) After the acquittal, Mr. Dzuya sued the Corporation for wrongful dismissal and sought compensation in Mombasa vide Civil Suit No.989 of 1997. However, the parties involved, namely, the Legal Officer of the Postal Corporation of Kenya and Mr. Dzuya's lawyers, who are M/s Kanyi Juma & Company Advocates, agreed on an out of court settlement with Mr. Dzuya's consent. The agreement reached was that the Postal Corporation was to pay Mr. Dzuya Kshs350,000. This sum was paid to M/s Kanyi and Juma Company Advocates vide a Kenya Commercial Bank cheque No.006879 dated 13th December, 2000 as compensation. The Corporation, therefore, as of now, owes Mr. Dzuya nothing and the file has been closed.

Mr. Maitha: Mr. Deputy Speaker, Sir, Mr. Dzuya went to court because he had been acquitted and the Corporation could not let him go back to work. The Corporation itself agreed to pay Kshs350,000 as compensation for the time Mr. Dzuya was out of work. However, it refused to pay Mr. Dzuya for the 23 years he worked in the Corporation. Could the Assistant Minister tell this House why the Corporation refused to pay Mr. Dzuya for the service he rendered to it for 23 years?

Mr. Keah: Mr. Deputy Speaker, Sir, I do not have that information right now. I would plead with the Chair to give me more time to go back and check why Mr. Dzuya was not paid for the services he rendered for 23 years. I sincerely I admit that I do not have that information here with me.

Mr. Deputy Speaker: Mr. Maitha, are you happy with that?

Mr. Maitha: Yes, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Mr. Keah, you will bring that answer on Tuesday next week.

Mr. Keah: Yes, Mr. Deputy Speaker, Sir.

Mr. Muiruri: On a point of order, Mr. Deputy Speaker, Sir. Last Thursday, I had asked the Minister of State, Office of the President, a Question by Private Notice on some killings and robberies of violence---

Mr. Deputy Speaker: Order! I told you I will give you an opportunity to raise your issue after Question Time.

Mr. Muiruri: Mr. Deputy Speaker, Sir, the Question should have been the first one in the Order Paper because it was deferred and the Chair made a ruling that it will appear first on the Order Paper.

Mr. Deputy Speaker: Order! You are now asking me to insert the Question in the Order Paper. I cannot do that. I will deal with it after I have finished Question Time. I understand perfectly your Question is not on the Order Paper. But neither you nor I, nor both of us together can put it back now!

QUESTIONS BY PRIVATE NOTICE

POLICE CANCELLATION OF MARALAL RESIDENTS' JOURNEY

(**Mr. Ndicho**) to ask the Minister of State, Office of the President:-

(a) Who gave orders to police in Maralal on Sunday 25th March, 2001, to prevent members of the Pokot, Samburu and Tugen communities from travelling to Nairobi to attend their case at the High Court?

(b) Who will compensate the victims for the debt of 350,000 they incurred on hiring transport to Nairobi?

(c) Could the Minister assure the House that these people will not be prevented from coming to litigate their cases in Nairobi?

Mr. Deputy Speaker: Is Mr. Ndicho not here? We will leave this Question until the end then.

OPERATIONS OF TAWFIQ BUS COMPANY

(**Mr. Munyasia**) to ask the Minister for Information, Transport and Communications:-

(a) is the Minister aware that the Tawfiq Bus Company has been involved in numerous road accidents in the past two years?

- (b) Is he further aware that all the drivers and conductors of the company's buses are non-citizens?
 (c) What urgent measures has the Minister taken to bring discipline in the operations of this company to spare lives of passengers?

Mr. Deputy Speaker: Mr. Munyasia's Question is deferred because he is attending to the Electoral Commission in his constituency. Therefore, the Question is deferred to Wednesday, next week.

(Question deferred)

ATTACHMENT OF KEBIRIGO TEA FACTORY LORRIES

Mr. Obwocha: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Agriculture the following Question by Private Notice.

(a) Is the Minister aware that auctioneers have attached two Kenya Tea Development Authority lorries belonging to Kebirigo Tea Factory, thereby rendering the collection of tea leaves impossible?

(b) Why has the KTDA been unable to release the payments demanded by the aggrieved farmers?

(c) What is the Ministry doing to resolve this anomaly to hasten collection of tea leaves?

The Minister for Agriculture (Mr. Obure): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am aware that auctioneers illegally attached one vehicle belonging to Kebirigo Tea Factory.

(b) The Kenya Tea Development Authority is not holding any payment due to growers of Kebirigo Tea Factory.

(c) The Government has taken the following steps to hasten the collection of tea leaves in the area.

(i) An additional tea factory is under construction within Nyamira District to ease green leaves congestion in the existing factories. That additional factory is called Gianchore Tea Factory.

(ii) The broken down vehicles are in the process of being repaired in order to improve the turn round of the fleet.

(iii) Kebirigo Tea Factory had budgeted to purchase additional leave collection vehicles.

(iv) Arrangements are being made in conjunction with both the Government and the Tea Cess Committee in Nyamira District to improve the conditions of the roads in the area.

Mr. Obwocha: Mr. Deputy Speaker, Sir, is it not contradictory that the Minister is saying one vehicle was attached by the auctioneers, and in the same breath, he says that the factory or the KTDA is not holding any payments to the farmers. The farmers went to court because the factory or the KTDA never released the payment due to them. The KTDA lost the case. So, naturally, the KTDA should have released the payment, or appeal against the ruling. When will the bonus payment withheld by the KTDA or the factory be released to the farmers so that this vehicle can be released to assist them collect the tea leaves?

Mr. Obure: Mr. Deputy Speaker, Sir, with your indulgence, I would like to say that Pave Auctioneers did attach one vehicle at Kebirigo Tea Factory in January this year to recover a sum of Kshs588,910.20 awarded by the Chief Magistrate's Court in Kisii in respect of claims by growers aggrieved by the decision taken by the KTDA and Kebirigo Tea Factory to withhold payment for suspected green leaves weight falsification. The auctioneers were to sell the vehicle on 17th January, 2001. Consequently, Kebirigo Tea Factory moved to the High Court to challenge the decision taken by the lower court. The sum of Kshs588,910.20 has already been deposited in court pending determination of the appeal. The money, therefore, is not held by the tea company. The vehicle has since been released. In addition to the appeal in the High Court, Kebirigo Tea Factory has sued Pave Auctioneers, whom I understand are very notorious, for wrongful attachment of their vehicle as the said auctioneers are not licensed to carry out the business of auctioneering. I have a letter from the Auctioneers Licensing Board confirming that pave auctioneers who carried out this attachment are, in fact, not auctioneers. The issue here relates to falsification, but the matter is in the High Court for determination.

Mr. Anyona: Mr. Deputy Speaker, Sir, I do not think the Minister is coming out clearly. It is true that two to three years ago, there was withholding of bonus. I am surprised the matter has not been resolved. I thought that the vehicles and the money belonged to the farmers. How do you attach farmers' own vehicles for a debt which you have incurred because you were not properly treated? I think there is something that is not clear. Could the Minister explain it? We are talking at cross-purposes.

Mr. Obure: Mr. Deputy Speaker, Sir, Kebirigo Tea Company Limited is owned by farmers and all the vehicles and other property, therefore, belongs to all of them. But in this case, the issue is that a few farmers are suspected to have falsified the weight of green leaves. The directors who represent the farmers are unhappy about paying a huge sum of Kshs588,910.20 to farmers whom they believe have falsified weights of green leaves. They have, therefore, gone to the High Court to try and challenge the decision of the lower court to award this money to a

few people who are suspected to be dishonest and trying to cheat the rest of the farmers. I think the action by the directors must be endorsed in this particular case in order to save the overall interest of the other farmers.

Mr. Obwocha: Mr. Deputy Speaker, Sir, while I totally agree with the Minister, if they are going to withhold this money, the most logical thing to do then is for KTDA and the company to go to court and argue their case out. They cannot hold the money and at the same time, ask the farmers to continue delivering tea leaves. They are now holding the subsequent tea repayments. Could the Minister either establish a committee to verify whether these payments should be released to the farmers? If there is falsification, then we will support them.

Mr. Obure: Mr. Deputy Speaker, Sir, the money we are talking about is Kshs588,910.20. That is the money that is held by the court. It has been deposited in the court and it is the one which will decide, after the appeal, whether the money can be paid to the farmers. If the same farmers are delivering tea leaves to Kebirigo Tea Factory, then I will instruct them to pay them accordingly for what they have delivered subsequent to this order.

Mr. Deputy Speaker: Next Question, Mr. N. Nyagah!

ALLOCATION OF EASTLEIGH SOUTH
GOVERNMENT LAND

Mr. N. Nyagah: Mr. Deputy Speaker, Sir, I beg to ask my brother the following Question by Private Notice.

(a) Is the Minister aware that illegal allocation of Government land, adjacent to Eastleigh South, is currently being undertaken by unauthorised persons while over 5,000 people in Kiambiu Slum Village have no land or plot?

(b) Is he further aware that a sum ranging between Kshs5,000 and Kshs10,000 is being demanded under the banner of Kiambiu Settlement Scheme, Eastleigh South?

(c) What plans does the Government have in settling people living in informal settlement? Could the Minister order a stop to this and nullify the said allocations forthwith?

(Laughter)

I do not see the need for excitement!

The Minister for Lands and Settlement (Mr. J. Nyagah): Mr. Deputy Speaker, Sir, I beg to reply.

Mr. Obwocha: On a point of order, Mr. Deputy Speaker, Sir. Is the Chair satisfied that the Member has asked the Question properly? How could he ask his brother? He should be asking the Minister!

Mr. Deputy Speaker: I think the Chair caught him quite accurately. The Chair knew the brother he was talking to as the Minister for Lands and Settlement!

(Laughter)

The Minister for Lands and Settlement (Mr. J. Nyagah): Mr. Deputy Speaker, Sir, I beg to reply.

(a) I am not aware that illegal allocation of land is currently being undertaken by unauthorised persons at the expense of Kiambiu Slum residents who have no land in Kiambiu Slum Village.

(b) I am also not aware that a sum of money ranging from Kshs5,000 to Kshs10,000 is being demanded from the applicants under the banner of Kiambiu Settlement Scheme. We do not have such a settlement scheme in Nairobi. I have asked the Provincial Administration to investigate and take appropriate legal action against the culprits who may be obtaining money from people by false pretences.

(c) My Ministry, in collaboration with the City Council and the Provincial Administration, will plan the slum areas in order to regularize the informal settlement. The exercise has been delayed due to lack of resources. The alleged allocations are illegal and, therefore, a nullity.

Mr. N. Nyagah: Mr. Deputy Speaker, Sir, we used to know this Minister for a long time in this House as a good man in the manner in which he answered Questions. However, he will wreck his name in this House for one reason, that his officials in the Ministry are not being transparent and honest. I have here with me a letter written by the residents of Kiambiu dated 28th March 2001, and I would like to table it. It is copied to the Permanent Secretary, Ministry of Lands and Settlement; the Head of the Public Service and also to the Provincial Commissioner bringing to the attention of the Ministry this illegality. That is just one letter.

Mr. Deputy Speaker, Sir, I have yet another letter which has also come from the residents of Kiambiu, dated 5th February 2001, again, bringing to the attention of the Permanent Secretary through the Minister this illegality. I have a receipt signed by the councillor of the area, Mr. Kiragu, titled Kiambiu Settlement Scheme, which has 5,000 plots going for Kshs300,000. Since he has accepted to nullify the allocation, and I want to table the document for his

attention, who in the opinion of the Minister, is going to ensure that all the houses that have been newly constructed in Kiambu have been brought down?

*(Mr. N. Nyagah laid the documents
on the Table)*

Mr. J. Nyagah: Mr. Deputy Speaker, Sir, let me confirm a few things. This particular piece of land belongs to the Department of Defence (DOD). I have had consultations with my colleague in charge of the DOD to make sure that they acquire back their land.

Mr. Maitha: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister trying to mislead this House by saying that there is land belonging to the DOD while he is the Minister in charge of all land in this country?

Mr. J. Nyagah: Mr. Deputy Speaker, Sir, I fully agree that, initially, the land was mine before I dished it out to various Government departments. In this particular case, the land was given to the DOD. Illegally, some people have cut the fence of the DOD and converted the land into an illegal settlement. That is why I said in my answer that I am going to consult with the Minister in charge of Internal Security in order to ensure that the Provincial Administration, the DOD and ourselves sit together and resolve that irregularity. My Ministry will not give any documentation to make it a legal settlement whatsoever. But it needs the sitting down of the DOD, ourselves and the Provincial Administration to resolve it once and for all.

Mr. Muchiri: Mr. Deputy Speaker, Sir, this is a very serious matter. There are over 5,000 residents in that slum. The Provincial Administration in conjunction with the councillor, have been allocating these plots. It is true the land belongs to the DOD. It is the Office of the President which has been allocating those plots in conjunction with the councillors and DOs, and the PC is aware of it. If these houses will be demolished, where will those people go to?

Mr. J. Nyagah: Mr. Deputy Speaker, Sir, serious allegations are being made in this House which require further analysis. It is a DP councillor who is doing it. That is why I said it will become necessary for us to consult.

Hon. Members: No! No! It is the PC!

Mr. Ndwiga: On a point of order, Mr. Deputy Speaker, Sir, I want to seek your guidance. If the Minister is unable to answer a Question, are we going to allow this House to be used for trivialities? It has been alleged here that DOs, chiefs and a councillor are the ones doing that job. Do the DOs and chiefs belong to the DP? Could you please ask the Minister to be serious on such very serious matter and not to trivialise it?

Mr. J. Nyagah: Mr. Deputy Speaker, Sir, I have confirmed that the Government side - the three Ministries involved - are going to sit down because it is a very serious matter, but I would also like to ask the DP to talk to their councillor because he is also party to that issue.

(Applause)

An hon. Member: Have we, in DP, taken over the Government?

Mr. N. Nyagah: Mr. Deputy Speaker, Sir, I do not want to appear to be the man who is bringing chaos to Nairobi, but I am capable of also bringing mayhem in that village. I am urging the Minister for Lands and Settlement, in consideration of the three arms of Government that he has talked about, that--- The local hon. Member, who is myself, is considered to be part and parcel of that because we have 10,000 people in the slum who live here. But regarding this particular slum area that we are talking about, the one I have brought the Question about, which, indeed, is being sold, there are no people living on it.

Mr. Deputy Speaker: Order, Mr. N. Nyagah! You are now not asking a question; you are making a speech.

Mr. N. Nyagah: Mr. Deputy Speaker, Sir, my question is as follows: Is the Government going to consider nullifying those allocations so that there is no mayhem? I am ready to negotiate with those three arms of the Government so that we can at least leave the people of Kiambu untouched, and that the newly allocated parcels of land should be nullified using a bulldozer to bring down the new irregular allocations. The Government should move in there tomorrow. The Minister should liaise with the Office of the President and bring in bulldozers and remove those people who have paid money illegally to acquire those parcels of land.

Mr. J. Nyagah: Mr. Deputy Speaker, Sir, I want to confirm a few things. I am not in charge of that illegal structure, but I have promised to work with my colleagues in the Office of the President who are in charge of the Provincial Administration and the Department of Defence, who are the real owners of that land, in order to find a solution to that problem. I have no problem with the councillor, the hon. Member and the local leadership, and they can be party to sorting out that problem. The Government is very keen in not only solving that particular problem, but also all the problems of Nairobi. In fact, we are working closely in looking for money from the World Bank and the

Treasury in order to resolve problems in all the slums in Nairobi.

Mr. Deputy Speaker: Order, Mr. Minister! The point is very simple. Mr. N. Nyagah merely wants you to confirm that you are going to be the convenor, and when you do convene that meeting, he will be invited.

Mr. J. Nyagah: Mr. Deputy Speaker, Sir, I have no problem myself, and I have said that he can come with the councillor and other local leaders.

Mr. Deputy Speaker: Next Question by Dr. Murungaru!

Dr. Murungaru: Mr. Deputy Speaker, Sir, it is unfortunate that I do not have a brother in this House to answer my Question. However, Mr. J. Nyagah is almost my brother.

Mr. Deputy Speaker: All Kenyans are brothers.

RESETTLEMENT OF FORMER FOREST SQUATTERS

Dr. Murungaru: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Lands and Settlement the following Question by Private Notice.

(a) Could the Minister consider settling former forest squatters evicted from forest villages in Nyeri and Meru Central districts in 1989 on land other than gazetted forests?

The Assistant Minister for Lands and Settlement (Mr. Tarar): Mr. Deputy Speaker, Sir---

(Laughter)

Mr. Deputy Speaker, Sir, I beg to reply.

Due to scarcity of land, it is not possible at the moment to consider resettling former forest squatters who were evicted from forest villages in Nyeri and Meru Central District in 1989. The respective district Development Committees should look for ways and means of assisting these people within the two districts.

Dr. Murungaru: Mr. Deputy Speaker, Sir, while asking this Question, I had in mind the possible alternative sites to be used to settle the many squatters in Kieni and Meru and other parts of the country in a proper manner. In that area, and around Nanyuki, we have got more than 250,000 acres of land lying idle; in Olpejeta Ranch, Mutara Ranch and Solio Ranch. The ranchers are willing to sell that land, but the Government has been unwilling to purchase those ranches under the Settlement Fund Trustee Scheme. Could the Assistant Minister tell us whether he has got funds available in the SFTS and whether, if I send my contacts to those ranchers, he could consider setting up settlement schemes there in order to settle those farmers?

Mr. Tarar: Mr. Deputy Speaker, Sir, I hope even the hon. Member is aware that those ranches are private land, but we, in the Ministry, do not have enough land to buy that land, so that we can settle those people there. If funds will be available, we will be able to buy that land.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. The Government set aside 2,000 hectares of land in Sirimon, on the slopes of Mt. Kenya, specifically to settle squatters from that region - Nyeri and Meru Central districts. Is the Assistant Minister telling this House that those 2,000 acres will not be given to those people who do not come from that area? This is because that was done three years ago, and there are no squatters have been settled on that land.

Mr. Tarar: Mr. Deputy Speaker, Sir, that exercise is going on, but I want to assure hon. Members that, that particular land, which is going to be available, will not accommodate all those squatters who were kicked out from the forest.

Mr. Murathe: Mr. Deputy Speaker, Sir---

Mr. Kiunjuri: On a point of order, Mr. Deputy Speaker, Sir. This is a very serious point of order.

Mr. Deputy Speaker: If it is not a point of order, there will be consequences.

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, we passed in this House last year, a Motion which I brought and the Minister for Lands and Settlement assured this House that the squatters from the same area were supposed to be settled. Are we running two parallel governments? This is because even the Minister for Lands and Settlement assured us that all the parcels of land that were excised from the 67,000 acres were supposed to be issued out to squatters. Are we running two parallel governments; one telling us that the squatters should be settled and the other one telling us that there are other people who will be settled on the same land?

Mr. Deputy Speaker: So, what is your point?

Mr. Kiunjuri: Mr. Deputy Speaker, Sir, my point is: Is the Assistant Minister not misleading this House?

Mr. Deputy Speaker: Order, Mr. Kiunjuri! If there is a Motion that has been passed in this House to the effect that the squatters should be settled, then, that is it. Now, the Assistant Minister has told you that he does not have

enough land to cater for all the squatters. So, what you should be pressing the Assistant Minister to do is to find more land.

Proceed, Mr. Murathe!

Mr. Murathe: Mr. Deputy Speaker, Sir, considering that the "Minister for excision" is already excising a lot of forest lands and other lands which he promised to take hon. Members to in order to verify---

Mr. Deputy Speaker: Order, Mr. Murathe! There is no Minister for excision and he cannot excise any other land except forest land.

Mr. Murathe: Mr. Deputy Speaker, Sir, considering that the Minister had undertaken to take hon. Members on a fact-finding tour to establish genuine squatters and those areas with forest lands that need excising, could the Assistant Minister then stand in this House and tell us that he does not have land? Mr. Tarar, what are you doing with all that land which you are currently telling Kenyans that you are excising?

Mr. Tarar: Mr. Deputy Speaker, Sir, I think the hon. Member is aware that it was actually the Committee of this House which was to take the officials from my Ministry to that particular area, but they have already failed to take them there. As I said, if we had enough land, we would have just gone ahead and considered the squatters.

Thank you.

Mr. Wamae: Mr. Deputy Speaker, Sir, could the Assistant Minister confirm that land in Hombe and Gathiuru is going to be given to these forest squatters? I think this land has been surveyed by the Ministry of Lands and Settlement and it should be given to these squatters.

Mr. Tarar: It has always been the responsibility of the Ministry to give land to the squatters.

Ms. Karua: On a point of order, Mr. Speaker, Sir. If, indeed, as pointed out by Mr. Kiunjuri, a Motion was passed by this House for settling these squatters and the Assistant Minister did undertake to settle them--- This issue can be confirmed in the HANSARD. Why he is telling us today that he has no land to settle these squatters? He must have considered this issue when he was giving that undertaking to the House. If he stands there today and recants, then he is treating this House with utter contempt and, I think, under Standing Order 98(3), that would amount to disorderly conduct on the part of the Assistant Minister, for which he ought to be named. I am seeking the direction of the Chair because the business of this House cannot be conducted in an atmosphere where Members take each other for granted. I am inviting the Chair to verify the fact and make a ruling.

Mr. Deputy Speaker: Yes, I really cannot recall that debate, and if I do, I cannot recall its details. But I will check the HANSARD to establish whether the Assistant Minister did give an undertaking to this House that he would settle these squatters. If he did do that, then clearly what he has said today contradicts that position, which was by way of a response from the Government and appropriate action will be taken. Let me say that this is the second time that this Standing Order has been invoked. But I want hon. Members to look at it again carefully to see that when they invite the Speaker to name somebody, it is really a totally disorderly conduct.

Mr. Ndicho: Mr. Deputy Speaker, Sir, the issue of land finds a very deep place in my heart. The Assistant Minister says that, "due to scarcity of land" these people cannot be settled. I want to remind the Assistant Minister that, these people who live around Mt. Kenya region - Nyeri and Meru - are the people who fought for the Independence. When they were beaten by the whitemen, they went to the forest to hide. When Independence came, President Jomo Kenyatta announced that they should come out because we had attained our Independence. When they came out there was no land because it had been taken by the big people and some whitemen who had refused to go away. They went back to the forest.

Mr. Deputy Speaker: Order! This Question is dealing with people who have lived in the forest for ages, or those who worked for the Government!

Mr. Ndicho: Mr. Deputy Speaker, Sir, when these went back to the forest, they were given the name "forest squatters." Going by the fact that the Assistant Minister promised this House that he was going to resettle all squatters, what is he going to do with all the land that is occupied by the white people around Mt. Kenya, for which these people fought? He cannot tell us that there is scarcity of land when there is a lot of it around Mt. Kenya!

Mr. Tarar: Mr. Deputy Speaker, Sir, I think Mr. Ndicho is aware that the land which have already been mentioned is private land which has got nothing to do with my Ministry.

Mr. Deputy Speaker: Order! Order!

Dr. Murungaru: On a point of order, Mr. Deputy Speaker, Sir. Can I have a chance to raise an issue?

Mr. Deputy Speaker: It is for me to give!

Dr. Murungaru: Thank you very much.

Mr. Deputy Speaker: No, I have not given it to you.

Mr. Ndicho's Question for the second time! Proceed, hon. Ndicho!

Dr. Murungaru: Mr. Deputy Speaker, I want to know when the Chair will be able to make a ruling on the

invitation that you received from Ms. Martha Karua, taking into account the importance---

Mr. Deputy Speaker: I will do so on Tuesday next week!

Proceed hon. Ndicho!

POLICE CANCELLATION OF
MARALAL RESIDENTS' JOURNEY

Mr. Ndicho: Mr. Deputy Speaker, Sir, I wish to, most sincerely, apologize for coming late. However, I beg to ask the Minister of State, Office of the President the following Question by Private Notice.

(a) Who gave orders to police in Maralal on Sunday 25th March, 2001, to prevent members of the Pokot, Samburu and Tugen communities from travelling to Nairobi to attend their case at the High Court?

(b) Who will compensate the victims for the debt of Kshs350,000 they incurred on hiring transport to Nairobi?

(c) Could the Minister assure the House that these people will not be prevented from coming to litigate their cases in Nairobi?

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

(a) The police were acting on information to the effect that the group mentioned by the hon. Member was headed for Nairobi to stage an illegal demonstration at the High Court of Kenya. The police took preventive action in accordance with Sections 62, 63 and 64 of the Criminal Procedure Code, Cap.75, of the Laws of Kenya.

(b) The issue of compensating the group for the expenses incurred does not arise. People cannot be prevented from travelling, if their intentions are lawful.

Mr. Ndicho: Mr. Deputy Speaker, Sir, this is another very sad answer because this is not another issue that concerns land. Now, the Pokot, the Samburu and the Tugen went to graze their cattle in some land that belongs to a German girl called Kurki Kurlman. When they went there, she took them to the High Court in Nairobi. During the hearing of their case, they went and hired buses to come to Nairobi to hear their case. This is the time that the police prevented them from coming to Nairobi, making it impossible for their case to be mentioned or to be heard. Now, is their intention to come to court to hear their case being termed as an illegal action by this Government which prevented them from hearing their case in court? Is that illegal?

Mr. Samoei: Mr. Deputy Speaker, Sir, as the hon. Member has mentioned, there was a negotiated agreement between the owner of the private ranch, whose name has been given by the hon. Member as Kurki Kurlman. During the drought, local people, especially the Samburus and Pokots mainly, approached this lady who was kind enough to let them graze their animals in her ranch. It was agreed under certain conditions that the local residents could keep the number of animals to a certain level so that they do not destroy the ranch of this lady. These local residents abused the trust and the agreement to the extent that they burnt down---

Mr. Muite: On a point of order, Mr. Deputy Speaker, Sir. Although the Question by the hon. Member for Juja relates to the prevention of these people from coming to the High Court in Nairobi, the Assistant Minister is now going to the merits of a case which he knows is pending before the High Court. Is the matter not *sub judice*? Why should he not confine himself to answering this House as to why these plaintiffs, because they were party to the case, were prevented from coming to conduct their case in Nairobi?

Mr. Samoei: Mr. Deputy Speaker, Sir, as to whether the issues I am raising here are matters *sub judice* or not, it is for the Chair to determine. However, I wish to state, as I have already done, that this agreement was abused and this lady went to seek redress in court. On 25th March---

Mr. Deputy Speaker: Mr. Samoei, Mr. Ndicho asked you whether the very fact of their coming to Nairobi constitutes an illegality.

Mr. Samoei: Mr. Deputy Speaker, Sir, the case was filed at the High Court, but there was no hearing or mentioning of the case on 26th March, 2001.

An hon. Member: If the plaintiff was not there, there would be no hearing.

Mr. Samoei: Mr. Deputy Speaker, Sir, the group, however, went ahead and hired four buses. Our intelligence report gave us information that they intended to carry out an illegal demonstration in the City. I would like to say that the police took preventive measures in accordance with the law.

Mr. Muite: Mr. Deputy Speaker, Sir, if the police received intelligence reports that these people were coming to demonstrate in the City--- In fact, these people were coming for their case; they are the plaintiffs because they are the ones who had taken the lady to court.

Could the Minister explain to this House why it was not possible for the police to telephone the Registrar of the High Court to verify whether these people had a case in court or not? This is because they told the police in Rumuruti that they were plaintiffs and they were coming for their case. Why did the police not telephone the Registrar

of the High Court to verify that information before stopping them from coming to Nairobi?

Mr. Samoei: Mr. Deputy Speaker, Sir, the facts of this case, while they receive overwhelming support from hon. Members here, who have advocated for illegal invasion of farms belonging to non-indigenous Kenyans, we were not going to allow a situation that had precipitated elsewhere in the country to take place. We did take action in accordance with the law.

Mr. Ndicho: Mr. Deputy Speaker, Sir, you have already heard the bias that the Assistant Minister has put on this Question; that I have called for illegal occupation of this land. That is why they are now punishing the Pokot, Tugen, Samburu and Marakwet communities. I now understand the reason why even the Pokot, the Marakwet and the Samburu do not want to hear anything from this Government.

Mr. Deputy Speaker: Mr. Ndicho, ask your question!

Mr. Ndicho: Mr. Deputy Speaker, Sir, now that the Assistant Minister has known and it has been confirmed by the hon. Member for Kikuyu, when these people come to court--- It is this white woman who has sued these people.

Mr. Deputy Speaker: Mr. Ndicho, ask your question!

Mr. Ndicho: Mr. Deputy Speaker, Sir, the next time these people will come to court, will the Assistant Minister order his policemen to prevent them from coming to hear their case?

Mr. Samoei: Mr. Deputy Speaker, Sir, in respect of private property, which our Constitution subscribes to, it really does not matter whether this woman was white or black. We would still take the same action. When these people will come for the hearing of their case, they are entitled to and nobody will stop them.

Mr. Deputy Speaker: That is the end of Question Time.

Mr. Muiruri, you can now stand on your point of order.

POINTS OF ORDER

FATE OF DEFERRED QUESTION

Mr. Muiruri: Mr. Deputy Speaker, Sir, on Thursday, last week, I had a Question addressed to the Minister of State, Office of the President in charge of Internal Security about a murder and two robberies which were committed in my constituency by some policemen. First, the Minister denied any knowledge of these incidents. Later on, I furnished him with the names of the policemen and the Chair deferred the Question to today, but it is not on the Order Paper.

Mr. Deputy Speaker: It is true that last week on Thursday, I did defer a Question which was asked by Mr. Muiruri and directed to the Minister of State, Office of the President regarding a murder and two robberies in his constituency. I would like to say that it is entirely my fault that I did not record against your Question that it should be brought up today and that is why it is not on the Order Paper today. But I would like to assure you that it will appear on the Order Paper, tomorrow afternoon.

SUGAR DEVELOPMENT LEVY FUND FIGURES

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, yesterday during the proceedings of the House, while the Minister for Agriculture was making a Ministerial Statement on the sugar industry, I disputed the figures that he had with regard to the Sugar Development Levy Fund, and I was asked to come and substantiate why it is that the Minister's figure of Kshs7 billion collected from the Levy Fund is different from my figure of Kshs13.2 billion. I have come with my figures today and I would like to table them before the House. I have held extensive consultation with the Kenya Sugar Authority (KSA) and the Ministry of Agriculture, Livestock and Rural Development. I would like to table the following figures, but the House needs to know the summary because this is a long document.

Mr. Deputy Speaker: Which document are you reading from?

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, the document I am reading from is a summary of figures I have compiled from the KSA annual report and accounts for the period 1992/93 to 1999/2000, and these figures have been audited by the Auditor-General (Corporations). I have also included the STF cumulative interest schedule for the period 1992 to 30th June, 2000. Between 1992/93 Financial Year to 1999/2000 Financial Year, both in terms of Sugar Development Levy Fund for local production and imports, the total comes to Kshs9,096,264,380. The STF cumulative interest schedule between January, 1992 to 30th June, 1998, again from the same document, amounts to Kshs658,678,035.05. The interest to June, 2000, which is estimated from this report, because it is not yet available, comes to Kshs164,669,508. The cumulative interest schedule for that period, when it is totalled comes to Kshs823,347,543.05. That makes the total levy plus interest come to Kshs9,919,611,923.05. When this figure is rounded up, it comes to Kshs10 billion.

Now, we should come to the rationale behind the Kshs13.2 billion. If we include the figures given in the above table and the notes therein, which do not include sugar levy arrears that the factory owes to the KSA--- I have also calculated sugar levy arrears that the factory owes to the KSA plus factoring in the levy evaded as a result of importers disguising their imports as industrial sugar or simply evading duty altogether since 1992. That brings us to an estimate of Kshs320,200,000 every year from 1992, which makes a total of Kshs3.2 billion. If you add Kshs3.2 billion to Kshs10 billion, you get Kshs13.2 billion. I would like to table this report.

(Prof. Anyang'-Nyong'o laid the report on the Table)

Further, another report that I would like to table is in connection with the reasons why the Ministry of Agriculture, Livestock and Rural Development does not collect levy funds from the Ports and the funds are being evaded. I would like to table a letter from the Ministry of Finance and Planning, dated 5th February, 1998 together with the contract with SWIPCO dated 3rd April, 1998 and a communication from the Ministry of Agriculture, Livestock and Rural Development dated 27th July, 1998.

(Prof. Anyang'-Nyong'o laid the documents on the Table)

In these documents, you will find the reasons why the levy is being evaded. If the Government had been wise enough to learn from our next door neighbour, Uganda, which refused to hire SWIPCO as a pre-shipment agent, and I think SWIPCO, until its "sum" ended in 2000--- This is important for the House. I would like to quote these paragraphs and then I sit down.

Mr. Deputy Speaker: Order, Prof. Anyang'-Nyong'o! You have more than acquitted yourself.

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, but I was just giving reasons why the Levy Fund is being evaded. Nonetheless, the documents which we have here are important in my calculation, and I am quite sure that the Minister for Agriculture, in consultation with his officers, will do this country duty by collection of these funds.

The Minister for Agriculture (Mr. Obure): Mr. Deputy Speaker, Sir, the Statement I issued yesterday related to how much levy had been collected by the Sugar Development Fund over the years since its inception.

Listening to the allegation made by Prof. Anyang'-Nyong'o, there is an attempt by him to justify the figure he quoted by including in it an element of interest and what he considers to have been evaded by the potential payers of that levy. I have not looked at those documents, but I am not so sure that he has substantiated the figure he has talked about. He has talked about interest when interest does not arise in this particular case. I was addressing simply the question of the amount of levy paid to the Sugar Development Fund over the years and the interest factor.

Prof. Anyang'-Nyong'o: Mr. Deputy Speaker, Sir, I am really surprised by the response by the Minister. Indeed, my figures are based on public records. If, in simple accounting, you cannot include the interest accruing from a sum of money as part of that sum, then, indeed, the Minister needs to go back to the University of Nairobi, and take a course 101, Bachelor of Commerce.

The Minister for Agriculture (Mr. Obure): Mr. Deputy Speaker, Sir, Prof. Anyang'-Nyong'o is, in fact, a political scientist. If he were an accountant, he would know that interest for this purpose is not considered as a levy. It would be considered as a separate item of revenue. Therefore, I am not sure whether Prof. Anyang'-Nyong'o has substantiated the allegations he made.

Mr. Deputy Speaker: Order! I think we are now beginning to indulge in a bit of semantic squabbles. Prof. Anyang'-Nyong'o was required to indicate his source of the figures and he has done that very adequately. So, if you have differences as to your approaches to accounting or to balance sheet interpretation, you can settle that outside the Chamber.

BILLS

Second reading

THE CONSTITUTION OF KENYA REVIEW (AMENDMENT) BILL

(The Attorney-General on 24.4.2001)

(Resumption of Debate interrupted on 24.4.2001)

Mr. Muite: Mr. Deputy Speaker, Sir, I thank you for giving me this opportunity to contribute to this important Bill.

I would like, at the very onset, to say that I have always consistently and persistently supported a unified approach to constitutional review in this country. I have repeatedly said that we cannot have a successful review of our Constitution unless a consensus is developed. I would like to say, and the Attorney-General (AG) will bear me witness, that before we went to Safari Park Hotel, the very origin of that consensus was the meeting we Opposition leaders and certain Cabinet Ministers had in 1998 in the house of the former German Ambassador. That is where we started meeting and met a couple of times. It was the first time that we had dialogue with our counterparts. Before that time, we were talking to each other through the media. After a couple of meetings, we then started meeting and talking in the AG's Conference Room. It was from the Conference Room that we expanded our group to include other hon. Members of this House. Then we went to the Bomas of Kenya where we brought in the Civil Society and religious leaders. From the Bomas of Kenya, we went to Safari Park Hotel.

So, I have always been for a merged constitutional review process. Even at Ufungamano, I was for a merged process. I pointed out at Ufungamano that we should not repeat the mistakes that we have made in the past. It will be recollected that after the Safari Park Hotel meetings, we enacted the 1998 Act. The 1998 Act, which amended the 1997 Act, was the result of the consensus which we developed in Safari Park Hotel. I am saying that we made mistakes at the Safari Park Hotel meetings. We should learn from history, and should not repeat any mistakes when enacting the present Bill. The 1998 Act specified that the Parliamentary political parties would nominate 13 Commissioners to the Commission. When we were having those discussions at the Safari Park Hotel, it was agreed that KANU would nominate five of those 13 Commissioners. The Democratic Party of Kenya (DP) was to nominate three Commissioners and the other political parties had their share. The distribution of the 13 Commissioners had been agreed upon. In the 1998, we failed to put a section in the Act stating how many Commissioners KANU was to nominate and how many Commissioners DP was to nominate. That matter was left to a gentleman's agreement. It was not in the Act. We came here and passed the Bill. The Bill became law and immediately after the Bill became law, KANU said that it wanted to nominate seven Commissioners. That was why KANU then stormed the meeting at County Hall and scuttled the whole process. As a result, the process stalled.

Mr. Deputy Speaker, Sir, we appear here to be repeating the same mistake. We have not learnt from failure to specify in the law how these Commissioners will be appointed. So, while I support the merger, I would appeal to my colleagues here that we should not leave a loophole where tomorrow, after we pass this Bill, we will get into disputes and start quarrelling and disagreeing on the implementation of the Act, which we are enacting today. Unless we clarify these matters and actually have them in the law, we are leaving room for disputes.

If you look at page 438 of the Constitution of Kenya (Amendment) Bill, 2001, Section 8, which is the result of the merger negotiations, is being amended to reflect what was agreed upon as a result of the merger discussions. The amendment of Section 8 is meant to simply increase the number of Commissioners from 15 to 27 Commissioners. It states:-

"Delete 15 and insert 27".

But when you look at page 438 Sub-Clause (4), for the purposes of section 8, which increases the Commissioners from 15 to 27 Commissioners, it states:-

"The 12 new Commissioners aforesaid shall be nominated from a list prepared and forwarded to the National Assembly by the Chairperson of the Commission".

So, that Section does not say where the additional 12 Commissioners will be nominated from. If we enact this law in its present format, all that the Chairman of the Commission is required to do is to forward a list of 12 names. The Ufungamano Initiative is not mentioned. There is no legal requirement or right in the Ufungamano Initiative to forward the 12 names to the Chairman of the Commission. That is creating room for disputes tomorrow. If we enact this law in the present format, Mr. Kamotho, who never loses any moment to remind us that he is the Secretary-General of the ruling party, KANU, will be absolutely within his right to come and say to us: "Show me where it gives the Ufungamano Initiative the legal right to forward the names!" It will be within his right. Even Mr. Ruto will be perfectly entitled to ask: "Who is the Ufungamano? We do not know any Ufungamano!" What this Section says is that the Chairman of the Commission is to forward 12 names to Parliament.

If, indeed, during the negotiations, the two sides had agreed that the Ufungamano was to nominate 12 Commissioners, why do we not avoid potential conflicts and disputes, by amending this Act in order to say that the Ufungamano will nominate 12 Commissioners. That is what we failed to do at Safari Park. Do we have to repeat the same mistakes here? I am saying that we support the merger, but could we close the loopholes? Why are we shy to mention the Ufungamano? If we sat down with the Ufungamano and agreed that they were to nominate 12

Commissioners, let us say so in the letter of the law so that, we do not start disputing it tomorrow! Mr. Sunkuli will be entitled to argue that within those 12 additional Commissioners, since the law does not say that they are to come from the Ufungamano, he is entitled to bring one Maasai Commissioner from Kilgoris or Trans-Mara! He will be able to say that. So, I am saying that, if there is truly an agreement, the work of good lawyers is to ensure that there are no disputes in future. You look into the future and close all the loopholes. We support the merger, but we are asking the other side of the House that, if they are genuine, let us provide in this House that the Ufungamano will nominate 12 Commissioners. You could see that even yesterday, when Mr. Raila was making his contribution, it appeared that a final agreement was reached as to whether the Ufungamano will nominate 10 or 12 Commissioners.

But leaving the numbers aside for the time being, I am saying that, even if the Ufungamano is to nominate 10 Commissioners, let us agree so and put it in the letter of the law in the Act. Do not leave it to implications and gentlemen's agreements because some of the people that we are dealing with are not gentlemen! Let us rely on the law and not on gentlemen's agreements.

Mr. Deputy Speaker, Sir, the other very serious shortcoming that I have, and which I would like to see addressed, relates to what is called minimum reforms. If you look at page 429 of the Bill which we are debating, Clause 22, which is amending Section 26 of the principal Act, requires the Commission to complete its work within a period of 24 months, that is within two years. The Attorney-General says that the date of commencement was 4th October last year. So, we have a period of approximately 17 months remaining, and the Commission has not commenced its work. If we pass the Bill in its present form, we are going to take another couple of weeks disputing, disagreeing and quarrelling on the appointment of the 12 additional Commissioners. We will be asking whether they will come from the Ufungamano and whether they will be 10 or 12. That will take a bit of time before the Commission can commence its work. I think it is totally unrealistic and naive to expect that we can have a new Constitution within the remaining period of 17 months, even if the Commission was to commence its work tomorrow! We are talking about people-driven constitutional reforms. We are talking about involving the Kenyan people in the grassroots, in the constitution-making process. Therefore, you cannot begin to ask the people in Marakwet, Samburu and Trans-Mara to participate in the constitution-making process, before you carry out very intensive civic education. Civic education will take time and clearly, you have got to give adequate time for it.

We are also going to quarrel about the contents of that civic education. Civic education is one of the other areas, if I might digress a little, that requires addressing here. We need to agree upfront in this Act, before we enact it; just precisely who is responsible for civic education. I agree that the Commission can supervise and coordinate civic education, but we need to elaborate on it, so that we can close other loopholes for quarrels. We need to say here that the Commission has got the right to enlist the religious sector in civic education. We need to spell out that the Commission has got the right to involve the Non-Governmental Organisations (NGOs) and civil societies in carrying out civic education. We need to spell out the rights of even unregistered groups like Mageuzi to carry out civic education for their supporters. We need to spell out that the political parties are entitled to carry out civic education. If we fail to do that, we are leaving room for disagreements. We are leaving room where somebody somewhere, in the Executive arm of the Government, will use the Provincial Administration and the police to disrupt civic education meetings. So, those are loopholes that require to be closed. What I am saying is that, even where we close those loopholes regarding the civic education, we must allocate adequate time for every Kenyan to be brought up to the point where, he or she can effectively participate in the constitution-making process. You cannot rush the constitution-making process. That is a process that is done correctly and thoroughly; and the minimum period it has taken in any country anywhere else in the world is three years. Most processes take four, five or even seven years. Let us not rush the process because if we rush it, we are not going to get it right. Let us take our time.

Mr. Deputy Speaker, Sir, we should not forget that in Kenya, there are some very contentious issues which, by their very nature, will be very contentious when we embark on the process. You will have to allocate enough time for them. For example, I do not agree with Mr. Nassir on his song about Majimbo. But I will defend to the hilt, the right of Mr. Nassir to try and convince the rest of Kenyans about the advantages of the Majimbo system. That is his right and he must be given it to do that. We have to argue and accord each other time to call each other names, and be very angry with each other, until all of us come down and speak to each other. If you do not give that time, you will not be able to develop consensus and a successful constitution-making process. The issue of Majimbo will take time.

The issue of land holding and use will also take time. Are we going to have a ceiling on how much land an individual can own? We are going to debate about the right of any Kenyan to buy and settle on a piece of land in any area in this country. There are people who genuinely hold the view that certain areas should be reserved for the people of that area. We must not impose our views on them. We want to hear them. We want them to listen to us so that, at the end of the day, we can develop a consensus. The issue of land is very contentious in this country, and it will take time. There is no way in which you can develop a policy on land within the remaining 17 months. Land will form a central issue in the new constitutional order.

This nation is polarised along ethnic lines. We have got to address how we will reduce ethnicity and balkanising this country along tribal lines. That will take time. There are other serious issues.

In my view, we must now, for the first time, bring into our Constitution, economic issues. That is because much more important, than the freedom of speech and other things, are economic issues, health services, employment, decent housing, water and adequate food. The economic issues have got to be factored in the new constitutional order. How do we divide our resources is an issue that will call for debate for a very long period of time. Can we agree on a formula to see how much of the income generated from Murang'a District will be retained in that district, and how much will go to the Central Government? We have got many issues that will take time such that it is not possible. I have a lot of respect for the chairman of the Commission, Prof. Yash Pal Ghai, but when he starts promising Kenyans that he will give us a new Constitution before the next elections which is within 17 months, he is not being realistic. When you look at page 429, after the Commission is required to complete its work within 12 months, sub-section three says that if within 12 months after commencement of its work, it finds it cannot complete its work within the remaining period, they will within 12 months make a request for extension of that period of 24 months.

Sub-section four goes on to say that in making that request the Commission will have the power - this is where the devil rests - to recommend minimum reforms. This is another IPPG. Here is a Commission, the majority of whose members are partisan, despite all this talk from Mr. Raila that once they are appointed they are non-partisan. Why are we spending so much time deciding on who will appoint what number of commissioners if, after appointment, they will be non-partisan? In practical terms they will not be independent unless we provide adequately for that independence in the Bill. They will be partisan. How can we give this political power to a Commission that is controlled by one or two stakeholders to recommend minimum reforms? This is a political decision. I am saying that this is a serious flaw. These Commissioners should not be given this power.

We must be realistic and accept that we will not have a new Constitution before the next elections and, therefore, examine the other options that exist. One of the options is that instead of passing the buck, we the stakeholders who have negotiated for this merger should assume the responsibility of debating, dialoguing and developing the consensus on those minimum reforms now upfront, so that we know exactly what we have agreed upon. Let us not leave it to the future. Let us divorce the constitutional reform process from the next elections. Let us go back to Safari Park Hotel as stakeholders and negotiate an interim Constitution. That is the way forward for this nation. This is a gaping loophole; the failure to recognise that we will not have a new Constitution before the next elections and to discuss, negotiate and agree on an interim Constitution and a package that is targeted at the next elections. This is what we must do. I am making a passionate appeal on this issue of minimum reforms to my friend Mr. Raila.

There are many people in this country who have helped steer laws in this House and they have fallen victim to the laws that they steered. I do not want my friend Mr. Raila to steer a law and then he becomes a victim of it. I make a passionate appeal to Mr. Kibaki. I would like Mr. Kibaki to have a fair chance at having another go at the presidency. Let us agree on a package which is targeted at the next elections. It should ensure that we can have a free and fair election. If we enact this law in its present format, we are handing the ruling party, KANU, an opportunity through the control of a majority of the commissioners, to come up with a package of minimum reforms which will ensure that KANU, together with its President, remain in power. The boasts we hear very often from KANU that they will rule this country for the next 100 years will become a reality. We must not do it. This is what they have in mind.

I have absolutely no problem with KANU ruling this country for the next 100 years provided they do so by winning political power in a fair contest in the market place. We want a new Constitution that will make it possible, for the very first time in this country for elections to be not only free, but fair. Let us negotiate this minimum package now upfront so as not to leave this tremendous power in the hands of Commissioners who are in the control of one or two stakeholders. I appeal to my friends on this side to realise the potential danger in enacting this minimum clause.

We have left out the issue of money. When you look at the provision for finances in the Act that we are amending, all it says is that the finances of the Commission would be a direct charge on the Consolidated Fund. If you look at Cap.3 (a)

Section 29, which we are amending, it merely says that the expenses of the constitutional review process incurred by the Commission and the national conferences in accordance with this Act, shall be charged on and issued out of the Consolidated Fund without further appropriation than this Act. In other words, all we have done is to make the expenses of the Commission chargeable on the Consolidated Fund. We have not said how much those expenses are. We have not even clarified in this law whether or not the Commissioners will be entitled to any remunerations. Some of these Commissioners are professors while others are eminent lawyers. We are asking them to leave their jobs. You are asking an eminent lawyer to stop practising law and join a process which might take two, three or four years when he is not earning any money from his practice. This will be a full time job. Is that being reasonable? Will we attract the right calibre of Commissioners?

I agree that some of the figures which are being floated, of Kshs3 million and what-have-you, are exorbitant and unacceptable. How are we securing the independence of the Commission when financially, we leave them at the mercy of the Executive who is an interested party in the result of the work of the Commission, since he is one of the stakeholders?

How can we leave the Executive to negotiate the level of remuneration of the Commissioners? We should agree on the principle whether these people are going to be paid salaries and if so, let us fix the levels of those salaries ourselves so that we do it upfront in a transparent manner so that money is not used to influence a majority of those Commissioners to make certain recommendations.

So, this is another defect. It is not good enough to say that their expenses will be charged to the Consolidated Fund. How much? After all, who prepares the Budget? It is the Minister for Finance. And who appoints the Minister for Finance? How do we know what word will be whispered to the Minister for Finance during one of these tea parties in one of the State Houses and Lodges as to how much he should give? This is important. You saw when the President landed from Arusha. He stated *ex-cathedra*: "Hakuna kitu kama hicho. Eti wanauliza mishahara. Those who want salaries should resign." The issue of remunerating these people is important and should not be left to one of the stakeholders. Let us agree on a reasonable level of remuneration. Let us fix it in this Act and I am requesting the hon. Attorney-General to bring an appropriate amendment during the Third Reading for us to agree on the salaries. Bring that amendment and we are going to support it.

Mr. Deputy Speaker, Sir, on the issue of making amendments, this House has already established its sovereignty and authority. I am pleased that this House even had the courage and firmness to tell the World Bank and IMF that they have no business drafting and crafting a Bill and ordering the Attorney-General to bring it to this House in that format and seeking to tell this House to enact that Bill without amendments. That is an insult to the supremacy of Parliament. I may not agree with any amendments which might be proposed by KANU but again I shall defend to the hilt their right to bring those amendments and to try and persuade enough Members to vote for those amendments. We will vote for the ones which promote the interests of the welfare of the Kenyan people and they are secure that this process---

Mr. Deputy Speaker: Order, Mr. Muite! Your time is up. Mr. ole Sunkuli!

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Deputy Speaker, Sir, in support of these amendments to the Bill, I want to join those who say that actually it is time for this country to have a new Constitution. The country has waited for long and, for a number of years now, we have just been debating about the process of bringing a new Constitution to Kenya.

Mr. Deputy Speaker, Sir, before the last elections, the IPPG brought in a requirement that, in order to commit the Government to constitutional change after the elections, that there was a Bill that was required, the Constitution of Kenya (Amendment) Bill. That Bill was passed but after the elections it was realised that that Bill was not adequate and did not answer a number of questions.

[Mr. Deputy Speaker left the Chair]

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

Both the Government and the Opposition agreed that that Bill was not good enough for amending the Constitution of Kenya in accordance with the wishes of the people. We were all made to undertake a process beginning from Bomas of Kenya to Safari Park. All these were magnanimous gestures to try and incorporate others, who otherwise have no responsibility in the law-making process, to give their views. People have said that we must be careful not to repeat the mistakes of Safari Park and I want to agree quite a lot with that. We must never try to repeat the mistakes of Safari Park.

Mr. Temporary Deputy Speaker, Sir, today, we have reached a consensus and I think we are reaching a consensus. I think that this particular process will give us the new Constitution of Kenya and I want to thank those who have come on board in this process so that we can all be able to have one unified process. However, it is important to understand what the mistakes of Safari Park were. The mistakes of Safari Park were that we went away from principle and refused to answer questions of principle. We refused to answer the question of representation in this country. There are people who believe that in order to have an all-inclusive constitutional process in Kenya that every NGO must be represented in it. I think that was the mistake of Safari Park. That is why we could not agree up to now that if you want to have a fair process, you must have every little NGO represented.

That is why some people were proposing that we should have 75 members. In fact, I do remember the hon. Member for Kangema proposing that there should be 100 Commissioners because there were so many NGOs out there

that were not represented. Because of that, there has been a stalemate up to today in the constitution-making process of this country. I am very glad that today, the Act just says that we have 12 more Commissioners. It does not tell us to go and visit the offices of every little NGO. Even an NGO that was created for purposes of killing rats wants to participate in the constitution making process. However, today, all that has been removed and we are going to have a group of 12 extra Kenyans. They could be coming from anywhere but they have not been said to come from this or that NGO. This is because the reality of Kenya is---

Mr. Murathe: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it fair for the Minister to engage in a merger discussion with an entity which, he is now denying as amorphous, does not exist and that we do not care where those 12 Commissioners will come from?

The Temporary Deputy Speaker (Mr. Imanyara): Order! Continue, Mr. ole Sunkuli!

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, the reality of Kenya is that Kenyans are not divided into NGOs. This is because not every Kenyan belongs to an NGO. Kenyans belong to communities, precisely ethnic communities, and to have a fair constitution process in Kenya, you must include every community. The NGOs can wait because I think that was one of the things that could easily have rocked the democracy of Kenya.

Mr. Temporary Deputy Speaker, Sir, originally, when we came to this House, our principal duty was to make the laws of this country. We, of course, have been asked to share this responsibility with people whose only possible reason to share them with is the fact that they are interested in constitution-making. However, today, I am glad that even those who supported some other people in Safari Park have realised that, therein, lay the danger of wrecking our democratic process. Today, therefore, we have said with one voice that let us leave aside all these NGOs; let us nominate 12 Kenyans who will go ahead and propose amendments to this House or to the referendum of every Kenyan that will be brought here for eventual enactment by the representatives of the people of Kenya. I think that has been the biggest compromise. Mr. Temporary Deputy Speaker, Sir, I want to be very grateful to Rev. Mutava Musyimi and other members of the clergy. Although those people participated in the negotiations, they did not do so for themselves; they nominated commissioners other than themselves. I know people in some organisations allied to the so-called "Ufungamano Initiative", who negotiated for positions in the Commission, so that they could personally benefit. That has been the problem. So, it is important for us to realise the mistake we made at the Safari Park meetings. At those meetings we allowed people from too many organisations who ought to have given the Commission their views; they ought not necessarily to be commissioners.

If every little interested person becomes a commissioner, from who will the Commission collect views? It is important to realise that the small Commission we are forming will visit the churches, wherever they are, and the churches will tell it what they want included in the Constitution. Of course, the churches in Kenya have tended to take a partisan position. However, with respect to this particular issue, they should be congratulated, because no member of the clergy has been nominated for appointment as a commissioner. The clergy has nominated independent persons just as the Parliamentary Select Committee on the Constitutional Review could not have nominated Members of Parliament for appointment to the Commission. This was done so that we could eventually have a neutral Commission. So, let us avoid the mistakes that we made at the Safari Park meetings. I hope that this is going to be the last time for amorphous organisations to want to participate in such a serious exercise.

Mr. Temporary Deputy Speaker, Sir, I am surprised that the hon. Member for Kabete wanted the additional ten commissioners to be specifically nominated from the so-called Ufungamano Initiative. When we were drafting the earlier Bill, we provided for five seats for an organisation called The Women Political Caucus. At that time, I could easily have registered myself as the Women Political Caucus, because the caucus was not a registered organisation. The five commissioners from that caucus would have belonged to me. Even now, we cannot say that anybody belongs to, say, Ufungamano, since Ufungamano is not a registered organisation. I think it is important for us to accept the spirit of this process and not be fussy about the whole process. Non-governmental organisations (NGOs) have given hon. Members of the Opposition the vocabulary with which to describe the constitutional review process. There has been the word "stakeholders". The most recent word that has come up is "hardliner". People are now being referred to as "hardliners".

Mr. Obwocha: On a point of order, Mr. Temporary Deputy Speaker, Sir. I know the Minister to be a member of the Catholic Church; so am I. The Catholic Church is a member of the Ufungamano Initiative. How can he now say that the Catholic Church is amorphous when he belongs to that church? Is he in order to say so?

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, the Maasai wing of the Catholic Church does not belong to the Ufungamano Initiative. Also, the Catholic Church is not an amorphous organisation.

Mr. Temporary Deputy Speaker, Sir, it is important to realise that each organisation, Parliament included, has its responsibility. Parliament has the ultimate responsibility of making the laws of this land. Coming specifically to the

Bill we are debating, the question of civic education has been addressed.

Mr. N. Nyagah: On a point of order, Mr. Temporary Deputy Speaker, Sir. We are talking about some very serious matters as far as this Bill is concerned. Could the Minister explain why the Parliamentary Select Committee on the Constitutional Review decided to negotiate with an amorphous group called "The Ufungamano Initiative", if indeed the Members to that Committee are serious about the appointment of the extra 12 members to the Commission?

The Temporary Deputy Speaker (Mr. Imanyara): I do not think that, that is a point of order.

You may continue, Mr. Minister.

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, before I was interrupted, I was discussing the question of civic education. The hon. Member for Kabete had said that we should say who should conduct civic education. I think it is the responsibility of anybody who wishes to conduct civic education to Kenyans to do so. What we are saying is that---

Mr. Murathe: On a point of order, Mr. Temporary Deputy Speaker, Sir. Hon. N. Nyagah stood on a point of order regarding a very serious matter.

The Temporary Deputy Speaker (Mr. Imanyara): But I ruled the hon. Member out of order, Mr. Murathe.

Mr. Murathe: I would now like to raise my point of order, Mr. Temporary Deputy Speaker, Sir. The Minister is telling us that this House's Parliamentary Select Committee negotiated with an unregistered body. Then are we not---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Murathe, do you want to contribute to the Motion or are you raising a point of order? If you are raising a point of order, do so and I will make a ruling on it.

Mr. Murathe: Mr. Temporary Deputy Speaker, Sir, I will probably wait to contribute to the Motion.

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, I think anybody can carry out civic education. However, what we are saying is that the job of conducting civic education lies first and foremost with the Commission, and that the Commission must consider civic education as one of its core functions. It must also ensure that the mischief that was intended is not done. Those who want to do advocacy instead of civic education should not be allowed to do so. The Commission, therefore, must regulate the activities of those who are going to carry out civic education. Many people want to travel from Nairobi to other parts of the country and do the usual things in hotels. They want to get together, elitist groups of people, spend enormous amounts of money and impart ideas that have nothing to do with civic education to the people. Many donors who sympathise with them say that only reputable NGOs will conduct civic education. The so-called "reputable NGOs" are the same old, recycled NGOs that come from around Nairobi, whose main industry that enables them to live happily is civic education. They do not educate people because they want people to know civic education, but rather because that is the way in which they earn their living. Some of them have even left jobs at universities because it is more lucrative to belong to NGOs. They want to continue doing this now that the whole Kenyan field is available to them.

I think we should not make a mistake and leave this very important exercise to these money-making NGOs. Let the Commission going to be appointed by this House be the one with the principal duty of educating the people of Kenya. We do not want to be like one American President who could not chew gum and walk straight. There is no time for conducting civic education and another separate time for seeking the views of the people. The two exercises must run concurrently. In the course of collecting views, the people must also get educated, so that civic education does not stop the process of collecting views by the Commission. Now that the Commission is going to have 27 members, what excuse do we have to say that 17 months are not enough for the process? Will they not operate like every other commission and subdivide themselves into convenient groups and travel to different parts of Kenya to collect views and synthesize them? What is the excuse of saying they cannot complete this responsibility? I think that once the Commission has come into place, let them educate the people and accredit the NGOs that they think will assist in civic education. If NGOs will be the ones conducting civic education, then the Commission must deliberately ensure that the whole of Kenya is covered by the NGOs. Otherwise, people from one side of the country cannot travel all over the country to educate people in other areas. I think that will not be right. There are retired teachers and churchmen in every part of this country who could be utilised in order to conduct civic education, so that the people of Kenya know what the present Constitution contains and they can make up their minds on what they want to change.

Mr. Temporary Deputy Speaker, Sir, many amendments, including Mr. Muite's proposal on finances, will be addressed tomorrow. But let us have the facts correct. If we want a good Constitution, then we must tell the Commissioners that to belong to the Commission is an act of honour. Eventually, the greatest payment that they get is the fact that they participated in the process. Therefore, they become honourable and dignified Kenyans who will give Kenya a good Constitution. We must not allow the Constitution to be amended by people who join the Commission because of the high remuneration. I think that whoever will eventually determine the remuneration of the Commissioners, be it the Government - and I would argue it should be, because every commission is paid for by the Government in accordance with the remuneration determined by the Department of the Personnel Management

(DPM), or it becomes a Select Committee of this House as some hon. Members would wish - it must be emphasised in principle that we must avoid paying these people salaries. We should pay them something that is good enough to say to them that they did a good thing for this country. This will ensure that attractions of finance are divorced from the constitution-making process. We will be able see out of this, how many people will sacrifice for the sake of this country. This is because if we give them millions of shillings, then how will the sacrifice come about? I think sacrifice must be emphasised in this particular matter.

Mr. Temporary Deputy Speaker, Sir, I would like to say to this honourable House that I do support the merger of those who have not been in the Commission. Let us stop blaming one another by saying that this and that person does not want the constitutional reform to go ahead, or that person is a hardliner. I have heard the Press describe even me as a "hardliner".

Hon. Members: Yes, you are!

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, apart from the fact that it is the language of NGOs, after the expiry of other words like "stakeholder", they have now coined a new word to describe those who do not agree with them. But the beauty of this process is that all views must be heard because, if we all had one view, we would all be part of the same. I am sure, if we all had one view, especially the good view, all of us would belong to this side. But because there are others who do not have the good view, therefore, we belong to the different side of the divide. It is good that we be frank with each other so that we do not have misunderstandings along the way. I am a Member of the Parliamentary Select Committee chaired by hon. Raila. During the negotiations between Prof. Ghai and the Ufungamano Initiative, we were informed that ten members of those 12 would come from the group which was sitting at Ufungamano House. As for the two extra Commissioners, the Parliamentary Select Committee would be given the opportunity to choose from two specified provinces. I do take that this gentleman's agreement must not now be back-peddled again so that we start creating a disagreement where there was none. We hope---

Mr. Wamae: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Minister to continue talking about ten and two Commissioners? Could we not have the memorandum of understanding under which the Ufungamano Initiative and the Parliamentary Select Committee agreed on these issues?

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, that is what I was saying. I hope that when appointing the ten Commissioners, the Ufungamano Initiative will take into account real talents so that we do not end up with two layers of Commissioners: Those who are highly qualified and those who are not necessarily qualified. I think it is important because all these will be Commissioners of a national Commission of this Republic; we must demand of every Commissioner the same qualifications as we demand from the other. We know people will have the leeway to choose whosoever they like, but I think that power should not be used to arbitrarily nominate activists of some movements and little organisations or people who do not have good qualifications.

Mr. Ndicho: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to take all his time to lecture the Ufungamano Initiative on the criteria and academic standards of Commissioners that they ought to appoint?

The Temporary Deputy Speaker (Mr. Imanyara): He may take as much time as he wants. It is his time to contribute.

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, by the way, it is also the requirement of the Act that we take into consideration talents and qualifications of Commissioners who will serve in the constitutional review process. I am emphasizing that people should not just go and nominate their own supporters. They should be able to choose people who they know will deliver to Kenya.

I think it is time, for heaven's sake, that we realised that Kenya is much larger than our own home areas.

Mr. Ndwiga: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Minister in order to keep telling this House that people should not nominate supporters when he, as an hon. Member of the Select Committee, nominated his own lawyer, the one who represented him in the sexual matter?

(Laughter)

The Minister of State, Office of the President (Mr. ole Sunkuli): Mr. Temporary Deputy Speaker, Sir, whoever will be nominated, we ought to say that he is qualified because he or she has the academic qualifications as stipulated in the Act. He or she should be a person who will stand above board, away from activism and has not participated in the paltry affairs that have characterised the activism of our Kenyan politics.

Mr. Temporary Deputy Speaker, Sir, we want to support this process. It is now time that we went to the

substance of the issue. It is now time that we started addressing what kind of Government we want to have in Kenya; whether it is a parliamentary system, a Presidential, or federal Government. I think it is important that we get to the bottom of the land issues so that we understand the concept that everybody is allowed to settle anywhere. We should start delinking and placing exception to that rule, so that people who do not have any other resource apart from their land will not be jeopardized just because they happen to be a minority.

I, therefore, wish to end my contribution and congratulate Mr. Ndwiga for being so frivolous. **Prof.**

Anyang'-Nyong'o: Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to contribute to this Bill. I want to say from the very beginning that the success of any Constitution review process, especially when it is dubbed as a comprehensive review process, depends essentially on the political culture of a country. If the political culture is wrong, we cannot have a successful comprehensive review process, especially during the time period which has been specified in the Bill, and especially given the so-called presumed consensus that is being peddled in this House as lying behind the formation of this Bill. I concur entirely with what Mr. Muite has said in the House today regarding the uncertainties, roadblocks, bumps and uncertain pipelines that cannot be gone through regarding the process that is assumed to have been established. Let me warn this nation like I did after Safari Park in 1998, when people came to this House and said they have had a consensus which was not written into any law. It was assumed that it was gentlemen's agreement. There were no gentlemen on either side of the House, because nobody was willing to keep that agreement.

As I said in 1998, and the HANSARD is there to bear me out on that, indeed, when the political culture is wrong, you cannot assume that gentlemen's consensus at all. In any case, in 1998 after Safari Park, we in the SDP proposed 16 amendments to that Safari Park Bill in this House, and only two or three were accepted. We did warn this House that as soon as you go out there, that process is not going to succeed and within one month, it was stuck precisely because of some of the reasons we were advancing. But we were told, as is the characteristic of all demagogues, that we were not at Safari Park and, therefore, we were not entitled to comment. But you can be engaged in a process by being critical of it, so that people who are in it can be wiser. We, in the academic world, always know that when you are teaching students and you set an examination, and students sit it and you mark it, you must still humble yourself to an external examiner to come and find out, as my friend, Dr. Anangwe knows, whether, indeed, what you are doing is up to the mark.

The SDP, right from Bomas of Kenya in 1998, said it was not going to be engaged in the process because in the IPPC, we had proposed to the Attorney-General that the Bomas of Kenya should have a free chairman to superintend the process; a chairman that will be independent of all parties contentious in the review process. We were not listened to. It is only in the year 2001 that we woke up to realise that we needed a free chairman in the person of Prof. Yash Pal Ghai. If, indeed, we had been listened to in the Bomas of Kenya and we had a free chairman from then, then we would have started on the right foot and this process would have been over. But demagogues and sycophants did not want to listen to us. Indeed, the process went to Safari Park and it was started on a wrong foot. The Bill came to this House full of all kinds of problems. We did propose those amendments, and they are on record and nobody listened to us.

This time when the process started again and we went to Ufungamano, we did meet with the clerics twice as the SDP and submitted to the memoranda saying precisely what needs to be done for the process to go ahead. Once more, we were not listened to. It was said God will look after the problem. These days, God is very busy! He has all the world's problems on his shoulders; AIDS and everything; things He never expected. But Satan has been working overtime than God. So, we cannot take to God petty problems that we can solve, the responsibility for which he gave us as citizens of Kenya. That, indeed, is a responsibility we should not take to God. Those things are on record and we can publish them as the SDP.

We are back into this House with a faulty Bill, assumptions, hurry, selfishness and so on, and we in the SDP will not endorse this Bill. We shall say categorically that you are on the wrong foot, you are going nowhere and within a month or two, you will be back into this House again pleading for another amendment; and yet another Bill will be brought to this House for the so-called comprehensive review of the Constitution of Kenya which will never happen so long as you have an authoritarian presidential regime in power in this country, and history tells it all over the world.

(Applause)

Mr. Temporary Deputy Speaker, Sir, in Tanzania, Mwalimu Julius Nyerere was humble enough to know that his Ujamaa policies had failed, and in 1985, he bowed out of power to let others give Tanzanians the political space for reforms. In the Soviet Union, in 1985, Michael Gorbachev came to power after three years of uncertainty in the Russian presidency, which loosened authoritarian power in that country. Being a known traditional Kremlin insider and an intellectual like Mwalimu Nyerere, he was prepared to give the Russians a chance even if reform meant he was

to leave power. That is exactly what happened. Here was an individual who was prepared to reform himself out of power.

If you go to South Africa, the reform process started in 1966 by the assassination of Verwoerd, but it was not until 1990 when the apartheid regime realised that it was impossible to stem the tide of reform. At that time, De Klerk was in power and like Mwalimu Nyerere, he was prepared to see himself reformed out of power. But in Kenya, unfortunately, we do not have a De Klerk or a Gorbachev and much more, tragically, we do not have a Julius Nyerere. If we really want to know how far in terms of political and economic decay Kenya can sink, look in Zaire, now called the Democratic Republic of Congo (DRC); Mobutu Sese Seko Kuku wa Zabanga was driven out of power by death and not by anything else. When he left, chaos set loose in Zaire because his authoritarian presidency had destroyed all institutions in that country that could possibly engage in the process of reform.

In this country, as I talk, there has been institutional decay of profound proportions. So, we should not deceive ourselves that we are forming anything if we do not look at the institutional capacity of this nation to engage in a reform discourse. As I speak, one of the most important institutions that would involve itself in a reform discourse is the University of Nairobi, and all the public universities, where I used to be, but because of institutional decay, what we have in those institutions are not professors, but sycophants, I dare say.

(Applause)

There are only two professors I know in this country who can take a pen and engage in public discourse; that is Dr. Willy Mutunga and Prof. Kivutha Kibwana. I have not seen anybody from our public universities in this country who has put pen and paper together in order to engage in public discourse. If I am wrong, I stand to be corrected. Indeed, as Bishop Augustine of Hippo once said, everybody must always stop for a moment and think that he or she might be wrong. Therefore, I am prepared to think that I might be wrong, but if I am wrong, let me be confronted by ocular proof from the other side that I am wrong.

Mr. Temporary Deputy Speaker, Sir, the second institution that would have engaged in a serious public discourse in this country in the reform process is the Fourth Estate, but it has been muzzled by the policies of the Government. We have only one radio station in this nation that reaches every village. Alas, that radio station is owned by the Government; the Kenya Broadcasting Corporation (KBC), or the "Kabarak Broadcasting Corporation." If the only powerful radio station in this nation is owned by the Government, is the Government going to be discoursing with itself in every village in this country? Yet we need - since the radio is the most powerful instrument of communication in a developing society - to rally our people in radio communication. We need a thousand flowers to bloom; a million-fold to content, through the radio station. But as I watch these people--- We have been hammering in this House, since 1993, this issue: "Free the airwaves; free the electronic airwaves!" On every mountain top, in valley and marketplace in this nation, all Kenyan voices are crying to the Government to free the electronic airwaves, but nobody listens to that cry in this nation.

Mr. Muithia: On a point of information, Mr. Temporary Deputy Speaker, Sir, I would like to inform the hon. Member that on the issue of freedom of expressing individual and collective views, today, Mr. S.K. Macharia who had established a free radio station has been arrested and his station closed down.

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I welcome that point of information, and I hope that it is noted as one of the people's road bumps on the road towards reform in this country.

The other institution that could help us engage in public discourse is not just the electronic media, but also the print media. As I speak today, the remuneration for journalists in this country is pitiful. Those of us who involve ourselves in rural politics, and I know every hon. Member in this House knows that, know that should you go and hold a rally in Sidindi or Bura, it is not easy to get good coverage. First of all, members of the Fourth Estate find it very difficult to accept going to those places. This is because they do not have cars, motorcycles or scooters. All they have is to rely on their feet and matatus. Those are some of the institutional capacities that we need to look into, if we are thinking that we are going to involve ourselves in a serious public discourse on the constitutional reform process. Therefore, those of us who are saying that there should be a free discourse and it should not be tied to the next general elections, we know what we are saying. We are saying that we are dealing with a very important document, and it must stand the test of time. That is one criterion. That, it must guarantee this nation democratic governance perpetually, is another criterion, and it must be in a position to be defended by every Kenyan alive today. That will be a document in which he or she has an input and respect. That cannot happen before December, 2002, given the institutional incapacity of this nation today to carry out a serious discourse on constitutional review. This is so, particularly a comprehensive one, after being misruled for over three decades by an authoritarian presidential regime, which is completely disrespectful of human rights and the principles of citizenship of the honourable citizens of the United Republic of Kenya.

The members of the Fourth Estate must be liberated and given the capacity to spread the word; to participate in that public discourse as dignified Kenyan citizens. They should not be paid by the opposite side to ensure that they write what they want because they are just vulnerable. There is a great deal of unreliability among the Kenyan people because of poverty. It is no wonder that this Government is in a hurry to comprehensively reform the Constitution because they know that they have reduced Kenyans to destitution. The Government admits that over 50 per cent of Kenyans live below the poverty line, and therefore, a person who lives below the poverty line has no time to be engaged in politics. They are more busy on survival.

The urgent thing is to reduce poverty and the vulnerability of Kenyans to poverty. Not only those 50 per cent who live below the poverty line will fail to participate in the public discourse, but even those who live above the poverty line have been made extremely vulnerable. It is only recently that hon. Members got what I might call a livelihood; a wage that allows them to pay for the insurance of their car, to drive their car to Kisumu and back, taking care of the potholes and all those excess charges by the Government. Now, it is possible for hon. Members to spend time thinking about Bills, and that is why they are keeping the other side very busy. They have been given the capacity to do so.

This House, from its own experience, must not be selfish. It must realise that other Kenyans too need capacity building to participate in that process. Therefore, this is not the time to hurry up with that process. It is time to think of the institutional capacity of this nation to engage in that process. Let the majority think for a moment that they may be wrong. Let those of us who are in the minority and who are critical of that process be given the opportunity to think loudly for this nation, and to ensure that we have a process set in motion that will produce a Constitution that will stand the test of time and that will guarantee Kenyans democratic governance.

The meaning of Ufungamano Initiative was precisely this: Ufungamano was meant to provide an alternative voice and avenue to ensure that we think loud and clear and produce a process that would be sound and not to be hurried by masters of the conjecture. But alas, some of us were made once again, to think more of matters of the conjecture rather than of matters of posterity. A Constitution must be a document that gives proper legacy to this country in terms of governance, and posterity will be proud of us. That was the meaning of the Ufungamano Initiative and that should be its meaning today. The so-called merger is, indeed, among other things, a method of gagging voices.

I was shocked in one of the discourses that we have had recently that some people were even contemplating gagging hon. Members from bringing amendments to this Bill. In that regard, I must stand up and congratulate the Vice-President, Prof. George Saitoti, for his yesterday's remark. I saw him on TV yesterday, saying that hon. Members must be free to give amendments to the House, because that is their constitutional responsibility.

Mr. Temporary Deputy Speaker, Sir, I take off my hat to Prof. Saitoti. Prof. Saitoti should advise the Government that the comprehensive review process of the Constitution, in the spirit of wanting to serve Kenyans, should not decide the General Elections in the year 2002. We have a Constitution and it is equally the responsibility of this august House to amend that Constitution in those areas that it deems fit, so that we can have what appears to be a level playing ground during the General Elections of the year 2002. That must be done in good time, but not like the IPPG, which was brought into the scene when we were rushing to the General Elections. It had absolutely no meaning to political practices in this country.

Mr. Temporary Deputy Speaker, Sir, what this House must do today is to take responsibility and ensure that within time record-- By the way, the Citizens Coalition for the Constitutional Change have already come out with a model constitution, which can take care of our urgent problems, so that we know in good time what the rules of the game are. Political contest is, first and foremost, a contest about the rules of the game. That is one of the reasons why there is so much controversy about the Constitution. If, indeed, we want to have a peaceful political transition in this country, we must very quickly agree on the rules of the game for the General Elections in 2002, as urgently as possible; otherwise, I warn this House, and I must be on record, that if we go as we are doing now, by March next year or even earlier, this Government is going to come up with a proposal to lengthen the life of this Parliament under the argument that: "We need more time for the constitutional review; there is famine in the country; the President went to Sudan the other day and he was just negotiating something about IGAD." There are a multitude of reasons the other side can bring to this House to lengthen the life of this Parliament.

Mr. Ndicho: On a point of information, Mr. Temporary Deputy Speaker, Sir. I wish to inform Prof. Anyang'-Nyong'o that the Constitution does not allow this House to extend its life unless there are two things: First, we must come and amend that section or secondly, apply that section which says that Kenya must be at war with another country. So, unless we tip President Museveni to provoke us and then we start war with him, we cannot then extend the life of this House.

Prof. Anyang'-Nyong'o: Let me go ahead, Mr. Temporary Deputy Speaker, Sir. It has been said that there was an agreement among the so-called negotiators, that when they come to this House with the two Bills, one, amending the Constitution of Kenya Review (Amendment) Act and the other one amending the Constitution of the

Republic of Kenya, we would have a package that nobody was going to disagree as far as two Bills are concerned on the Floor of the House. The Opposition took it for granted that, indeed, in order for the constitutional review process to be secure, it must be entrenched in the Constitution. Some of us were of the opinion that in order for it to be entrenched in the Constitution, we should amend the Constitution first, so that we are secure. But then, we were told that you cannot do that until what you are amending comes into being. In other words, the Act that we were trying to insert must be there first. So, we said, "fine, if you people agree with the package---"

Mr. Temporary Deputy Speaker, Sir, let me warn this House that, that Bill which is coming to the House next week or so to entrench into the Constitution, will not be passed by this House. I have a premonition that it will not be passed, in which case, it will be a nullity. So, stand warned that once that entrenchment becomes a nullity, the whole exercise will be as dead as a dodo.

Mr. Temporary Deputy Speaker, Sir, let me refer the Chair to Chapter 102 of the Laws of Kenya, Commissions of Inquiry Act, Section 3 subsection (1). It states as follows:

"The President whenever he considers it advisable so to do, may issue a commission under this Act appointing a commission or commissioners and authorizing him or them, or any specific quorum of them to inquire into the conduct of any public officer, or the conduct or management of any public body or into any matter into which an inquiry would, in the opinion of the President, be in the public interest".

Could you note that?

Then I can go to Section 4 Subsection (1) which states as follows:

"The President may at any time, if he considers advisable so to do, revoke, or issue a commission amending a commission previously issued, and, without prejudice to the generality of those in power, may by any such amending Commission appoint an additional commissioner or Commissioners, vary the designation of the chairman or Deputy the could be Chairman of the commission or appoint a new Commissioner in the place of any Commissioner who is or becomes unable or unwilling to act or dies, or is, in the opinion of the President, for any reason, unsuitable to continue to serve as a Commissioner."

Mr. Temporary Deputy Speaker, Sir, the other day I was struck when the President said: "Let Prof. Yash Pal Ghai not be so casual". I noted the word "casual". What does it mean in the English Language, and what does it mean in relation to this Constitutional Review Process? I urge the honourable House to take note of Chapter 102 of the Laws of Kenya and the Commission of Inquiry Act, particularly those sections I have noted. So, if this Act is entrenched in the Constitution of the Republic of Kenya--- Hon. Members, maybe, I may be proven wrong, but I do not think so!

Finally, when Mr. Murungi was addressing the House yesterday, he did equate Dr. Apollo Njonjo, the Secretary-General of the Social Democratic Party (SDP), with qualities beyond those of Dr. Apollo Njonjo. But, in that regard, maybe, he is making Dr. Apollo Njonjo more famous than he deserves. But what took me aback was that since the SDP had commented, as a matter of observation and fact, on issues that I had thought Mr. Murungi could have addressed himself to, he instead personalised the whole thing, trying to ridicule the Secretary-General of the SDP. I was really taken aback back by that.

Ms. Karua: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Prof. Anyang'-Nyong'o to start discussing matters that occurred outside the House and defending his so-called Secretary-General---

The Temporary Deputy Speaker (Mr. Imanyara): Order! Proceed, Prof. Anyang'-Nyong'o!

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, I respect the hon. Martha Karua because she knows the law, but I would respect her further if she knew the Standing Orders of this House. I was commenting on what Mr. Murungi said in the House, and I think I am entitled to do that.

So, if, indeed, Mr. Murungi went further than what he should have said and did mention some things which are not too close to issues that he should have addressed himself to, it is incumbent upon me, as the Chairman of the Political Bureau of the SDP, indeed, to comment it. But what is more important is that, having done that, I would like to put Mr. Murungi on a standby for greater things to come.

Mr. Temporary Deputy Speaker, Sir, what is more important is that, in discussing the issue of the constitutional review process of the Republic of Kenya, people will differ and, indeed, that should be the case. A constitutional review process is a contentious issue because we are trying to lay down the fundamental laws of the land. When people differ, please, I urge you, do not condemn or gave certain people a fame that they would not wish not to bear.

If, indeed, we are serious and faithful to the Constitution, under which we are serving, then freedom of the speech is a cardinal point in the process of the constitutional review. I think, if heretic people do not agree, they must, indeed, come to the field. That is why I am saying, a hundred people may think that they are right, but if one of them stands up and says that they are wrong, indeed, they should be prepared to listen to that one first. That principle is more

important in this process than any other thing.

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Affey): Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to this very important Motion.

First of all, I want to congratulate the Attorney-General for the manner in which he did move this important Motion. As a Member of the Parliamentary Select Committee, I can say with confidence that we have made this country proud. I [**The Assistant Minister for Foreign Affairs and International Co-operation**]

can also say with confidence that we have raised the status of Parliament. We are now dealing with a process that is basically parliamentary-led constitutional review process. Kenyans will recall that a few months ago, a section of Members of this House walked away in protest of the Report which the Parliamentary Select Committee was---

An hon. Member: That is far gone!

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Affey): Mr. Temporary Deputy Speaker, Sir, history is very important and it has caught up with those people who want to run away from it. We brought up a report, and on the basis of that report, we enacted law. I would like to say that we were magnanimous. Even after the report which established the Ghai Commission, we did not ignore what was happening in the country. Again, we sat and listened to the views of our colleagues on the other side of the House, which this particular Bill proposes to do. I would like to say that we increased the Commissioners from 15 to 27. Therefore, we hope that the doubting Thomases will now realise that this is a serious process and Parliament is a very serious institution.

Mr. Temporary Deputy Speaker, Sir, my language is very soft and I am not hostile. In fact, through Prof. Ghai, we have had adequate consultations. It might not be right to say "negotiations", but I think it will be fair to say "consultations" between the Parliamentary Select Committee on behalf of Parliament. When I say "Parliament", I am not only talking about KANU and the NDP, but also about SAFINA, FORD(K), KSC, Shirikisho and DP. So, I am talking about the whole House. On behalf of the House, we were able to carry out adequate consultations.

As a Member of the Committee, and as a practising Muslim, I just want to inform the House that we want to say the truth about those consultations. One very important truth about the consultations is about the numbers. Yesterday, when Mr. Murungi was speaking, he was not speaking from a position of information or authority. But as a Member of the Select Committee and as a Member who participated in those deliberations on behalf of the House, I can speak with some authority about what we had discussed.

I would like to inform the House that the consultations led to the fact that we asked our friends in Ufungamano--- This is because we could not even define the word "Ufungamano" in law. That is why, if this House takes time to go through our minutes, as a Select Committee, at no time did we minute Ufungamano as a legal entity, but we had consultations, and Prof. Ghai, did with a lot of diligence, the work of a facilitator. I will give that in due course. We did agree that Prof. Ghai relays this particular message; that we were going to have on board ten more Commissioners, and we were not talking about the Safari Park Hotel Commissioners. This is because the Parliamentary Select Committee did not come up with the names of the Safari Park Hotel nominees because we had also names that we submitted to the Attorney-General.

I would like to inform this House that the Parliamentary Select Committee advertised for those posts and we got 15 Kenyans of very high calibre. These Kenyans are lawyers and prominent Kenyans. Todate, we do not have formal names. I would like to say that even the ten names we had agreed have not reached the Parliamentary Select Committee. What must be taken into account is that even the ten names, when they come before the Parliamentary Select Committee, will be vetted by this Committee to confirm that whatever is in the Act has been complied with.

Mr. Temporary Deputy Speaker, Sir, we also indicated that the Parliamentary Select Committee will nominate two Commissioners, and we were very specific with the two Commissioners. We said that one Commissioner will come from the North Eastern Province and another one from Rift Valley Province. I would like to say that the ten Commissioners, plus the two Commissioners from the Parliamentary Select Committee, will join the Commission as an expanded team. Therefore, some of us who participated in the deliberations get surprised from what we hear and read in the Press. These are completely different issues from what we discussed, as a Committee. Therefore, I just want to confirm to the House and appeal to hon. Members that the agreed number was ten against two so that there are 12 additional Commissioners.

We also agreed that those Commissioners will be vetted by the Parliamentary Select Committee so that we do not create two sets of Commissioners in one Commission; one highly qualified and another one with some kind of qualifications which cannot be explained. I would like to appeal that when these names will be submitted before Parliament, because we are working on behalf of Parliament, that we receive names that do not stand to be rejected by Parliament; that we get names of Commissioners who will, before the eyes of Kenyans, qualify to become Commissioners.

Mr. Temporary Deputy Speaker, Sir, the other issue which has also been raised is the aspect of the salary or the remuneration of the Commissioners. I would like to agree with the President that for somebody to be appointed a

Commissioner to review the laws of this country, it is much more an honour than what he or she gains in terms of material from a particular Commission he or she is appointed to. This is not business. You could be a wonderful lawyer or having a big business, but you have to sacrifice for your country when it requires your services. This country has educated many lawyers and many people in the Civil Service, some of whom have retired and others are in active business. I hope that those ones who have applied and have already been absorbed have not applied on the basis of making money, but they have applied on the basis of serving this country.

I just want to dwell a little bit on the amendments that we intend to propose. We are not disowning this particular Bill, which has been drafted by legal draftsmen. The text of the so-called "consultations" or "negotiations" cannot change the amendments that we intend to propose. I would like to say that these amendments are harmless and they are only anticipated to facilitate the process.

One of the amendments is the aspect of civic education. In the former Act, which we had passed and we are amending now, we clearly stated that the aspect of civic education will be conducted, regulated and facilitated by the Commission. Somewhere along the road, when our lawyers were drafting the Bill, they replaced the word "conducting" with "promoting", and that is where we have a problem. We want the Commission to take full responsibility for conducting, regulating and facilitating the aspect of civic education because we believe that civic education is the core business of the Commission; that this Commission cannot function in isolation of civic education; that this Commission must educate the country on the kind of response they would like to get from it. Therefore, we will be very happy if the Commission takes the responsibility of educating this country. We know that certain parts of this country, and in particular North Eastern Province, have very few so-called NGOs, with the exception of major humanitarian organisations like the UNICEF and the World Food Programme (WFP).

Mr. Temporary Deputy Speaker, Sir, we do not have NGOs that are very much predominant in this part of the country. Therefore, we are wary of the fact that civic education may never reach North Eastern Province. We, in North Eastern Province, are waiting for this constitutional review process and a new constitutional order with a lot of passion. We believe that the current Constitution has been responsible for all the bad roads and under-development in that region for the last over 35 years. Therefore, we are very passionate about this constitutional review process and we want this Commission to sufficiently educate our people on the kind of responses it wants. In the absence of that, we shall not have a comprehensive review process. We should not leave the process to NGOs, whose motivation is to make money and at times to remove a certain political order. We are not struggling to remove a certain political order in existence, but we want a new Constitution for posterity. We want a Constitution in which everybody will believe they had a role in making it. We want, in the years to come, to say that the Constitution is our document. Therefore, this amendment on the aspect of civic education does not change the text of our agreement with our brothers from the Ufungamano initiative. Therefore, saying that we are backtracking on what we had agreed on is not true. We did not agree on the issue of civic education and there is no problem with the Commission handling civic education.

Mr. Temporary Deputy Speaker, Sir, the other amendment that we intend to propose is on what should happen in case a vacancy occurs in the Commission. As is provided for now in the Act; that the Commission will advertise any vacancy that may arise, we believe that there is some mischief in that particular amendment. Initially, it was provided for Parliament, through the Parliamentary Select Committee on Constitution Review, to carry out that function; if a vacancy arose in the Commission, it was to be filled by the Parliamentary Select Committee on Constitution Review. Now, this provision has been removed and it is provided that the Commission will fill such a vacancy itself. This is not part of our agreement and, therefore, we will not backtrack on anything. This does not change the text of our agreement. We are saying that Parliament is a supreme body and that this is now a parliamentary process. If this is a parliamentary process, led by the Parliamentary Select Committee on Constitution Review on behalf of Parliament, and there is a Commission appointed by Parliament, I do not see any harm in Parliament filling any vacancy that may arise. That is also a harmless amendment and it does not change the text of the agreement. Those who are saying that we are backtracking on whatever we had agreed upon are not telling the truth.

The other amendment that we intend to propose is related to the referendum. This House should be very careful. We do not have experience in conducting referendums and we do not have set laws for conducting referendums. We are saying that when we have a new Constitution, we shall subject it to a referendum before it is brought before Parliament. But there is a danger in that. For some of us who come from regions in this country whose numerical strength is weaker, we can sense some mischief in this kind of amendment. This will divide this country in a way you have never seen. Consider the majimbo aspect. When hon. Nassir talks about majimbo in Parliament, he does not talk as an individual, but he talks on behalf of the people he represents in Parliament. He could even be talking on behalf of the people of Coast Province, whom I know hold the issue of majimbo dearly. If we subject such a matter to a referendum and seven provinces in this country say that they reject the majimbo system of Government and people from the Coast Province accept it, will you not have clearly divided this country? You will have divided the country, and people from Coast Province will always feel that the new constitutional order will have been imposed on them by a

majority of people who do not come from that province. Therefore, this issue will be so sensitive that this House should be careful about the kind of legislations it will pass.

That is why we decided that an issue such as the majimbo system of Government should be left to the Commission to determine. But Parliament can advise on such matters because the current Bill as it is, provides for a Parliamentary Select Committee on Constitution Review. The business of the Parliamentary Select Committee on Constitution Review is to co-ordinate between Parliament and the Commission. It might want to propose certain legislations, as we have already indicated that we would want it to provide minimum reforms if it cannot complete the review process in time for the general election.

We do not expect Prof. Yash Pal Ghai to walk in here and give us a document on the minimum reforms. There must be a channel for him to use and the channel is the Parliamentary Select Committee on Constitution Review. Therefore, we should leave it to the Commission to determine whether, indeed, it is necessary to subject the new constitutional order to a referendum or not.

Mr. Temporary Deputy Speaker, Sir, still on the amendments that we intend to move, hon. Muite has already indicated that he intends to move certain amendments. When you look at these amendments, they completely change the text of the consultations that we have had.

Mr. Muite: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member not completely out of order in beginning to discuss amendments when we are not in the Committee Stage?

The Temporary Deputy Speaker (Mr. Imanyara): Yes, indeed, hon. Affey, we are not in the Committee Stage. You can mention the amendments without discussing them.

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Affey): Thank you, Mr. Temporary Deputy Speaker, Sir. I was not discussing amendments *per se*, but I was only discussing what I find in this particular Bill that I think needs to be amended. I am totally in order to discuss what I think needs to be amended.

It is public knowledge that hon. Muite intends to move amendments here. I know the kind of amendments he intends to move, and I am only saying that if allowed, then hon. Muite's intended amendments will change the text of the agreement that we have had. Therefore, we will discuss a new Bill. I am not anticipating debate, but I am only saying that--

The Temporary Deputy Speaker (Mr. Imanyara): But the amendments are on the Order Paper.

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Affey): Yes, Mr. Temporary Deputy Speaker, Sir, they are on the Order Paper.

The Temporary Deputy Speaker (Mr. Imanyara): If the amendments are on the Order Paper, you cannot discuss them.

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Affey): Thank you, Mr. Temporary Deputy Speaker, Sir, for that piece of advice.

I am only reminding hon. Muite, now that I have been restrained from discussing them, that these amendments will change the text of the agreement we reached. We sat in County Hall for many months. For all those months, we had one guiding principle, that the country looks upon Parliament for guidance. The country also looks upon Parliament to show the way.

I want to take this opportunity to congratulate hon. Members of the Parliamentary Select Committee on Constitution Review for having found time to do its work, being patient and withstanding threats and abuses. We know that we had hon. Members in that Committee from the Opposition, such as hon. Raila and other hon. Members. These hon. Members were doing the right thing for Kenya. They did what they did and history has vindicated them, and we will now be able to get an expanded Commission with few squabbles, to conduct the constitution review process.

I only want to request my colleagues, especially in the Opposition, not to find more opportunities to derail the process. This country needs a new constitutional order. For the last eight years, we have been debating about a new constitutional order. We are now more educated than we were a few years ago. The fact that we have been debating a new constitutional order for the last seven years makes it even easier for the Commission to provide civic education to Kenyans. The Commission does not require the support of the NGOs in order to provide civic education because Kenyans are already aware that we are discussing the formulation of a new constitutional order. Therefore, I am sure this will help to make the work of the Commission a lot easier.

With those few remarks, I beg to support.

Mr. Kathangu: Ahsante sana, Bw. Naibu Spika wa Muda. Jambo la kwanza, ningetaka kutoa shukrani zangu kubwa kwa wote wale ambao walifikiria kuleta huu Mswada katika Bunge. Wale ambao wananung'unika wakati huu, wakisema kwamba kuna sahihisho linaloweza kuletwa katika Mswada kufaidi KANU zaidi, naona kama kuna shida kidogo. Shida hiyo ni kwamba, sisi wengine tulisema tangu zamani ni vibaya kukubali kwa haraka Ufungamano kukubaliana na wazo la kuungana na ile Kamati ya Bunge na wote wakasema: "La, tunahitaji huo muungano saa hii!" Na katika mazungumzo mengine, viongozi wengine wa vyama vya kisiasa walisema kwamba

kuna wengine ambao wako Ufungamano Initiative, ambao ni "pseudo-intellectuals", na hawataki "day-dreaming!" Wale ambao wanakataa kuungana ni watu ambao wamepotoka na hawawezi kuleta faida katika nchi hii.

Bw. Naibu Spika wa Muda, nilipokuwa naketi kusikiliza mambo yakizungumzwa na viongozi mbali mbali, nilistaajabu sana kusikia wengine ambao walikuwa wanaunga muungano mkono, wakilalamika huenda ikawa KANU watapindua mawazo na kuwasahau, na kusahau yale ambao walikuwa wanapendelea! Mimi naona kwamba katika upande wetu, kuna unafiki mkubwa sana. Kwa nini wewe ukubali muungano, halafu baadaye, unakuja kwa Bunge hili kusema kwamba KANU itafanya hivi na vile? Naona wengine wamekubali kupotezea Kenya wakati, na wengine wameungana na KANU kimawazo na kwa njia zingine ambazo hatujui! Sisi tuko hapa wakati huu kuangalia Mswada ambao utafaidi KANU, na ambao hautafaidi nchi, na sisi tuko hapa kwa mwaka mwingine kuzungumza juu ya Katiba, na vile itabadihishwa. Hiyo ni kazi ya kuku na msafishaji wa kuku huyo! Utachukua kuku ambaye amekuwa matopeni, umwingize katika bafu na kumsafisha miguu. Ukimwacha, yuke kuku atarudi pale pale matopeni!

Mr. Mkalla: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Mr. Kathangu to use different languages? He is talking of merger, kuku and other things. I do not know which language he is using?

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Mkalla, you are completely out of order!

Proceed, Mr. Kathangu!

Mr. Kathangu: Bw. Naibu Spika wa Muda, namheshimu sana kwa sababu yeye ni "mkurugenzi mkuu" katika Bunge hili. Kwa hivyo, hata akisema chafu, mimi nasema: "Ni kweli bwana!"

Kama vile tumeambiwa miaka mingi---

Mr. Mwenje: Jambo la nidhamu, Bw. Naibu Spika wa Muda. Sitaki kumdhuru Ndugu yangu, Bw. Kathangu, lakini amesema kwamba kuna wengine walipinga muungano na hawataji! Si atuambie ni nani wanapinga huo muungano?

The Temporary Deputy Speaker (Mr. Imanyara): Nidhamu! Mpe nafasi!

Mr. Kathangu: Bw. Naibu Spika wa Muda, najua Kimombo kidogo. Jana, rafiki yangu, Bw. Murungi, akitaka kulinganisha wale wasiopendelea huo muungano na wale wanaunga mkono, alisema kwa Kimombo hivi: "Those opposed to the merger are like pythons who would rather set Kenya on fire, than lose political power." That is what Mr. Murungi said yesterday.

Bw. Naibu Spika wa Muda, wasiopendelea muungano katika Kenya ni akina nani? Mswada huu unatakiwa uzungumziwe na akina nani? Kuna wengine kama mimi ambao kweli kimungu, sipendelei kitu kinachoitwa muungano katika Kenya. Sababu zangu ni tofauti na za wale ambao wako upande wa KANU, ambao hawapendelei muungano na Katiba nzuri kwa sababu wanataka kuendelea kuweka uongozi mifukoni mwao. Mimi sipendelei huu muungano kwa sababu utakuwa unapotosha Wakenya, na kuwapotezea nyakati zao. Hawa watu wawili ni tofauti. Sisi wawili hatuwezi kuwa pythons. Mimi nikiangalia Bw. Murungi, na ni wakili wangu mkubwa sana, alikosea hapo. Viongozi ninaowazungumzia na ambao Bw. Mwenje anataka kuwajua ni kama Bw. Murungi. Mimi sina haya kwa sababu nililetwa hapa na watu wa Runyenjes, na ninatakiwa nizungumzie Mswada huu. Mwingine ni Bw. Kibaki mwenyewe, ambaye alisema: "Those fellows are pseudo-intellectuals and if they are opposed to the merger, they are day-dreaming." Those are his views but views of one of the major political parties in this country.

An hon. Member: Endelea kwa Kiswahili!

Mr. Kathangu: Bw. Naibu Spika wa Muda, naziulewa lugha zote! Nitafanya nini? Bahati ni kwangu!

Tuache hayo kwa sababu tunaweza kuwa na mzaha. Lakini wakati chatu tunayemtaja akimeza--- Kama umemezwa na nyoka fulani, kilio chako tumboni kina tofauti na wakati ulikuwa unalia ulipomwona yule nyoka! Wakati uko ndani ya tumbo ya nyoka, kilio chako ni kwamba: "Tafadhali usinifinye zaidi wewe nyoka." Wakati huko nje, kilio chako ni: "Tafadhali, kujeni mnisaidie nisimezwe na huyu nyoka." Mimi naona kwamba wengi wamemezwa na huo muungano na watatokomea! Ningetaka kilio chao kiwe "tusifinywe zaidi na nyoka yule!"

(Applause)

Kuna tofauti kubwa sana katika Ufungamano Initiative. Wakati siasa za Katiba zilikuwa kwa Ufungamano Initiative, zilikuwa tofauti na wakati Katiba ilikuwa katika Kamati ambayo iliongozwa na Bw. Raila. Lakini, mchezo ni ule ule. Kutoka Ufungamano mwaka wa 1997, kulitokea jamaa ambao walisema: "Huenda kukawa na maandamano katika nchi yetu na biashara iaribike, na Katiba ambayo tunataka kuunda ikosekane. Kwa hivyo, tuunde akili na fikra fulani ambazo zinaweza kuvunjavunja National Convention Executive Council (NCEC) mwaka wa 1997, ili kusiwae maandamano katika Kenya." Mwaka huu, watu wale wana hofu kwamba huenda Muungano wa Mageuzi na Ufungamano wakaleta mchafuko katika nchi kwa sababu ya Katiba. Kwa hivyo, wataangalia waone muungano unaweza kufanya nini.

Mtu mmoja ameniambia kuwa kumekuwa na mazungumzo katika nyanda mbali mbali serikalini zikisema kwamba kuna "M" tatu ambazo ni lazima zichungwe sana. "M" ya kwanza ni Muungano wa Mageuzi; ya pili ni

Mungiki, na ya tatu ni Mfungamano. Hapa walikosea; inatakiwa kuwa Ufungamano wala si Mfungamano. Hii ni kumaanisha kwamba watu wa Kenya wanaunga mkono Ufungamano, Mungiki na Muungano wa Mageuzi. Watu wa Kenya hawapo na Wajumbe wengi ambao wako katika Jumba hili kwa sababu wengi wao wanalinda mali, wapotovu na wanataka uchumi wa Kenya uharibike.

Kwa hivyo, juhudi nyingi zitafanywa na kama wewe ni wakili, ni wajibu wako kuhakikisha kwamba Mswada kama huu umelainika vizuri ili Kenya iwe nchi nzuri na ilainike kisheria. Lakini wakili huyo huyo atadanganyika kwa sababu katika upande wa Serikali hakuna wakili anayesema kuwa Kenya iongozwe kisheria. Wanataka Kenya iongozwe kimabavu. Kwa hivyo wakili atapotelea hapo.

Wengine wetu tunasema kwamba ingawa tunauona Mswada huu, tunataka kusimamia ukweli. Ukweli ulioko ni kwamba tunapoendelea kuzungumza hapa, kila wiki wazee kutoka wilaya mbili wanaenda kwenye Ikulu kuzungumza na Rais jinsi atakavyoendelea katika uongozi. Mashahidi wao ni Bw. Raila Odinga na Musalia Mudavadi.

Wakati wazee wanapoamka kusema: "Mzee, tunataka uendelee", Raila na mashahidi wenzake wanasikiza wanaona kuwa juhudi zao za kuwa Rais katika nchi zimetokomea kabisa. Utapata Rais Moi akisema: "Si mimi niliyesema hivi; ni wazee kutoka wilaya." Tuko hapa kusema vile hii sheria na Mswada huu utakavyoleta Katiba mpya katika Kenya. Mambo ni mengine kule Ikulu. Hawa watu wanaenda kule Ikulu kuchekacheka, kunywa chai na kula kuku lakini hawajui ni nini kinachoendelea.

(Laughter)

Tunaweza kuangua kicheko hapa na huku wale waliokuja katika Jumba hili kusikiza wazee na akina mama wakizungumza hawana shilingi kumi ya kuenda nyumbani. Sisi tunabebana na matumbo hapa tukijua kwamba ifikapo saa moja, tutaenda huko Inter-Continental Hotel ambako kuna pombe kali. Hawa nao wanang'ang'ana wakijua kwamba kutakuwa na Mswada wa kutengeneza Katiba. Wataingoja hiyo Katiba. Ninamuunga mkono Mhe. Anyang'-Nyong'o aliposema hivi: "Katika tawala za mabavu hakuna vile kunaweza kuandikwa Katiba mpya kwa sababu Katiba mpya ni ya kukatakata maongozi ya mlinda talimu." Kwa hivyo, tunaota ikiwa tunatarajia kwamba kutakuwa na Katiba mpya katika Kenya wakati Rais wetu Moi anaongoza.

Mwito wangu kwenye wazee na akina mama mnaoongoza nchi hii ni kwamba hakuna Katiba itakayofanya kazi ikiwa hakuna usalama wa nchi. Jambo la kwanza, inafaa tudumisha usalama; na la pili inafaa tufikirie jinsi watu wetu watalala kwa njia ya amani. Baadaye tunaweza kuzungumza juu ya sheria na Katiba. Kenya hii ina haraka ya kwenda wapi? Kila siku polisi wanaua Wakenya 175. Kenya huzika watu wake 650 kila siku ambao hufa kwa Ukimwi. Nchi hii ina huzuni ama raha? Kutoka Jumatatu mpaka Jumapili kuna matanga na huku mnakuja hapa na kusema kwamba mtabadilisha Katiba. Mtakusanya maoni kutoka kwa nani, na watu wako mazishini; wanafuata ng'ombe zao; Muungano wa Mageuzi unamtafuta Bw. Orenge katika Jela; vijana 14 wameshikwa huko Kamukunji na wanatafuta na wazazi wao; na mtoto wa Kathangu amechukuliwa na majambazi sita pamoja na polisi? Kazi ya Kathangu ni kumtafuta mtoto wake! Mtatafuta maoni wapi?

Masahihisho ambayo yanaletwa hapa ni ya bure kwa sababu tutasahihisha na mwaka ujao tutakuwa tunafikiria juu ya sheria nyingine mpya. Ninamwona Bw. Affey hapa ambaye pia amechaguliwa kama mimi. Yuko hapa kusema kwamba kwa sababu alikuwa katika ile Kamati anaamini kwamba hakuna kitu kitakachobadilika. Tulikuwa katika hizo Kamati, ofisi ya Mkuu wa Sheria, County Hall na hata hiyo Safari Park msiyoiheshimu mara ngapi? Na sasa tunasema kuwa hatuna heshima hata kidogo kwa hiyo sheria tuliounda. Tutaiheshimu sheria hii vipi? Ikiwa Rais wa nchi ataendelea kuwaita wenzangu hapa kuenda Ikulu kuongea naye, na kukubali makamishna kuingia katika Ikulu ili wengine wazungumze vipi watabadilisha Katiba na kuendelea kukusanya mawazo ya watu kutoka vijinini, kisha wanakubaliana na Rais kuhusu mambo yanayotakiwa kufanywa, itakuwa vigumu sana kwa hiyo Tume kufanya kazi yake. Juzi wakati wale makamishna walienda kule Ikulu, kamishna mmoja - natumai kuwa ni rafiki wa Wakenya - anayeitwa Alice Yano, alipotoka kumuona Rais alienda kuwatafuta mawakili 11 wa Kikalenjin na wakaenda kumwona Rais tena na wakaongea--

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Affey): On a point of order, Mr. Temporary Deputy Speaker, Sir. Are you satisfied that the hon. Member can use the Floor of the House to attack a Commissioner who has been appointed by Parliament to serve the Commission?

Mr. Kathangu: Bw. Naibu Spika wa Muda, utapata kamishna ambaye amechaguliwa kuunda Katiba ya nchi hii akitumiwa kama Mbuzi Juda akiambiwa: "Enda jikoni na utafute fulani na umlete hapa. Enda vichakani na ulete fulani hapa ili tumuunde." Nitakuwa kipofu ikiwa sioni hayo ni makosa. Hao makamishna 11 walipotoka kwa Rais walikuja na kusema kwamba marekebisho ambayo niko nayo hapa na ambayo yako Bungeni sasa yameundwa na Wabunge. Waliwapa hawa Wabunge hayo marekebisho wayaleta katika Bunge. Hii ilifanywa baada ya makamishna kumwona Rais, kuwatafuta mawakili wa Kikalenjin ili wakubaliane jinsi watakvopotosha Bunge hili. Kuna Daktari anayeitwa Misoi naye alikuwa katika Bunge hili. Yeye pia alienda Ikulu na wakakubaliana huko, kisha

ameanza kutangaza kuwa ametengeneza Ufungamano II. Kwa sababu Ufungamano wamesema wataungana na Tume, sasa anataka kuunda Ufungamano II kwa sababu wamesema kwamba hawatakubali Mswada huu upitishwe vile nchi ingetaka. Anataka tuwe tukileta kelele hapa, naye atakuwa anatumbojea katika Ufungamano. Ninaona unafiki wa aina hii ambao unatakiwa umalizwe katika nchi hii kwa sababu nchi hii si ya Bw. Moi ama Baraza la Mawaziri. Hii nchi ni ya kila mwananchi, hata wale wasiozaliwa. Kwa hivyo, ningetaka kusema hapa kwamba tunaweza kupoteza wakati wa nchi hii kuzungumzia Mswada na mwingine utakuja na tutaendelea tu na mwisho itakuwa kwamba hakuna jambo lo lote tulifanyia nchi hii.

Bw. Naibu Spika wa Muda, mimi nawangalia wazee ambao wako katika Bunge hili, ambao wengine ni baba zangu, ndugu zangu na wengine wako karibu sana kuwa aidha watoto wangu wa kwanza ama ndugu zangu wa mwisho. Nikiangalia, ni historia gani? Jamaa hawa ambao wanawakilisha nchi, ikiwa wataunda historia, ni lazima tukumbuke kwamba tuko katika mwanzo wa karne ambayo unatuuliza tuwe kielelezo kama vile tumekuwa katika Afrika Mashariki na Kati. Tutakuwa kielelezo katika Afrika Mashariki na Kati ikiwa sisi wenyewe hatutasahau mambo ya ulafi na ya kudumisha nguvu za Serikali ambazo hazina maana.

Bw. Naibu Spika wa Muda, nimepata fursa kupatana na jamaa wengine kutoka nchi za eneo letu hili. Wengine wamekuwa hapa kutoka mwaka 1963, kutoka Rwanda ambako walifukuzwa. Wako hapa na kazi yao ni udereva. Mimi najua kwamba walikuwa wametoka nyumba za wafalme. Githeri ya Kshs25 ni ghali kwao, lakini kule walikuwa matajiri. Ni afadhali uwe na kijiko kimoja cha Blue Band, ule kwa muda wa mwezi mmoja ukiwa na raha mstarehe, badala ya githeri ukichapwa viboko kila siku. Wakati Kenya inaambiwa mambo ya referendum, kwa sababu neno "referendum" halikutoka kijijini kwetu bali limetoka katika Bunge hili, ni lazima tuwambie Wakenya "referendum" yenyewe ni kusema nini kwa sababu hawajui. Hakuna maana ya mimi nisimame upande huu na wewe upande huo tukisema vile Kenya inatakiwa kuwa na referendum. Tunatakiwa kwanza tuwambie wananchi "referendum" ni kusema nini ili pia watusaidie kusema kama wataendelea nayo au la. Ndio maana kuna umuhimu wa kuwa na civic education.

Bw. Naibu Spika wa Muda, nimesikia Waziri wetu hapa, Bw. Sunkuli, akisema hakuna maana ya kuwa na civic education. Tutakosa kuwa na civic education namna gani? Watu wetu hawajajua ni sababu gani tulipewa kijikaratasi kutoka Uingereza ambacho kinaitwa Katiba ama Constitution. Ukienda kijijini na utafute ni watu wangapi wanajua maana ya Katiba ni nini, utakuta hakuna. Sisi tumejaribu hapa tunapoenda kwa warsha na karakana zingine ambapo tunawauliza hata waalimu: "Mumshaona Katiba ya Kenya?" Wanasema: "Hapana." Ninaona kuna umuhimu wa kuwa na civic education na ni lazima pia kuwa na referendum wakati tunapoambiwa na Bw. Raila Odinga kwamba itafanya watu wakosane na wakose kujua ni nini wanalofanya katika Katiba. Referendum, baada ya kuokota maoni yote, ingefaa tuende kwa wananchi ili waambiwe kwamba maoni ya wananchi wote wa nchi yamekuwa namna hii, mnaunga mkono ama la, ndio baadaye tuletewe katika Bunge tukate kauli tukiwa Bunge la mamlaka kwamba, vile watu wameamua nasi tuamue hivyo.

Bw. Naibu Spika wa Muda, ningetaka kuketi chini kwa kusema hivi: Katika Kenya tuko na askari waliostaafu na wale ambao wamefukuzwa kazi zaidi ya 26,000. Tuko na askari ambao wametoka kwa kiundi cha Flying ama "Firing" Squad, cha Special Branch na CID. Wako hapa na kazi yao ni kwamba wameunda vikundi mbali mbali katika nchi kuiba ng'ombe ambao wanauzwa katika masoko. Pia wanaiba katika benki na tunawajua wengine. Ninaomba Bunge hili, tafadhali, ikiwa tunataka kudumisha usalama katika nchi hii, tujue askari wote waliostaafu wanakaa wapi na wanaishi namna gani. Ikiwa kazi yao ni kuombaomba, basi tunajua kwamba tuna hatari kubwa sana kwamba mwisho kabisa, aidha ndio wataajiriwa na wanasiasa kama militia ama kama si hivyo, wenyewe watajiunda kama militia na nyinyi nyote mtakuwa taabani asubuhi moja.

The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Affey): Nitaingia Bungeni!

Mr. Kathangu: Na yeye anasema ataingia Bunge. Mimi, kama yeye anavyosema, atajua kwamba ni generali ambaye anapenda nchi yake. Kama singekuwa hivyo, mngelikiona. Lakini kwa sababu ninapenda nchi hii na mimi sio muoga na naweza kuhakishia Bunge hili kwamba ikiwa mambo yanaweza kuenda mrama katika nchi hii ndio mtajua naweza kuwasaidia.

Bw. Naibu Spika wa Muda, wakati wa kuketi ningetaka kusema mambo ya fedha. Electoral Commission ya Kenya ni watu ambao wanapewa fedha na marupurupu mengi. Swali ambalo liko hapa ni hili: Ni kwa nini upande wa Serikali ukataa kwamba tunatakiwa tuwalipe mshahara na marupurupu wanakamishina ambao wataokota maoni ya Katiba? Ninaona ya kwamba wanakataa ili kila jioni kuwe kuna mfuko Ikulu wa Rais, ili yote watakayookota na kusema, yawe ni yale ambayo Serikali na Moi wanataka na sio vile wananchi na nchi hii wangependa.

Bw. Naibu Spika wa Muda, nashukuru na ninawaombea nyote.

The Assistant Minister for Tourism, Trade and Industry (Mr. Ekirapa): Mr. Temporary Deputy Speaker, Sir, thank you for allowing me a few minutes to contribute to this debate, and let me, right from the beginning, say that I support the efforts that everybody has made in being able to produce the document that we are now discussing in this

House.

Mr. Temporary Deputy Speaker, Sir, it has taken us a long time to reach this moment. It has been a difficult and treacherous road. Let me say that I am disappointed at this moment to hear a few of my colleagues expressing some fear, doubts and a lot of misgivings as to whether this process will go forward. I hope that in two years' time we will be able to come back to this House and disprove those views.

Mr. Temporary Deputy Speaker, Sir, Kenyans have waited for this process for too long and they expect that this august House will this time approve this Bill and appoint the Commissioners to enable them to move forward with the process, to enable this country to have a new Constitution. The agenda which every Kenyan has is to see a new Constitution put in place and I really would think that my friends are very wrong in their fears. I hope that we will meet here in two years' time and have a new Constitution.

Mr. Temporary Deputy Speaker, Sir, I know, and we all know, that there are some of those who would not like the constitution-making progress to take place. There are a few of us who have fought very hard to ensure that the process does not take off. I would like to appeal to them to give the process a chance.

Let them show our people what it is that they have in store for them in future. Let them give the people the opportunity to express their views on the current Constitution and say what changes they would like to see in future. It is in their interests. Our people have been waiting for too long. So, I would like to appeal to leaders to give the constitutional review process a chance to succeed this time round. I hope that when the amendments that have been proposed come up for debate at the end of next week, we will, as Parliament, agree on the way forward.

Mr. Temporary Deputy Speaker, Sir, I am aware that some issues such as those related to the appointment of the Commissioners are contentious. I believe that it is the wish of everybody that the Commissioners will be independent Kenyans of integrity, who are committed to seeing that this country will remain stable in future. I hope that they will come up with a draft Constitution that will guarantee Kenyans a future, and a Constitution which will last for a long time as constitutions in other countries have done.

The appointment of the Commissioners must, therefore, have been in accordance with the Act that was approved by this House, so that when the amendments are brought here, they will conform to the Act that this House approved. We, therefore, hope that the Commission will consist of independent people, who will collect and collate views countrywide and come up with a draft Constitution Kenyans would like to have. Thereafter, this House will debate the draft Constitution. Before that is done, the people will have an opportunity to debate the draft constitution. That will be an opportunity for our people to express additional views on the draft Constitution.

Mr. Temporary Deputy Speaker, Sir, on the issue of the referendum, I would like to agree with those who have proposed that this House defines the rules to govern the proposed referendum. This country does not have such rules in place. We have no experience in referendums. It is, therefore, only fair that this House puts in place the law to govern referendums, so that we know exactly what the Commissioners expect to get when they go out there. Do we want them to ask specific questions for the people to answer or do we want to give them a blanket opportunity to ask whatever they feel like asking the people? It is important to make this clear. I want to agree with those who have expressed fears about the proposed referendum. Some people have suggested that in the referendum, our people should be asked specific questions. The questions should be on issues we hear in this House or those which will not have been agreed upon at the national convention. In other words, if it will be found that specific issues will still be in contention by then, we will have to go back to the people and ask them to provide answers to them. We should, however, not ask our people to go into a referendum just for the sake of it.

Mr. Temporary Deputy Speaker, Sir, a referendum has two possible outcomes: It can either divide or unite our people. But it will, at least, give them an opportunity to say "yes" or "no" to specific issues. If a complete region says "no" to an issue, what are we going to do? Can we still go ahead with the process simply because 60 or 70 per cent of the country's population has agreed to the subject of the referendum? Therefore, this House should be very careful on the issue of the referendum because its result can go either way.

The issue of the appointment of the Commissioners has already been explained. There is tremendous misunderstanding about the so-called "agreement" that was reached through consultations chaired by the Commission's Chairman. It is very clear, and I want to confirm that our understanding through the Chairman of the Commission was that there would be 12 additional Commissioners, of which, ten Commissioners will be appointed by the Ufungamano Initiative and the remaining two will be appointed by the Parliamentary Select Committee. There seems to be a misunderstanding about the appointment of the 12 additional Commissioners. I think there should be a process to confirm what was agreed upon. I want to confirm that was the agreement. I am sure there is sufficient evidence to prove that, despite the fact that there are people who are misleading the public into believing that Ufungamano Initiative is supposed to appoint the 12 additional Commissioners. That is not the case.

Mr. Temporary Deputy Speaker, Sir, everybody has commented on the issue of the remuneration of Commissioners. I think it is very important, in keeping with the principle of fair remuneration, that we establish a

system which will determine how much money Commissioners will earn. It is not fair for the Commissioners themselves to decide how much they should pay themselves.

Mr. Temporary Deputy Speaker, Sir, there is already a precedent in this country as far as remuneration of Commissioners is concerned. For example, we have the Electoral Commission of Kenya. I think it is important for us to take into consideration how much other Commissioners are paid, so that we determine how much to pay these Commissioners. It cannot be just something completely out of the ordinary for our Commissioners.

Mr. Temporary Deputy Speaker, Sir, I feel the issue of civic education is very important and I must comment on it. Civic education must, and will have to, remain the responsibility of the Commission. The Commission must determine whether they will have a standard format in order to enable most Kenyans to participate in civic education. We must ensure that civic education will be the same throughout the country. Hon. Members have raised a number of issues as far as civic education is concerned. We know that there are areas, for example, my constituency, where we do not even have a single NGO. If we leave it to the NGOs to conduct civic education, who will carry out the exercise of civic education in such areas? Therefore, the Commission must devise an alternative system to make sure that the communities in areas where NGOs do not exist also have access to civic education. The commission must remain the responsible organ for civic education. We know that certain NGOs have already drawn their Constitutions. We have been told that in this House. We know others have got civic education contents already drawn up. I think we must make the point very clearly and loudly that this Constitution will be made by the people of Kenya, for the people of Kenya and for Kenya. We cannot expect other people to come up---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Ekirapa, you will be able to continue with your contribution. However, it is now 6.30 p.m. and as you are aware, there is a notice of Motion for the Adjournment at the end of the normal sitting day, pursuant to Standing Order No.18(1). So, I would like to call upon the Minister who is moving the Motion to proceed, to enable Prof. Anyang'-Nyong'o to raise a matter concerning an unsatisfactory reply to Question No.2 by Private Notice, answered on Wednesday, 18th April, 2001, in connection with the importation of industrial sugar and status of sugar factories in the country.

**MOTION FOR ADJOURNMENT
UNDER STANDING ORDER NO.18(1)**

UNSATISFACTORY REPLY TO QUESTION
ON IMPORTATION OF SUGAR

The Minister for Information, Transport and Communications (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House do now adjourn.

The Assistant Minister for Tourism, Trade and Industry (Mr. Ekirapa) seconded.

(Question proposed)

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, on Wednesday---

The Temporary Deputy Speaker (Mr. Imanyara): You will have 10 minutes and the Minister will have 10 minutes. Thereafter, I propose to give those who speak five minutes each.

Prof. Anyang'-Nyong'o: Thank you, Mr. Temporary Deputy Speaker, Sir. On Wednesday, 18th April, 2001, the Member for Webuye, Mr. Kombo, asked the Minister for Agriculture a Question that touched on the matters very important to the sugar industry, particularly as stated in the Order Paper; the importation of sugar into country and hence, ruining our domestic industry and matters touching on the general status of the sugar industry. The Minister must understand that Members of this House are concerned about the sugar industry because of the very important role it plays in our economy. It is at the centre of the lives of about five million Kenyans who depend on this industry for their livelihood in terms of directly producing sugar. But in terms of consumption, it is important to our industry, as well as Kenyans as consumers in general.

Mr. Temporary Deputy Speaker, Sir, the key issues that concern the sugar industry today that we would like the Ministry to address itself to can be put as four. Can the factories as currently constituted be expected to be viable? Are they in a state that this Government can tell this nation that they are viable, they must be supported and they must be part of the sugar production industry in this country? Secondly, why is it that illegal importation of sugar is being allowed contrary to the fact that in 1998, we hired a pre-shipment firm called SWIPCO to ensure that duty is not evaded? We paid extremely high fees to SWIPCO. I want to table in this House the contract for the verification of imports into Kenya between the Kenya Government and SWIPCO, dated 3rd April, 1998, which is very detailed.

(Prof. Anyang'-Nyong'o laid the document on the Table)

Kenyans find it very difficult to understand that this Government can afford to pay a firm so much fees and yet, come to this House and tell us, one, that sugar is being dumped; two, the duty is being evaded, and three, that they do not know the people who are evading the duty and they have signed a contract with SWIPCO, unless this was a fraudulent contract. I leave it to the Member for Webuye, Mr. Kombo, to tell this House from his own research how much money we are losing through the evasion of duty and the fact that the Sugar Levy Fund is missing a lot of millions of Kenyan shillings through evasion of duty. That will be the responsibility of Mr. Kombo.

Thirdly, Mr. Temporary Deputy Speaker, Sir, given that industrial sugar was exempted from duty during the Financial Bill last year, how come that when it was being exempted, the Government did not put in place appropriate measures to ensure that importers of sugar do not cheat? How come that since the exemption, the Minister is still telling us today that people are importing sugar as industrial sugar and the Government, in spite of SWIPCO and everything else, is not in a position to avoid that kind of travesty? Finally, given the fact that the high cost of production of sugar in Kenya is making us less competitive in the COMESA market and, hence, leaving this Government to make a very fundamental proposition to this nation, that we should in actual fact abandon the production of sugar altogether; what plans does the Government have to make sure that those people who are abandoning the production of sugar because we cannot compete in COMESA will be productively occupied in other agricultural practices? If the Government is coming with a Sessional Paper to this House on the status of sugar industry, these are the issues that it must address itself to.

Mr. Temporary Deputy Speaker, Sir, on the status of the factories, it is true that these factories have been ruined as a result of corruption and mismanagement. But it is true, too, that the Government is full of information and data from this House; from the Public Accounts Committee (PAC) and the Public Investments Committee (PIC), as to who has been corrupt, who has mismanaged these factories and how much money is involved. If I take the case of Nzoia Sugar Mills, the 1994/95 PIC Report did put it very clearly. We had asked the Government to establish an 11-member Inter-Ministerial Committee to look into the problem of Nzoia and it reported to us. That Report was tabled in this House and approved, and yet, to date, the Government has not taken any action against Arkel International Inc., S.C. Schaffer, Mr. Mwangale and a Mr. Wafula. The list is long, of people who were involved in corruption and mismanagement of Nzoia. Let me warn this House that Kenya lost a lot in Phases I and II of the expansion of Nzoia Sugar Mills in terms of equipment that could not work, money that could not be accounted for and money paid to lawyers which was exorbitant. All that data is available in a series of PIC Reports and yet, the Minister dares come to this House to tell us that the factories are broke. Yes, they are broke, but why can we not catch the thief? Somebody once said that "set a thief to catch a thief!" Is it going to be the responsibility of Kenyans to elect thieves into the Government so that they can catch thieves who have ruined these factories? If that is not the case, then let the Government rise up to its responsibility and tell this House why the industry is being ruined. The House has done its duty to tell the Government who is responsible. We have even constituted an 11-member Inter-Ministerial Committee to look into the problem, given the Report to this House and the Government, and no action is taken. Farmers are crying for justice. This same factory owes farmers Kshs995,482,906, which they have not been paid.

Mr. Temporary Deputy Speaker, Sir, I am only making one plea to the Government: Please, pay the farmers the money. I do not care where they will get the money from, but it should pay the farmers what is due to them. After that, the Government can do anything with those factories. It is said that Muhoroni and Miwani sugar companies are just producing smoke; there is nothing they are producing. If that is the case, the Government should just pay the farmers what it owes them so that they can use that money to grow maize, rear cattle or do something else which is more productive than being enslaved to this Government and those sugar factories.

Mr. Omino: That is their constitutional right!

Mr. Prof. Anyang'-Nyong'o: Yes, Mr. Temporary Deputy Speaker, Sir.

Mr. Omino: They will even become more productive!

Prof. Anyang'-Nyong'o: Mr. Temporary Deputy Speaker, Sir, they will even become more productive and make sure that those who are dying of HIV/AIDS are replaced.

Regarding Sony Sugar Company, it is a factory which has the highest potential for sugar production in terms of parcels of land and everything else. This Government has hired two management firms in succession - M/S Mehta Group of Companies and M/S Booker Tate. All these groups of companies, which have been paid exorbitant fees for managing Sony Sugar Company, have always left the factory in shambles. When M/S Booker Tate took over in 1986 from M/S Mehta Group of Companies, there was very little cane development in the area. When their contract was over in 2000, the same was true. So, one wonders why M/S Booker Tate was in Sony Sugar Company for four or five years and when they left, the situation had not improved from where they took over from M/S Mehta Group of

Companies. Why are we paying so much money to those management firms when they cannot make sure that they do their jobs?

In the case of Sony Sugar Company, the Government needs to decide this: Is Sony Sugar Company going to expand its production level from 2,000 tonnes of cane per day to 7,000 or 10,000 tonnes per day? This is because 2,000 tonnes of cane per day are unviable according to the present economies of sugar production, especially if you want to compete in COMESA. That is, you cannot have a factory in Kenya producing only 2,000 tonnes per day. Parcels of land, the people and the farmers are there and ready to work, but Sony Sugar Company can only be salvaged if production is increased to at least 6,000 tonnes of cane per day and, at best, 10,000 tonnes of cane per day. But I know that in the paper, the Government is preparing to--- I have listened to the various sugar seminars I have gone to and the Government has decided that Kenya is not viable for sugar production. In fact, the only viable place that this Government wants to move to in order to produce sugar is the Bura Irrigation Scheme. I agree with them.

Bura, like Kenana in Sudan, can be very good in sugar production, but only if the Government implements that project. Can they come out with a clear policy as to how we are going to disengage from sugar in Western and Nyanza provinces and move to something else without penalising the farmers? The new policy should be farmer-friendly and not just Government-friendly and trader-friendly.

Mr. Temporary Deputy Speaker, Sir, in our law books we have the Agricultural Act, the mother Act for all the Acts dealing with farms in this country. It is the Agricultural Act which is the issue! This Government has been trying to produce a Sugar Bill since nineteen-*pat opuk*. Nineteen-*pat opuk* is a very long time ago in Luo vocabulary. So, if the Government has spent so many years trying to produce a Sugar Bill, is that the only thing that the farmers are expecting from this Government? I think this Government had better look at the Agricultural Act because it is the fundamental Act, which affects all farmers. It should come out with a viable policy on agriculture.

Mr. Temporary Deputy Speaker, Sir, I beg to support.

Mr. Kombo: Mr. Temporary Deputy Speaker, Sir, I think Prof. Anyang-Nyong'o has articulated the problems of the sugar industry very effectively. The Minister's answer to my question, obviously, demonstrated that the Government is not serious in solving problems afflicting the sugar-cane farmers. The sugar industry, as far as Western Province and a greater part of western Kenya and Nyanza as well, is the mainstay of the economy of that region. Once upon a time this area produced enough food until we started to producing sugar-cane. So, we have moved our acreage from maize production to sugar-cane production. People hope that they will sell their sugar-cane, make money and be able to buy food. However, that has not happened. Today, poverty in this part of the country is absolutely rampant. The reason why many of us have not gone to hotels to listen to poverty eradication seminars is because we know what the problem is. If you only pay the sugar-cane farmers their rightful money, poverty will be eliminated in western Kenya.

Mr. Temporary Deputy Speaker, Sir, for instance, if you take Nzoia Sugar Factory alone, there is an amount of Kshs700 million owed to the farmers. If you had put that money into the economy, I can assure you that poverty in western Kenya would have been eliminated. As the industry collapses, it means that the jobs will go and as they go, we will have insecurity within that part of the country. In fact, for many years in Bungoma, we did not know anything on insecurity and now it is on the increase because people are losing their jobs.

With regard to the problems of industrial sugar; and the importation of sugar; the consumption of sugar in this country is well known to be above 680,000 metric tonnes. The production of sugar in the whole country is known to be about 401,000 metric tonnes. That means that there is a shortfall of 279,000 metric tonnes. We have all these facts and we know what the shortfall is and the Ministry has no policy to ensure that only the shortfall is imported.

Mr. Temporary Deputy Speaker, Sir, I have checked some facts about the demand for industrial sugar and I have found that it is between 80,000 and 100,000 metric tonnes per annum. In 1999, only 57,000 metric tonnes were imported. In the year 2000, 118,000 metric tonnes were imported. In four months between January and April this year, we have already imported 59,000 metric tonnes. I just do not understand this! When you ask the Ministry of Agriculture and Rural Development about this, you are told: "In the past we used to gazette and, therefore, we knew exactly what to do." If you ask the Ministry of Finance and Planning, they will say: "I think it is important that we collect the funds, but the Ministry of Agriculture does not allow us, so we cannot---" You wonder whether the Government has got any policy whatsoever with regard to the sugar industry.

Mr. Temporary Deputy Speaker, Sir, I have a list here of people who have imported sugar under the guise of industrial sugar within a period of four months. I also have a list of those that have been gazetted in previous years. When you look at the list this year, there are strange names; Sultania, Akraba, Kingstone Tradings and so on. There are strange names that have not been there since 1999, but all of sudden, they now exist. For example, this company called Akraba has been licensed to import 4,000 tonnes this month, and 4,000 tonnes next month. When you ask what they do, you do not get an answer.

Mr. Kimeto: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute to

this Motion. I would like to point out that sugar-cane farming could improve the standard of living of Kenyans, but unfortunately, imported sugar has killed this industry in this country. I would like to say that this country has engaged in the business of selling other countries' sugar, something it should not be doing. By selling imported sugar, it means that this country is selling some people's subsidised sugar. By doing this, the standard of living of those people is improved, while the standard of living of our people is lowered. Why does the Minister for Agriculture not ensure that sugar-cane farmers are paid for all the cane delivered, so as to enable them buy other products produced in this country? When we kill the sugar industry, milk production will go down because people in Western Province will not afford to buy this commodity from Central and Rift Valley Provinces.

I would like to say that by killing the sugar industry, we are also killing the agricultural sector. When we went to school, we were told that Kenya was an agricultural country, but that is not the case today. We now fail to understand how this country is an agricultural country when it cannot produce enough sugar for its own people; when it cannot produce enough maize to feed its own people; when it cannot produce enough milk for its own people to drink. It is time we, Kenyans, thought of ways and means of putting the economy of this country back to where it was in 1978. We should produce enough sugar, milk and maize for our people, to enable them buy what they do not have from those who have.

It is very unfortunate that we are made to understand that the Government owes sugar-cane farmers Kshs995 million. This is a mystery. Let us find out who has this money. Let us pray to God to let this person give us this money. Where is this money?

(Laughter)

The Temporary Deputy Speaker (Mr. Imanyara): Order! I am sorry, the remaining ten minutes are for the Minister to reply.

The Minister Agriculture (Mr. Obure): Thank you, Mr. Temporary Deputy Speaker, Sir. I want to recognise the fact that sugar-cane production is a major source of livelihood for many Kenyans, and that the agricultural activity contributes substantially to the economy of this nation. I also want to say that the Government is, indeed, committed to ensure that the sugar industry in this country is sustained, at least, for the time being, until long-term measures are put in place to ensure that the industry can be self-sustaining. I want to admit that the sugar industry is right now going through a very turbulent period.

Mr. temporary Deputy Speaker, Sir, the situation has arisen mainly as a result of Kenya opening up its markets in accordance with the World Trade Organisation arrangement, and also the COMESA arrangement that came into force at the end of October, 2000. On 31st October, 2000, Kenya signed the COMESA Free Trade Agreement, which, in effect, zero-rated tariffs on quite a number of agricultural products. As a result of this, sugar from the COMESA countries imported into Kenya turns out to be much cheaper and the locally produced sugar cannot compete with that sugar. As a result, we have seen large quantities of sugar coming into the Kenyan market. The result of this is that the local sugar mills are building up stocks which they cannot sell. Some of them have even been forced to reduce prices to below the economic prevailing prices.

Mr. Temporary Deputy Speaker, Sir, one other thing that has arisen is that, because of some of the measures taken, we find that there is need now to harmonise duties and levies. This is because duties and levies were fixed at different rates for various categories of sugar. This has created a loophole which a number of importers are now taking advantage of. It is our intention to harmonise these duties, to make sure that these loopholes are completely sealed.

With regard to the industrial sugar, we have seen very substantial quantities of industrial sugar brought into the country. I would like to concur with the statistics given by hon. Kombo. I am aware that in the first three months of last year, for example, we imported into the country approximately 12,000 metric tonnes of sugar. During the same period this year, we have imported close to 35,000 metric tonnes of sugar. This is two-and -half times the quantity we imported last year. From the trend, it appears that if we continue at the rate we are going, we will be importing very huge quantities of industrial sugar. We are aware that this industrial sugar is not necessarily used by industrialists to manufacture goods either for export or for local consumption, but a lot of it finds its way into the market.

Mr. Temporary Deputy Speaker, Sir, I want to give my personal undertaking to this House that we are looking into this particular weakness, and we will put in place measures to ensure that this is curbed, and only that industrial sugar which is needed for manufacture of goods in this country, both for export and local consumption, will be imported into the country. So, we will go back to that system of monitoring the use of the industrial sugar so that we can seal that particular loophole.

There are various reasons why our sugar cannot compete with sugar produced elsewhere. We know that Brazil and Mexico have put huge subsidies into the sugar sector. Of course, we, in Kenya cannot afford that at our stage of development. We also know that those who grow sugar-cane seriously, grow it on large-scale plantations. That

is what we see in Sudan and in other areas. Unfortunately, our land tenure system does not permit that at the moment. We cannot go into large-scale production of sugar to achieve economies of scale. The other main reason is that machinery and equipment at our sugar mills are dilapidated, and the technology we use is outdated. As a result, the extraction of sucrose is very low, leading to high costs. Of course, we cannot control certain other inputs, such as the cost of production and transportation. Therefore, we know that we have problems. It will be folly to stand in this Parliament and say that we will overcome those problems overnight. We have to look for long-term solutions because we know that, that is an important industry to our nation.

Mr. Temporary Deputy Speaker, Sir, we have to look into the question of irrigation. Sudan has succeeded on irrigation. We are carrying out experiments in one of our sugar mill factories. We know that it makes a big difference. We know that, that is the way forward. We are talking about growing our sugar cane not necessarily in high altitude areas in Nzoia, Mumias and South Nyanza. We know that we can do much better if we grow the correct varieties of cane at the Coast where the altitude is low. The maturity period will be shorter and, at the end of the day, the cost of production will be lower. So, we are talking of efforts to try to become competitive.

As we look for long-term solutions, we are going to put short-term measures in place, to ensure that the present loopholes are sealed. We are concerned about the plight of the farmers. But the question in the long run will be the cost competitiveness of our sugar factories.

Mr. Sungu: When?

(Loud consultations)

The Minister for Agriculture (Mr. Obure): Mr. Temporary Deputy Speaker, Sir, I would like you to protect me from the shouting matches!

But I would like to say this: At the end of the day, the long-term solution lies in improving the efficiency of our operations to reduce the cost of production. We should ensure that the farmers are motivated to do proper husbandry of their crops. Those are matters that are being addressed through the Sugar Bill. I would like to announce here that the Sugar Bill is now ready to be laid on the Table of this House. We hope that the various provisions contained in the Sugar Bill provide the solutions to some of the problems that we are talking about. I am confident that we will soon see a thriving sugar industry. Thank you.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Imanyara): Order, hon. Members! It is now time for the interruption of business. The House is, therefore, adjourned to tomorrow, Thursday, 26th April, 2001, at 2.30 p.m. The House rose at 7.00 p.m.