

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 5th November, 1997

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:

Draft of the Presidential and Parliamentary Elections (Amendment Regulations) 1997.

The Draft of the National Assembly Elections Registration of Voters (Amendment) Regulations, 1997.

*(By the Assistant Minister, Office of
the President (Mr. Sunkuli) on behalf of
the Minister of State, Office of the President)*

NOTICE OF MOTION

ADOPTION OF PRESIDENTIAL AND
PARLIAMENTARY ELECTIONS REGULATIONS

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

THAT, pursuant to Section 34 of the National Assembly and Presidential Elections Act (Chapter 7 of the Laws of Kenya), this House approves the draft of the Presidential and Parliamentary Elections (Amendment) Regulations, 1997 and the draft of the National Assembly Elections (Registration of Voters) (Amendment) Regulations, 1997 which were laid on the Table of this House on the 5th November, 1997.

ORAL ANSWERS TO QUESTIONS

Question No.713

MURDER OF MR. ONDARA

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

(a) whether he is aware that on 22nd November, 1996, two administration police officers at Raitigo Patrol Base in Borabu Division of Nyamira District allegedly murdered Mr. Peter Osindo Ondara;

(b) if the answer to "a" is in the affirmative, what the outcome of the investigations is (including postmortem report) into the alleged murder of the late Peter Osindo Ondara; and,

(c) what action has been taken against the administration police officers involved.

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

(a) I am aware that one Dickson Ondara, the deceased's father reported to Keroka Police Station that he found his dead son's body lying on a footpath near his home. The Keroka Inquest File No.23/96 in respect of this matter is pending before court.

(b) According to the postmortem report, the cause of the death was severed cervical spinal cord and fracture of the cervical spine.

(c) Appropriate action will be taken after the Keroka Magistrate's Court has heard and concluded the inquest currently before it.

Mr. Anyona: Mr. Deputy Speaker, Sir, you have noticed that in almost all recent cases of this kind of murder, the answer has been that "a full inquest has been opened". That clearly is the move to short-change justice. When someone dies, the first thing would be to carry out investigations to establish the cause of death. We are not told what investigations were carried out and what was found out. We are just told about the inquest. This particular person was in the company of two Administration Policemen from this patrol base. They had a drink in the market place and continued with their drinking spree into their houses in the patrol base. Thereafter, that man was found murdered and at the place where the body was found, was a stick belonging to one of the APs. Can the Minister tell us exactly what investigations were carried out and what results those investigations revealed? He should also tell us how this decision was arrived at, to have an inquest rather than arrest these people who are known to have been with this man to make statements.

Mr. Sunkuli: Mr. Deputy Speaker, Sir, I hope the hon. Member appreciates that an inquest in itself is a form of investigation except that it is done by the court. It is the practice of our law that whenever the police cannot reach to the bottom of a case, the problem is taken to the court where the cause of death cannot be ascertained. In this particular case, there is no particular suspect who is to be investigated. The father of the deceased collected the body near his home. There was no clue that the police could use in order to reach the conclusions as to who exactly murdered this person. When the father reported the matter, he, indeed, reported it as though it was a murder. It does appear to have been a murder, but there were no clues as to who actually committed the murder.

Mr. Anyona: Mr. Deputy Speaker, Sir, what I am saying is this: This person was with two APs who were known. Indeed, and one of them is called Muli. The two of them were with him the whole day. As far as I know, these two APs are already witnesses in this "bogus" inquest. How can the Assistant Minister say that there is no suspect when we know the people who were there? They were with him and as far as I now--- I did not know the Question was coming up because I have documents which I will produce here tomorrow. These people with him and are even now listed as witnesses. So, how can he say that the suspect was not known?

Mr. Sunkuli: Mr. Deputy Speaker, Sir, I would greatly appreciate if the hon. Member can give me those particulars, in which case I will ensure that although those particular persons appear as witnesses, the court must keep them in mind as suspects. But I would appreciate if I get the particulars.

Mrs. Nyamato: Mr. Deputy Speaker, Sir, it is a very well known fact that this man called Mr. Muli was involved in murdering this boy. He committed a rape case after which the matter was reported to the police, and the case is also still being investigated. It is also known that because the community around fear the policemen, nobody will go and give evidence and say: "I saw him committing the murder." So, unless he is arrested and put in custody for investigations to continue, there is no way the truth will ever be known.

(Applause)

Mr. Sunkuli: Mr. Deputy Speaker, Sir, hon. Mrs. Nyamato has made a statement and I have taken note of it.

Mr. Angwenyi: Mr. Deputy Speaker, Sir, the answers we get for these murders committed by Government police officers are standard or similar. Day in day out, the same Assistant Minister gives us the same answer. Here are two APs who are prime suspects of the murder of Mr. Ondara and instead of being apprehended and being questioned, they have been turned out to be the witnesses. Do you think they will be witnesses to their own action for murdering this person? I would like the Assistant Minister to tell us clearly today, what steps they are going to take against these two suspects in respect of Mr. Ondara's murder?

Mr. Sunkuli: Mr. Deputy Speaker, Sir, I have requested to be given more particulars by those who have more information. The hon. Member seems to have a point, but I am saying that if he could give me more particulars--- The matter is before the court now and the court is investigating the murder. If I got more evidence, I would present it before the court.

Mr. Anyona: Mr. Deputy Speaker, Sir, this is one person I would not take seriously both as a person and as a Minister. I have a piece of a Government document which is a bond which was served on these APs to appear before the inquest. Unfortunately as I said, I did not know the Question was coming up today, but I have it somewhere. This is a Government document which has the names of these two APs as witnesses. But the Assistant Minister is saying that his people are not giving him correct information. But this is a Government document. How can you ask me to produce to you a Government document in possession of the police and your

office which is the highest office in this land and people are being murdered daily? What is he talking about?

Mr. Sunkuli: Mr. Deputy Speaker, Sir, I do not know why hon. Anyona has misunderstood me. I have also confirmed that there are witnesses who have been called. But in an inquest, it is possible for a witness to be treated or to be identified as a suspect. I thought he said that he had some evidence that could actually lead to a conclusion that they, indeed, are suspects. But without that, if these people are suspects, the court will find that they are suspects. I used to listen to these inquests and order for the apprehension of certain persons who were witnesses as suspects and they would be charged with the appropriate offences later.

Question No. 709

PAYMENT OF HARDSHIP ALLOWANCE
TO POLICE OFFICERS

Mr. Ojode asked the Minister of State, Office of the President;

(a) how much money is paid as hardship allowance to police constables, corporals, sergeants, inspectors, superintendents and assistant commissioners; and,

(b) when the Government will implement the recommendations of the Ng'eny Commission on the police remuneration.

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

(a) Hardship allowance is paid at the rate of 30 per cent of the officers' basic salary regardless of rank, provided this does not exceed Kshs600 for single officers and Kshs1,200 for married officers per month.

(b) An interim salary increment has been awarded to the Kenya Police, Administration Police, Kenya Prisons Service and the National Youth Service, after the Government received the recommendations of the Commission set up to look into the terms of service for the concerned officers. The recommendations will be implemented in full when funds become available.

Mr. Ojode: Mr. Deputy Speaker, Sir, it is common knowledge that the policemen are doing odd jobs for this Republic. In order to reduce criminal activities, these people must be paid well. Crime in both urban and rural areas is a creation of payment of insufficient funds or non-payment of hardship allowances to these officers. I have a payslip of a sergeant here. A corporal and a sergeant are being paid Kshs20 per month as hardship allowance.

An hon. Member: How much?

Mr. Ojode: Kshs20! An inspector is being paid Kshs100 as hardship allowance and the Assistant Minister is misleading the House by saying they are being paid 30 per cent of what they are getting as salaries.

Prof. Ouma: Is it Kshs20 per month or per day?

Mr. Ojode: Per month. As regards to the recommendations of the Ng'eny Commission, no implementation has taken effect to date. Could the Assistant Minister tell the House how much money was used during the setting up of this Commission and what was the lowest salary recommended by the Commission?

Mr. Sunkuli: Mr. Deputy Speaker, Sir, I do not have most of those facts off-head.

(Dr. Lwali-Oyondi stood up in his place)

Mr. Deputy Speaker: You cannot shoot up after everybody else is up and assume that the only way you can have priority is to rise on a point of order.

Mr. Kapten: Mr. Deputy Speaker, Sir, I do not know if the Government wants police officers to go on strike the way teachers did, before it can look into their terms and conditions of service. I know some areas where policemen go on duty without uniforms. Whatever uniforms they have are in tatters. They do not have boots, rain coats and gloves, especially when they are handling corpses. The corruption we have in this country--- you will find that traffic police officers on our roads have to demand bribes to enable them make ends meet. The Assistant Minister is saying that the Ng'eny Commission recommendations will be implemented when funds become available. When are funds going to be available to enable policemen in this country to enjoy decent standards of living? This is because at present policemen are living in terrible conditions, including poor housing. When are these funds going to be made available?

Mr. Sunkuli: Mr. Deputy Speaker, Sir, it is true that most police stations require to be upgraded. Many of them need to be supplied with vehicles and the Police Force needs to be equipped much better and the necessary facilities need to be provided. But the hon. Member lives in Kenya and understands the situation of our economy. When we become a rich country, when our economy improves, the standard of living of Kenyans of all walks of life, will, definitely, be improved.

Prof. Ouma: Mr. Deputy Speaker, Sir, I heard hon. Ojode say that a sergeant is paid Kshs20 as hardship allowance per month. If this is true, may I bring this to the notice of the Assistant Minister, that we cannot expect exemplary service from the Police Force, whom we need dearly if they live in such hardships, but they get Kshs20 per month as hardship allowance. Could the Assistant Minister tell us, instead of saying "when funds become available", how urgently the Ng'eny Commission recommendations will be implemented, so that the police officers may live better lives and not with Kshs20 per month as hardship allowance? This is because as long as this goes on, we cannot expect exemplary service from them.

Mr. Sunkuli: Mr. Deputy Speaker, Sir, no policeman earns Kshs20 hardship allowance per month. The reason why the hon. Ojode has not dared to table that payslip here is because he must be knowing that the Kshs20 indicated in the computer print-out must be involving some deductions probably out of imprest. But that can never happen, it is not true. Nobody is getting Kshs20 as hardship allowance.

Mr. Muite: Mr. Deputy Speaker, Sir, is the Assistant Minister aware that the police officers are actually being mistreated by this Government? Sometime ago, this Government published in the *Standard* Newspaper some salary increment scales for police officers. That was about three months ago. But the police officers are still getting the old salaries. What was published in the newspaper was for public consumption. Is it the policy of this Government to continue punishing police officers in this country?

Mr. Sunkuli: Mr. Temporary Deputy Speaker, Sir, that is not the policy of the Government. The policy of the Government is to continue reviewing the terms of service of all its workers and to ensure that the Police Force and, indeed, the entire Public Service is well paid. I know the hon. Member would like to find an error in that particular matter, but I am sure he does understand that we have an economy that cannot sustain payment of a very high salary.

Mr. Ojode: Mr. Deputy Speaker, Sir, the Assistant Minister is misleading this House. I have a payslip of one officer, and in the payslip, it is written that a corporal gets only Kshs20 hardship allowance per month and an inspector gets Kshs100. Could the Assistant Minister tell us how much money was recommended for the lowest paid officer within the Police Force? In order to wipe out this "*kitu kidogo*" business, these people must be paid well.

Mr. Deputy Speaker: What is your question hon. Ojode?

Mr. Ojode: Mr. Deputy Speaker, Sir, could the Assistant Minister tell this House how much money was recommended for the lowest paid officer by the Ng'eny Commission?

Mr. Sunkuli: Mr. Deputy Speaker, Sir, I think it must have escaped the mind of the hon. Member. The hon. Ojode has kept on referring to a fictitious payslip that is talking about Kshs20. Why can the hon. Ojode not table that payslip here?

Mr. Ojode: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to evade my question? I asked him how much is the lowest paid police officer supposed to earn according to the recommendations of the Ng'eny Commission? How much is it?

Mr. Sunkuli: Mr. Deputy Speaker, Sir, I am not evading the question. The basis of his question is the payslip that he has. Could he table that payslip?

Mr. Deputy Speaker: Well, I cannot whip him, but I think he is trying to be a little too smart. That is all I can say.

Mr. Farah: Mr. Deputy Speaker, Sir, you have clearly noticed that the hon. Assistant Minister is trying to be too smart or, to put it even more crudely, he is trying to be cheeky. This is a very serious issue. How could we pay a hardship allowance of that small magnitude to an officer who is working in a hardship area like Mandera and who is paying Kshs150 occasionally for a kilo of potatoes? Could the Assistant Minister consider improving hardship allowance for officers working in hardship areas? If we do not do that, the police officers will revert to corruption, sponsoring banditry, killing people by branding them shiftas and taking their money. Could the Assistant Minister consider raising the hardship allowance by 100 per cent of their basic salaries?

Mr. Sunkuli: Mr. Deputy Speaker, Sir, notwithstanding the negative remarks made about me by the hon. Member for Lagdera, I must say, at least, he has asked a serious question because he is truly concerned about the welfare of the officers working in hardship areas coming from a hardship area himself. Indeed, it is proper that the police be paid as well as possible, but the only problem that I have is that the hon. Member seems to be convinced that there is actually a policeman who is paid Kshs20 as hardship allowance per month. He does not understand that unlike him, hon. Ojode is not being serious and that is why he is not tabling the payslip.

Mr. Ojode: On a point of order, Mr. Deputy Speaker, Sir. I do not want to table the payslip because they will victimise that officer. I am asking a very simple question: Could the Assistant Minister inform this House how much money was recommended to be paid to the lowest officer? That is a very simple question

because I know the amount. If he does not know the amount, I will tell him. The Commission itself used over Kshs50 million to come up with these recommendations? If the Assistant Minister is not ready to tell me the recommended amount, I will tell the House because I know that he wants to evade my question.

Mr. Deputy Speaker: Tell the House then!

Mr. Ojode: No, let him talk first.

Mr. Sunkuli: Mr. Deputy Speaker, Sir, the minimum hardship allowance paid to every officer is 30 per cent of his basic salary.

Mr. Ojode: On a point of order, Mr. Deputy Speaker, Sir. Since the Assistant Minister has been evading my question, I want to inform the House that the Ng'eny Commission recommended that a police constable should earn Kshs30,000 per month. It is very true that this Government is not interested in giving any allowances to the police officers because they want the habit of giving out kitu kidogo to continue. Could the Assistant Minister confirm or deny that the lowest recommended amount to be paid to the police constables was Kshs30,000?

Mr. Sunkuli: Mr. Deputy Speaker, Sir, I do hold the view that under our Standing Orders, a Minister is not obliged to answer questions about documents that are public documents. There is no reason why hon. Ojode should interrogate me about a document which is a public document.

Mr. Deputy Speaker: Next Question, Mr. Raila Odinga.

Question No.631

PAYMENT OF TERMINAL BENEFITS TO
COTTON BOARD EMPLOYEES

Mr. Ojode, on behalf of **Mr. Raila**, asked the Minister of Agriculture, Livestock Development and Marketing:-

- (a) whether he is aware that employees of the Cotton Board of Kenya (CBK) who were retrenched in 1994 have not been paid their terminal benefits; and,
- (b) if the answer to "a" is in the affirmative, what steps he is taking to ensure that they are paid.

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

(a) All the staff of the Board who were retrenched served under contractual terms and conditions of service. The only terminal benefit under such arrangements was gratuity which was done in full at the time of retirement. In addition, the staff were paid in full salaries, house allowances and an equivalent of one month notice for non-renewal of their contracts.

(b) I am not in a position to take any action since all the workers were paid their dues.

Mr. Ojode: Thank you, Mr. Deputy Speaker, Sir. The Assistant Minister is misleading this House because I have a list of names of those workers who have not been paid their terminal benefits to-date. Since the Assistant Minister insists that there were workers who were paid their terminal benefits, could he tell us how many workers benefited from this and the amount of money they were paid?

Mr. Kirwa: Mr. Deputy Speaker, Sir, the total amount of money involved is Kshs17 million which was obtained from the Government after the said workers had gone for nine months without salaries. The total number of employees who were retrenched were 338. Eight of them served on temporary terms and six of them, voluntarily resigned from the Board.

Mr. Ndicho: Mr. Deputy Speaker, Sir, could the Assistant Minister tell us why, out of the money paid for the retrenchment exercise, 40 per cent of it is deducted? For example, if one was given Kshs100,000, he only ended up with Kshs60,000? Who takes the 40 per cent?

Mr. Kirwa: Mr. Deputy Speaker, Sir, as far as this Question is concerned, the 40 per cent issue does not arise. What I am aware of is that the 40 per cent is deducted from the Golden Handshake that civil servants get, but not staff of parastatals.

Mr. Mbeo: Mr. Deputy Speaker, Sir, arising from the Assistant Minister's response, could he table the list of the 338 employees for our perusal to determine exactly who was paid because as far as we are concerned, so many of these employees have not been paid to date? The figure the Assistant Minister quoted refers to the past payments that were made to the employees at the time of the termination of their contracts.

Mr. Kirwa: Mr. Deputy Speaker, Sir, I think it is appropriate for the hon. Member to table the list of the people who have not been paid. What I have said here is that 338 people were paid their benefits.

Mr. Ojode: Mr. Deputy Speaker, Sir, we are asking the Assistant Minister to table the list of those workers who had already been paid their terminal benefits as he is alleging. The reason why we are asking for the list is because the amount of money which was paid was salary in arrears for the last nine months. Could he give us the names of those who were paid their salary arrears and terminal benefits?

Mr. Kirwa: Mr. Deputy Speaker, Sir, I have no quarrel with that, and I will make the list available to the House.

Mr. Ojode: When?

Mr. Kirwa: Mr. Deputy Speaker, Sir, as soon as the photocopying services are available. I have the list with me.

Mr. Ndicho: Mr. Deputy Speaker, Sir, I happen to have a relative who was working in this place. The information I have, and I believe the Assistant Minister also has it, is that, the money he is talking about was paid to these people through a release payment voucher for people who were going on retrenchment, but there are some senior people who took the money and went to trade with it and so far, the records are showing that this money was paid or was released for the payment of these people but they never received anything. As hon. Ojode has said, it is only the people who had arrears of their salaries who were paid. But those people who were supposed to be paid the retrenchment money have not been paid up to date because somebody very senior--- If the Standing Orders could allow me to name him, I could.

Hon. Members: Name him!

Mr. Ndicho: He took that money and he is doing business with it and whatever he was doing went under, and he is not paying this money. Could the Assistant Minister confirm or deny that, that is the true position and that unless the Government intervenes, these people will remain unpaid for years?

Mr. Wamae: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for hon. Ndicho to refer to somebody who has defrauded the workers of the Cotton Board and then refuse to name him? Is it in order for me to ask him to name the person?

An hon. Member: Yes!

Mr. Deputy Speaker: That is going to break the Standing Orders!

Mr. Ndicho: Thank you, Mr. Speaker, Sir.

An hon. Member: Which Standing Order?

Mr. Ndicho: All of them!

An hon. Member: Name him!

Mr. Kirwa: Mr. Deputy Speaker, Sir, the information I have is that there were two issues. One, is the payment of retrenchment benefits to the workers and also the money that was paid after nine months of non-payment of salaries to the same staff. I would be glad if the hon. Member could give me specific names of people who have not been paid up to date. The list I have is for those people who have been paid.

Mr. Deputy Speaker: Mr. Ruhui's Question. Hon. Ruhui is not here! So, the Question is dropped---

An hon. Member: Ah! wapi? Uongo!

Mr. Deputy Speaker: What do you have hon. Mbeo?

Mr. Mbeo: I intend to ask Question No.532, on behalf of hon. Ruhui---

Mr. Deputy Speaker: What were you waiting for? I had called the Question for the Second Time! Okay, I will give you the benefit of doubt.

Question No.532

REHABILITATION OF SEWERAGE SYSTEMS IN DANDORA

Mr. Mbeo, on behalf of, **Mr. Ruhui,** asked the Minister for Local Government:-

(a) if he is aware that constant blockage of sewerage systems in Dandora is a great health hazard to the residents of this sprawling Estate and,

(b) if the answer to part "a" above is in the affirmative, whether he could ensure that the entire sewerage system in this Estate is rehabilitated.

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

(a) Yes, I am aware.

(b) The Nairobi City Council is attending to the problem by unblocking the sewerage systems. At the moment a contractor has been engaged to clean all the trunk sewers and open them up for the sewer to flow.

Mr. Mbeo: Thank you, Mr. Deputy Speaker, Sir. This is not the first time this Question has been asked

in this House and we have been getting the same answer whenever this particular Question concerning Dandora Estate is asked. It is common knowledge in the whole City of Nairobi that there is no contractor contracted to empty the sewerage systems of the City. Could the Assistant Minister now take it as a very urgent matter affecting the lives of Nairobians and ensure that, it is not only sewerage system in Dandora Estate which is opened up, but also in the rest of the other Eastland Estates, that have completely been ignored and need their sewerage systems attended to? Could the Assistant Minister also tell us the name of the contractor who is doing this job?

Dr. Wameyo: Mr. Deputy Speaker, Sir, I will bring the name of the contractor, tomorrow afternoon.

Prof. Ouma: Thank you, Mr. Deputy Speaker, Sir. The Assistant Minister says that the Nairobi City Council is in the process of getting somebody to unblock the sewerage systems. This blockage of sewerage systems occurs so often in different estates. Could the Assistant Minister tell us what is the cause of this blockage, so that a lasting solution is found? Unblocking is not the solution. For example, is this blockage related to broken and stolen manhole covers, so that solid waste gets into the sewerage? What is the reason? There must be a reason!

Dr. Wameyo: Mr. Deputy Speaker, Sir, I am very happy that hon. Prof. Ouma Muga knows some of these problems. One of the factors causing this problem is the theft of manhole covers leaving sewers exposed to dumping of rubbish and other debris---

An hon. Member: And dropping into the sewer---

Dr. Wameyo: Yes. There is blockage of the sewers by area residents so as to use sewerage for irrigation of their shambas.

(Laughter)

Mr. Deputy Speaker, Sir, there is also the construction of houses and other structures on sewer lines obstructing the manholes and making maintenance of the sewer inaccessible. But to redress this problem, the Nairobi City Council is planning to reinforce the manhole covers so that they cannot be removed by thieves.

Dr. Lwali-Oyondi: Mr. Deputy Speaker, Sir, arising from the answer given by the Assistant Minister, could he consider making the manholes out of concrete, instead of cast iron? Could he also check on the efficiency of the Nairobi City Council, because they can allow somebody to build a house on the sewerage system? Does he not agree with me that there is a lot of inefficiency in the management of the Nairobi City Council, to allow such constructions to be made?

Dr. Wameyo: Mr. Deputy Speaker, Sir, that will be done to make sure that the manhole covers are not so easy to steal.

Mr. Ruhii: Mr. Deputy Speaker, Sir, I wish to ask the Assistant Minister for Local Government why Dandora, of all the estates in Embakasi Constituency, is being penalised by this Government? It is Dandora that has got the dumping ground for all toxic material in Nairobi. It is Dandora where sewerage systems have never been put right, roads are impassable and streets lights are no longer in existence. Could he tell me why this is so? Is it because Embakasi, as we know it, is a predominantly an Opposition area and that, no KANU member exists in Embakasi Constituency? Could he tell me why?

Mr. Nthenge: Mr. Deputy Speaker, Sir, could the Assistant Minister tell us why these people who stole these covers have not been prosecuted?

Dr. Wameyo: Mr. Deputy Speaker, Sir, they will be prosecuted once they are arrested.

Mr. Nthenge: Why have they not been arrested?

Dr. Wameyo: Mr. Deputy Speaker, Sir, they will be arrested when they are identified.

Prof. Mzee: Mr. Deputy Speaker, Sir, if the Assistant Minister changed the name from 'manhole' to something else, probably, they will not be stolen. Why are they called 'manholes' in the first place?

Dr. Wameyo: Mr. Deputy Speaker, Sir, it is a question of English language.

Mr. Mbeo: Mr. Deputy Speaker, Sir, sometimes last year, the same Assistant Minister told this House that one of the problems affecting the sewerage system in Eastlands and, more so, Mathare North was because of illegal structures that have been built on the sewerage systems. He also said that the Ministry of Local Government was going to prosecute the owners of these illegal structures. They were either going to be demolished or something else was going to happen. Up to now, nothing has happened and the same thing is now happening in Dandora. Could the Assistant Minister tell this House, what action his Ministry or the Government is going to take, to demolish the illegal structures and allow free flow of the sewerage system?

Dr. Wameyo: Mr. Deputy Speaker, Sir, as concerns the illegal structures, I have already said that action is going to be taken, to make sure that those involved are prosecuted.

Mr. Mbeo: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to just say

that action is going to be taken when he knows the exact rules to be followed? What should be done when there is an illegal structure? Could he tell this House exactly what action is going to be taken, because it has taken so long? Why has action not been taken to date?

Dr. Wameyo: Mr. Deputy Speaker, Sir, we are going to follow the law and if the structures are found to be illegal, the owners will be prosecuted.

POINTS OF ORDER

WHEREABOUTS OF MR. SIMIYU

Mr. Munyasia: On a point of order, Mr. Deputy Speaker, Sir. I would like to demand a Ministerial Statement from the Ministry of Home Affairs and National Heritage, regarding the whereabouts of Patrick Walela Simiyu, who was imprisoned on 20th February, 1995, on account of being a member of FEM. The same Patrick Walela Simiyu appealed against such sentence and was freed on 14th August, 1996, by the High Court Judge Emmanuel O'kubasu.

Mr. Deputy Speaker, Sir, Dr. Kituyi brought a Question here regarding the whereabouts of Patrick Walela Simiyu who had not arrived home by 2nd July, 1997. The Assistant Minister, hon. Mutiso, while answering the Question on behalf of the Ministry, reported that Patrick Walela Simiyu had died on 16th June, 1995, that is one year and some months before he was freed by Judge Emmanuel O'kubasu, and that he had been buried somewhere in Langata Cemetery because the whereabouts of his parents could not be traced.

Mr. Deputy Speaker: I did not give you the Floor to make a speech!

Mr. Munyasia: Mr. Deputy Speaker, Sir, I am only giving the facts that will help the Minister to make the statement.

Since the Assistant Minister did not know Absalom Simiyu, the father of Patrick Walela Simiyu, he promised that he was going to make investigations and bring the information to this House on Thursday, 10th July, 1997. To date, the Assistant Minister has not appeared to give that reply. The parents of Patrick Walela Simiyu are still waiting for him. We want him dead or alive. If he is dead, we would like to bury him at his home in Chepkube.

The Assistant Minister for Home Affairs and National Heritage (Mr. Mutiso): Mr. Deputy Speaker, Sir, I will make a statement in that connection tomorrow.

SALARY INCREMENTS FOR UNIVERSITY STAFF

Mr. G.I. Ndwiga: On a point of order, Mr. Deputy Speaker, Sir. I would like to seek a Ministerial Statement from a Minister of State, Office of the President, regarding the announcement that was made by the Head of State, concerning the salary increments to civil servants, and particularly to the staff of public universities.

Mr. Deputy Speaker, Sir, some of these universities have not implemented the directive. As we know now, some of the staff have gone on strike and we would hate this kind of strike to spill to the students.

Could a Minister of State, Office of the President give a Ministerial Statement, regarding what was contained in that Presidential directive?

TRAINING OF HOMEGUARDS IN KIMILILI TOWN

Dr. Kituyi: On a point of order, Mr. Deputy Speaker, Sir. I rise to seek a Ministerial Statement from a Minister of State, Office of the President concerning a training activity that has been going on for the past one and a half months, at a police training post outside Kimilili Town, where individuals; young male adult African men, none of them with origins in Bungoma District, have continued to be trained mysteriously. When we have inquired, we have been told that these are homeguards. I would like the Government to tell us what homeguards are being trained for in Kimilili, and for what purpose at a time when such behaviour can easily trigger a lot of tension and anxiety in the run-up to the election.

FUNDS FOR NYERI DISTRICT TREASURY

Mr. Wamae: On a point of order, Mr. Deputy Speaker, Sir. I would like to demand an urgent Ministerial Statement from the Ministry of Finance, with regard to the Nyeri District Treasury. This Treasury is broke and is

not able to even refund bail money and it is not operational. This Treasury's funds are not being replenished from Nairobi. We would like to know why the people of Nyeri are being punished by this Government, by not giving the Treasury sufficient funds to run its operations as is normally the case.

DEATH OF MR. MICHAEL ONYANGO

Prof. Ouma: On a point of order, Mr. Deputy Speaker, Sir. Early last week I stood on a point of order, and asked the Office of the President to make a Ministerial Statement regarding the death of Michael Onyango Obiga who was shot dead by the police under suspicious circumstances. The death of this man has caused havoc in my Constituency. The people of Rangwe Constituency and I, would like to know who killed Onyango Akiro and what has been done. How long are we going to wait for the answer? We even asked for an inquest to know why he was killed, by who and for what reason. When are we going to get this Ministerial Statement? Are we going to go home without it?

Mr. Deputy Speaker: Can you make your statement!

Prof. Ouma: I have already made it!

Mr. Deputy Speaker: Good, then sit down!

Prof. Ouma: Mr. Speaker, Sir, the question is, we would like to be told when they are going to make this statement. The man is dead. They promised to give this statement on Tuesday this week, but it has passed. I would like to know the action that the Government has taken concerning this issue!

Mr. Deputy Speaker: Order! I thought you said that you have already asked for a Ministerial Statement.

Prof. Ouma: Mr. Deputy Speaker, Sir, but when are they responding?

Mr. Deputy Speaker: They will respond. The convention of the House is that the Government responds at its will.

DELAYED REPORT OF THE CONTROLLER AND AUDITOR-GENERAL

Mr. Muite: On a point of order, Mr. Deputy Speaker, Sir. The normal practice is for the report of the Controller and Auditor-General to be made available and laid here in April. We are now in November and the House is about to be dissolved. I would like a Ministerial Statement from the Ministry of Finance to explain this long delay in making the report of the Controller and Auditor-General available. Is it being delayed because this Government is afraid of the contents of that Report? When is it going to be made available?

FLOOD DISASTER AT THE COAST

Prof. Mzee: On a point of order, Mr. Deputy Speaker, Sir. Yesterday, the Assistant Minister in the Office of the President promised that he would issue a Ministerial Statement on the flood disaster at the Coast. I do not know if you noticed that immediately after answering questions, he sneaked out of the House.

Mr. Deputy Speaker: Is Somebody here to give the Ministerial Statement?

Prof. Mzee: Mr. Deputy Speaker, Sir, I would also like to ask the Vice-President and Minister for Planning and National Development to send a message to the President informing him that we are experiencing a disaster at the Coast and that the General Elections cannot be held until probably February and also because of Ramadhan as well.

MINISTERIAL STATEMENT

FLOOD DISASTER AT THE COAST

The Assistant Minister, Office of the President (Mr. Manga): Mr. Deputy Speaker, Sir, I beg to issue a Ministerial Statement in connection with the floods in the Coastal regions of our country. The flood disaster that hit the Coastal region of Kenya recently has been caused by the extraordinary downpour attributed to the climatic phenomena known as El-Nino. El-Nino is a combined effect of air, ocean currents, air pressure, temperature and ocean wind that causes ocean water to warm up which in turn sets in motion an abnormal weather associated with drought.

(Loud consultations)

Dr. Kituyi: On a point of order, Mr. Deputy Speaker, Sir. since this is a very important matter---

Mr. Deputy Speaker: Order! Order, Members. Could you leave the Assistant Minister to be heard in silence?

Dr. Kituyi: On a point of order, Mr. Deputy Speaker, Sir. Apart from the request that the Assistant Minister be heard in silence, would you ask him to inhale air, relax and then try to read the answer properly? He is unable to read the English language.

The Assistant Minister, Office of the President (Mr. Manga): Mr. Deputy Speaker, Sir, if the Member would listen to me, then he will get what I am trying to say. In Mombasa and Malindi, for instance, a total of 761.1 millimetres and 293.6 millimetres of rainfall respectively have been received from 1st October to 20th October representing a very substantial increase of 784.8 per cent and 424 per cent over the long term average figures of 97 millimetres and 69.2 millimetres respectively. The areas that were directly affected by the destructive downpour include Kilifi, Kwale, Malindi, Mombasa and Tana River Districts. Roads and bridges were washed away in Kwale, Kilifi and Malindi while the Moi International Airport suffered overflowing. The Nairobi-Mombasa Railway line was washed away near Miritini effectively rendering Mombasa inaccessible by rail.

Mr. Deputy Speaker, Sir, on the other hand, crops and livestock farming suffered especially in Kwale, Kilifi, Malindi and Tana River Districts. In Tana River district alone, a total of 634 heads of livestock are believed to have been lost.

Mr. Deputy Speaker, Sir, with regard to the water supply, the main Mzima pipeline was washed away at Kibarani on the Makupa Causeway and people went without water for about three days. Since some schools particularly in Kwale, Malindi and Kilifi districts could not be reached, the KCSE examination programme was temporarily hampered. Meanwhile, the houses and homesteads in both urban and rural areas were destroyed or rendered inhabitable, and 350 families' homes were destroyed in Kisauni and Changamwe in Mombasa, while 220 families were displaced in Garsen Division of Tana River District. Approximately 125 homesteads were destroyed and 250 families were displaced in Malindi District.

Mr. Deputy Speaker, Sir, in all these disasters, our records shows that 23 people lost their lives by either drowning or being crushed by collapsing walls. It is known that the Government has acted swiftly to alleviate the flood disaster. His Excellency the President personally made an unscheduled visit to Kilifi, Mombasa and Kwale districts where he personally assisted and evaluated the damages and also consoled the affected families. His Excellency the President donated a personal donation of Kshs1 million of which Kshs700,000 went to the flood victims and Kshs300,000 went to the funeral arrangements for the people who died.

Mr. Deputy Speaker, Sir, the Government has declared Coast Province a disaster area to facilitate the mobilisation of resources towards the flood disaster. In addition, the Government has launched a disaster Fund which now stands at Kshs6.3 million with an initial Government contribution of Kshs2 million. Moreover, 45,000 bags of maize are now available for distribution within the affected Coast region.

The other areas involving Government responses have included the provision of four helicopters for rescue operations, essential medical services and examinations. So far, the repairs of the Changamwe-Mombasa inland water pipeline has been completed and in the North Coast, Mbogoro and Company bridges have been repaired. In the South Coast, the Diani-Lungalunga Road which suffered seven cuts is under repair. The repairs of the Marere bridge connecting Kwale and Kinango will, however, take time, but diversions are being worked on.

Mr. Deputy Speaker, Sir, similar responses have been launched in other areas. For instance, access through Bura-Hola Road is also being considered.

Mr. Deputy Speaker, Sir, there is an outbreak of cholera and diarrhoea and the Government medical surveillance teams are already in Malindi, Kilifi, Kwale and Mombasa districts. In addition to that, drugs are being distributed by using helicopters to areas that have been cut off such as Kinango area.

Medical officers of health in the districts are part of the disaster response team under the district commissioners for the effective co-ordination on the ground. Disaster Committees have been formed at the district and provincial levels, even at the national level for preparations and taking action on the floods which, according to the meteorological experts, are expected to pick up in November, particularly in the Coast, Northern and Western Kenya.

Prof. Mzee: Mr. Deputy Speaker, Sir, I wish to thank the Assistant Minister for his lengthy statement. But I would like him to tell us what "the declaration of disaster" exactly means. We were told by the Government

that it would cost more than Kshs1 billion to rectify the damages. So far, the Minister has indicated that the disaster fund has Kshs6.3 million with Kshs2 million from the Government. That is very, very far from the Kshs1 billion target. Can we not mobilise the engineering units of the Kenya Army and the Kenya Navy to distribute food and repair the damages and make funds available to the victims of the floods, for example those in Bombolulu and Kalahari areas where a number of them have died through landslide? We should also provide alternative sites for those people to move to. It is useless to ask people to leave if we do not have alternative sites which are already equipped to receive those people.

The Assistant Minister, Office of the President (Mr. Manga): Mr. Deputy Speaker, Sir, the declaration of disaster as I said, is meant to enable the Government to move in and put together its resources without any problem so that it can alleviate the problem. I want also to clarify that the Kshs6.3 million which has been collected so far, is not meant for the repair of roads and other things. That money will go towards assisting the victims of the floods. The Government must have spent a lot of money to repair the bridges and other things. So, money is being used and our resources are being pulled together and the exercise will continue.

COMMITTEE OF THE WHOLE HOUSE

(Order for the Committee read)

[Mr. Deputy Speaker left the Chair]

IN THE COMMITTEE

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

THE ELECTRIC POWER BILL

The Temporary Deputy Chairman (Mr. Wetangula): Order, hon. Members! We have got two Bills before the House. We will start with the Electric Power Bill.

Clause 2

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, on Clause 2, I have two concerns to raise. The definition of "electric line" includes a telegraph or telephone line. Since when did a telephone line become part of an electric line? Could the hon. Minister explain to the House?

The Minister for Energy (Mr. M'Mukindia): Mr. Temporary Deputy Chairman, Sir, the hon. Member knows very well what a telegraph or a telephone line does. It carries an electrical current just like any major transmission or distribution line and that by definition is also covered under this.

Dr. Kituyi: Is it the understanding of the Minister that anything that has charged ions and does transmit electricity is a telephone line?

The Minister for Energy (Mr. M'Mukindia): Mr. Temporary Deputy Chairman, Sir, I think the hon. Member is really trying to misinterpret this thing. A line is a line and an object is an object. The two are very different.

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, when we look at the definition of a public authority, it is defined as the Government or any department or branch of the Government or of a community.

Can the Minister explain to this House how a branch of a community becomes a public authority?

The Minister for Energy (Mr. M'Mukindia): Mr. Temporary Deputy Chairman, Sir, again, this is a matter of semantics. I think it is quite clear that a public authority means either the Government or any department or branch of the Government or the community.

Dr. Kituyi: Mr. Temporary Deputy Chairman, Sir, I have asked him to tell this House since when did a branch of a community become a public authority?

The Minister for Energy (Mr. M'Mukindia): Mr. Temporary Deputy Chairman, Sir, as far as local authorities are concerned, we can have a branch of the local authority which is part of a community.

(Clauses 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61,

62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 71, 72, 73, 74, 75,
76, 77, 78, 79, 80, 81, 82 and 83 agreed to)

Clause 119

Mr. Muite: Mr. Temporary Chairman, Sir, is the Minister satisfied that the powers of the Board and the powers of Minister, as set out in the sections that have been read out, are actually going to encourage private investment by way of privatising electricity supply in this country? This Bill seeks to achieve liberalisation of the energy sector in this country. However, what the Bill seeks to give with the right hand, it is taking it away with left hand, in the sense that the Minister remains firmly in control of the Board, while the Board remains firmly in control of the entire process. This is likely to discourage private investment in the energy sector. Now that we are in Committee Stage, could the Minister consider suitable amendments to this section so that he confines his role to the regulation only and not the control. The powers retained here by the Minister and the Board mean that the sector will continue to be controlled very firmly by the Board and by the Minister. That will be a disincentive towards private investment in this sector.

The Minister for Energy (Mr. M'Mukindia): Mr. Temporary Deputy Chairman, Sir, the answer to the first question by hon. Member is: Yes, indeed. I am very satisfied that with the passing of this Bill and its subsequent enactment, it will be very attractive for the private sector to play its full role in the provision of electricity in this country. Secondly, the comments that the hon. Member has made were made during the Second Reading of this Bill. I disposed of that in my reply to the debate. The only duty that the Minister has is two-fold; licensing and setting up the policy for the sector. As far as the day to day control and regulation is concerned, we will leave this entirely to the Board.

Clause 121

Mr. Achola: Mr. Temporary Deputy Chairman, Sir, following what hon. Muite has raised, if you look at Clause 121(a), one of the functions of the Board is actually to set, review and adjust tariffs. If we will liberalise the energy sector, what business does the Board have in setting these tariffs? Clause 121(f) says that the Board will also approve electric power purchase contracts. If we will privatise the sector, the Board has no business really getting involved in it. Could the Minister throw some light on that one?

The Minister for Energy (Mr. M'Mukindia): Mr. Temporary Deputy Speaker, Sir, although we are liberalising the sector, we are not saying that, merely because you have put up a plant, you can charge anything you want. We have to recognize the fact that the energy sector is very important, whether it is for domestic or industrial purposes. It exerts a major influence on our standards of living, industries and so on. Therefore, we have to ensure that the tariffs are reviewed by the Board and set up according to the economic returns that are expected by each and every investor in this sector.

Mr. Muite: Mr. Temporary Deputy Speaker, Sir, I am interested to hear from the Minister how he expects to leave everything to the Board and that, that is sufficient liberalisation when he himself, as the Minister, is the one who will appoint that Board. Should he not consider liberalising the power to appoint the Board? Why, for example, does he not make provisions for the Institute of Engineers to appoint some members to that Board? Why does he not divest or democratise the powers of the Minister to nominate the Board? As long as it is the Minister who will nominate the Board, then it will be done on political basis and the directors of the Board will only do what they have been directed by the Minister to do.

The Minister for Energy (Mr. M'Mukindia): Mr. Temporary Deputy Chairman, Sir, this Bill sets out clearly what kind of professionals will be appointed to the Board. This question was debated in the second reading and there was a problem. It touches on the principle of who is going to be accountable to the public at the end of the day. Is it somebody who has no linkage with the public? At the end of the day, whichever Government is in power, we will have to be accountable to the public. This is because, we will be re-elected or rejected every five years. Therefore, it is appropriate that the Minister appoints the Board that will regulate and put in place the policies of the Government of the day.

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, could the Minister, in the case of the chairman of the Board, concede that instead of leaving the power to appoint the Chairman exclusively to the President, we should subject that appointment to the approval by Parliament, and perhaps also, his own powers to appoint the other five Board Members? Could he consider liberalising that?

The Minister for Energy (Mr. M'Mukindia): Mr. Temporary Deputy Chairman, Sir, I think the

question of Parliamentary approval of public officials is one of the items that is going to be dealt with by the commission that will review the Constitution, which the hon. Member has, unfortunately, gone against very strongly. The chance for that comes next year. I think, we would be jumping the gun today, if I approve that in principle. We need to review all the public officers, whether they are Presidential appointees or Public Service Commission people. I think in principle, we can do it. But we should wait until next year, when the Commission to review the Constitution starts its work.

*(Clauses 84, 85, 86, 87, 88, 89, 90, 91, 92, 93,
94, 95, 96, 97, 98, 99, 100, 101, 102, 103,
104, 105, 106, 107, 108, 109, 110, 111, 112,
113, 114, 115, 116, 117, 118, 119, 120,
121, 122, 123 and 124 agreed to)*

Clause 127

Mr. Achola: Mr. Temporary Deputy Chairman, Sir, in Clause 127, I think both the functions of the Ministry and the Board are being duplicated. For example, licensees will be required to furnish statistics to either the Minister or the Board. Now, can we make up our minds as to who is supposed to get these statistics, instead of asking licensees to furnish statistics to the Minister or the Board?

The Minister for Energy (Mr. M'Mukindia): Mr. Temporary Deputy Chairman, Sir, we are not specifying the statistics. There are statistics that will definitely be required by the Minister. But on a more regular basis, I believe the licensees will make more information available to the Board, who may then advise the Minister accordingly. But the Minister must have the possibility to access data directly from the licensees.

Clause 129

Mr. Achola: Mr. Temporary Deputy Chairman, Sir, when we were contributing to this Bill, many hon. Members considered the electricity sales levy of five per cent for every power consumed, punitive to consumers. They suggested this Clause to be removed. Could the Minister tell us whether he actually considered that?

The Minister for Energy (Mr. M'Mukindia): Mr. Temporary Deputy Chairman, Sir, during the debate in the Second Reading, there were two views. The view by hon. Keah was that, five per cent was too low because ten per cent of our people have got electricity in their houses. Therefore, 90 per cent of the country is not covered. The question which was asked was: How do you expect to ensure that the 90 per cent who are not covered by electrification will actually get the electricity as soon as possible? There was a proposal that, it should be increased to ten per cent.

On the other hand, hon. Achola asked the same question that he has asked today. We think that, five per cent is reasonable and it is in recognition of the need to spread electricity throughout the country. It is also a recognition of the fact that those of us who are lucky to have electricity today, have benefited through the Government investments, more or less for free. Really, a little payment on the basis of consumption is not too harsh.

*(Clauses 125, 126, 127, 128, 129,
130, 131 and 132 agreed to)*

(Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Energy (Mr. M'Mukindia): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Electric Power Bill, and its approval thereof, without amendment.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Mr. Wetangula): Let us go to the Co-operative Societies Bill.

THE CO-OPERATIVE SOCIETIES BILL

(Clause 2 agreed to)

Clause 3

The Minister for Co-operative Development (Mr. Munyi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3 be amended as follows:-

- (a) by deleting subclause (1) and inserting the following new subclause:-
- (1) There shall be a Commissioner for Co-operative Development who shall be responsible for the growth and development of co-operative societies.
- (b) by deleting subclause (3) and inserting the following new subclause:-
- (3) There shall be a Registrar of Co-operative Societies.
- (4) There shall be a Deputy-Registrar of Co-operative Societies and such number of Assistant Registrars as may be necessary for the purposes of this Act.
- (5) The Commissioner and the Registrar appointed under this section shall be public officers designated by the Minister for that purpose.
- (6) The Minister may, by a notice in the Gazette, and without prejudice to the power of the Registrar or the Deputy Registrar to exercise such powers or perform such duties, delegate any of the powers or duties conferred or imposed on the Registrar by or under this Act, to any Assistant Registrar.

(Question of the amendment proposed)

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

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

(Clause 3 as amended agreed to)

(Clause 4 agreed to)

Clause 5

The Minister for Co-operative Development (Mr. Munyi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5 be amended as follows:-

- (a) by deleting paragraph (c);
- (b) by renumbering the existing paragraph (d) as paragraph (c).

(Question of the amendment proposed)

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

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

(Clause 5 as amended agreed to)

*(Clauses 6, 7, 8, 9, 10, 11, 12, 13, 14, 15,
16, 17 and 18 agreed to)*

Clause 19

Mr. Michuki: Mr. Temporary Deputy Chairman, Sir, when I supported this Bill during the Second Reading, I made a very important point for which the Minister even congratulate me for, and it is a point I have brought out because in his amendments which he had assured me he would address to, he did not include this matter. If you look at the co-operative societies in rural areas, particularly the coffee co-operative societies, it is the wife and children who are involved because the husband has gone away from home. It is the wife and members of the family who do everything except to participate in voting. So, I am proposing the following amendment.

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Michuki, let me guide you. The correct way of moving your amendment is straightaway go to read out what you want to be done, before you give us the explanation, so that everybody can follow. Because what you are saying is already in the HANSARD, anyway. So, tell us what you want to do at this stage.

Mr. Michuki: Mr. Temporary Deputy Chairman, Sir, I propose that Clause 19 be amended, by deleting the colon after the word "hold" appearing in third line and inserting the following:

"But a member shall have the right to give a proxy to a spouse to vote at any meeting which the member has a right to vote".

This is my proposal in order to eliminate a lot of misunderstanding at the annual general meeting of the co-operatives societies, where we have husbands who are away and the family that looks after the produce does not participate in the decision that affects that produce. This will go a long way in eliminating that problem and introducing stability at the annual general meetings of the co-operative societies. So, I propose that amendment.

(Question of the amendment proposed)

Mr. Muite: Mr. Temporary Deputy Chairman, Sir, I would like very strongly to support the proposed amendment by the hon. Michuki, because it accords the practical realities at grassroots, with the law. We know that in a lot of these societies particularly the coffee co-operative society and even tea, when the husbands are away, it is the wives who attend the meetings, and it resorts in a very unfair situation where the majority of the people attending the meetings are not permitted to vote because they are not the co-operators, it is their husbands who are the co-operators, and yet the husbands are not able to attend the meeting. So, this will enable the women to actually vote at the meetings. And I think we can begin to see, if the Minister concedes to the amendment, we can begin to see the voting out of the men who vote themselves in and that is spoiling the society. I really would urge the Minister to concede to that proposed amendment. Thank you.

The Minister for Co-operative Development (Mr. Munyi): Mr. Temporary Deputy Chairman, Sir, after considering what has been going on, especially the outcry in the rural areas and elsewhere, I accept that suggestion by hon. Michuki.

Thank you, Mr. Temporary Deputy Chairman, Sir.

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

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

(Clause 19 as amended agreed to)

(Clauses 20, 21, 22, 23 and 24 agreed to)

Clause 25

The Minister for Co-operative Development (Mr. Munyi): Mr. Temporary Deputy Chairman, Sir, I

beg to move:-

THAT, clause 25 be amended as follows:-

(a) In subclause (3) by deleting the words "accounting period" and inserting the words "financial year";

(b) By deleting subclause (4) and inserting the new subclause-

(4) The audited accounts referred to in subsection (3) shall include-

(a) A balance sheet;

(b) A Surplus and loss account; and

(c) Cash flow statement,

and shall be approved by the members of the committee and authenticated by at least three office bearers, including the treasurer of the co-operative society, in accordance with the by-laws of the society.

(c) In subclause (5)-

(i) By deleting the words "efficiently and" appearing in paragraph (a);

(ii) By deleting the word "annual" appearing in paragraph (b) and inserting "a".

(Question of the amendment proposed)

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

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 25 as amended agreed to)

(Clauses 26, 27, 28 and 29 agreed to)

Clause 30

The Minister for Co-operative Development (Mr. Munyi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 30 be amended in subclause (7), by inserting immediately after the expression "sub-section (5) " appearing in paragraph (c), the words "or the securing of their claims".

(Question of the amendment proposed)

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

(Clause 30 as amended agreed to)

(Clauses 31, 32, 33 and 34 agreed to)

Clause 35

The Minister for Co-operative Development (Mr. Munyi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 35 be amended as follows:

(a) In subclause (2) by deleting the words "at the daily rate of not less than 20 per cent and inserting "at the rate of not less than 3 per cent per month."

(b) By inserting the following new subclause-

(3) In any proceedings instituted under the provisions of this section, the society may be represented by the Registrar.

(Question of the amendment proposed)

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

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 35 as amended agreed to)

(Clauses 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, and 57 agreed to)

Clause 58

The Minister for Co-Operative Development (Mr. Munyi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 58 be amended, in subclause (1) by deleting the words "of the Commissioner or".

(Question of the amendment proposed)

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

(Clause 58 as amended agreed to)

(Clauses 59, 60, 61, 62, 63, 64, 65, 66 and 67 agreed to)

Clause 68

The Minister for Co-operative Development (Mr. Munyi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 68 be amended as follows:

(a) by deleting the words "the parties, and shall be enforceable in like manner as an order made by the Registrar under subsection (1)(a)" appearing immediately after paragraph (1) of subclause (1);

(b) by inserting the following new subclause immediately after subclause (1):-

(2) The decision of the Tribunal on any matter referred to it under subsection (1) (K) shall be binding upon the parties and shall be exercisable in the like manner as an order made by the Registrar under subsection (1) (a).

(Question of the amendment proposed)

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

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 68 as amended agreed to)

Mr. Achola: On a point of order, Mr. Temporary Deputy Chairman, Sir. Can you warn hon. Dr. Wameyo to stop smashing our eardrums? If he has nothing to do, he can go and do it outside this House!

(Laughter)

The Temporary Deputy Chairman (Mr. Wetangula): I thought that voting here is by voice acclamation; either "yes" or "no". That is what hon. Dr. Wameyo is doing!

Mr. Achola: He is just shouting!

Clause 69

The Minister for Co-operative Development (Mr. Munyi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

Appeal against THAT, Clause 69 be deleted and
order of the following new clause

Liquidator or Inserted-

Registrar 69.(1) A person aggrieved by any

order or decision of the Registrar or the liquidator under section 66 or section 68, as the case may be, may appeal against the order or decision to the Tribunal within fourteen days of the order or decision.

(2) A person aggrieved by a decision of the Tribunal under subsection (1) may appeal to the High Court within fourteen days of the decision.

(Question of the amendment proposed)

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

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

(Clause 69 as amended agreed to)

(Clauses 70, 71 and 72 agreed to)

Clause 73

The Minister for Co-operative Development (Mr. Munyi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, clause 73 be amended in subclause (3) by deleting the word "request" and inserting the word "direct".

(Question of the amendment proposed)

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

*(Question, that the word to be inserted
in place thereof be inserted, put and agreed to)*

(Clause 73 as amended agreed to)

*(Clauses 74, 75, 76, 77, 78, 79, 80, 81, 82,
83, 84, 85, 86, 87, 88, 89 and 90 agreed to)*

Clause 91

The Minister for Co-operative Development (Mr. Munyi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 91 be amended in subclause (3) by deleting the words "shall be authentic and"

(Question of the amendment proposed)

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

(Clause 91 as amended agreed to)

(Clauses 92, 93 and 94 agreed to)

New Clause

The Minister for Co-operative Development (Mr. Munyi): Mr. Temporary Deputy Chairman Sir, I beg to move:-

THAT, the following new clause be inserted immediately after Clause 91:-

Exemption.92(1) Notwithstanding anything contained in this Act, the Minister may, by notice in the Gazette:-

- (a) exempt any co-operative society from all of the provisions of this Act, subject to such conditions, exceptions or qualifications as he may think fit to impose;
- (b) apply to any co-operative society any or all of the provisions of this Act, subject to such modifications as he may think fit.
- (2) The Minister shall be cause to published in the Gazette 14 days notice of the intention to grant an exemption under subsection (1).
- (3) Any person with an objection regarding an intended exemption under this section may make representations to the Minister within the period of notice.
- (4) The Minister may upon considering representations and objections made under this section either:-
 - (a) abstain from granting the intended exemption; or
 - (b) grant such exemption subject to such terms and conditions as he may deem fit.

I propose that this new clause be included in the Bill, so that it can explain other clauses which have been amended.

(Question of the new clause proposed)

(New clause read the First Time)

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

Mr. Achola: Mr. Temporary Deputy Chairman, Sir, could the Minister for Co-operative Development explain to the House the purpose and reason for this new clause?

*(Mr. Saitoti whispered
something to Mr. Munyi)*

Could hon. Saitoti allow the Minister to do his job?

The Minister for Co-operative Development (Mr. Munyi): Mr. Temporary Deputy Chairman, Sir, the new clause is on the Order Paper and the hon. Member can see it.

(Laughter)

Mr. Achola: Mr. Temporary Deputy Chairman, Sir, you cannot be satisfied with that. That is not an explanation at all! Is it? What is the purpose of the new clause? The fact that it is on the Order Paper does not explain anything.

The Minister for Co-operative Development (Mr. Munyi): Mr. Temporary Deputy Chairman, Sir, it came out of the proposals which were given by hon. Members. Mr. Michuki and the other hon. Members suggested it.

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

(The new clause was read a Second Time)

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

New Clause

The Minister for Co-operative Development (Mr. Munyi): Mr Chairman, Sir, I beg to move:-

THAT, the following new clause be inserted after the new clause 91:-

Powers of the Minister 93. The Minister may at any time and on any matter direct the Commissioner as to the exercise of his powers and duties under this Act.

THAT, clauses 92, 93 and 94 be renumbered accordingly.

(Question of the new clause proposed)

(The new clause read First Time)

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

Mr. Achola: Mr. Temporary Deputy Speaker, Sir, the Minister is not able to explain his clauses. I again want to know the purpose of this other new clause.

The Minister for Co-operative Development (Mr. Munyi): Mr. Temporary Deputy Chairman, Sir, the new clause is on the Order Paper and it is very clear. The hon. Member can see it.

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

(The new clause was read a Second Time)

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

(Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Co-operative Development (Mr. Munyi): Mr. Temporary Deputy Chairman, Sir, I beg to report---

An. hon. Member: No, you beg to move!

The Minister for Co-operative Development (Mr. Munyi): I beg to move that what has been already discussed---

The Temporary Deputy Chairman (Mr. Wetangula): Order! Order, hon. Minister! You are supposed to say "I beg to move that the Committee doth report to the House its consideration---"

The Minister for Co-operative Development (Mr. Munyi): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report the consideration to the House---

Mr. Muite: On a point of order, Mr. Temporary Deputy Chairman, Sir! Is it in order for the Chairman of a Committee of the whole House to really start spelling out to the Minister, who is earning the salary of a Cabinet

Minister what he should say? If he cannot do that simple requirement, why does he not ask his Assistant Minister to do it on his behalf?

The Temporary Deputy Chairman (Mr. Wetangula): Mr. Muite, the Chairman has the legal duty to ensure that the proceedings are carried out properly including guiding the Minister. Minister, carry on.

Mr. Ndicho: On a point of order, Mr. Temporary Deputy Chairman, Sir. Did you hear, even after you tried to guide him, instead of saying that "I beg to move", he said that "I beg to remove"

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS

THE ELECTRIC POWER BILL
CO-OPERATIVE SOCIETY BILL

Mr. Wetangula: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered the Electric Power Bill and approved the same without amendment.

The Minister for Energy (Mr. M'Mukindia): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said report.

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

(Question proposed)

(Question put and agreed to)

The Minister for Energy (Mr. M'Mukindia): Mr. Deputy Speaker, Sir, I beg to move that the Electric Power Bill be now read the Third Time.

The Minister for Health (Gen. Mulinge) seconded.

(Question proposed)

Mr. Muite: Mr. Deputy Speaker, Sir, now that this very important registration is about to become law, I express the hope that this is the last time we shall ever see generation of electricity as is in the same with the Turkwel dam. I hope that this Bill will prevent the possibility ever, of this country having another white elephant like Turkwel Dam. Electricity power affects the economy in a very fundamental way. The sooner efforts are made to bring down the cost of energy, the better. I would urge that the new Board when it is constituted including the Minister and the Government, whichever Government takes over after the next election, investigate the possibility of bringing down the cost of electricity in this House by importing and entering into sensible arrangements with our neighbours. Especially Tanzania which has got excess capacity of very cheap electricity. Uganda is now constructing the second hydro-electric project on the River Nile.

Mr. Deputy Speaker, Sir, these are neighbouring countries. We must regionalize the management of energy in order to--- (*inaudible*). I suggest that investigations should be done to see whether this Board that is being set up in this Act, can now negotiate the purchase of shares in the power generation in Northern Tanzania and Uganda and import it at a much lower cost than the cost of generating our own power here. If we could reduce the cost of energy in this country by 15 per cent, that will bring down the cost of irrigation, for example, horticulture as well as floriculture, and the cost of everything will come down to the benefit of the Kenyan economy. The proposals I am putting forward, that this Board and the Government should tempt the Republic of Uganda with exchange of shares. We can give them shares in the pipeline and extend the pipeline to Kampala, so that the cost of transporting the oil there goes down. They can own shares in the pipeline and we can own shares in the companies that are generating power in Uganda, so that we do not hold them at ransom and they do

not hold us at ransom. They benefit and we benefit. Their economy benefits and our economy benefits. What is ultimately important is to reduce the cost of energy for the benefit of the common people and the economy of this country, and that should be the objective. Thank you, Mr. Deputy Speaker, Sir.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Deputy Speaker, Sir, I just want to make a very brief comment at this Third Reading. It is commendable that this Bill has been passed because the passage of this Bill will trigger the release of a substantial amount of money which is going to expand the energy sector and especially more so, electricity which is going to be available for the expanding industry. Another important aspect of this Bill is the fact that with its own passage, it does open up the way for the involvement of the private sector. This is most welcome because we all know that it is the private sector that is going to play a major role in the industrialisation envisaged in the year 2000 and this is important. I want also to say one thing: It is utterly untrue, and it should be recorded here, that Turkwel is a "white" elephant. Without Turkwel, there would be no electricity at all. Electricity will continue to be expanded after elections, by which time KANU Government will have won with a landslide.

Mr. Deputy Speaker: Hon. Members, I hope you realise that this is the Third Reading stage.

Mr. Ndicho: Mr. Deputy Speaker, Sir, I want to be very brief and say that I am very happy and very proud that this Bill which is establishing that Board is going to remove the patronage of politics in the power sector. We hope and it is our trust that the liberalisation that will also be brought by establishment of this Act, will take electricity to the rural areas and ensure that the youth who are leaving school will have as much electricity and power as possible to start jua kali projects in these areas. This will reduce the influx of young people coming to look for jobs in the urban areas. My greatest joy is that the political patronage is over. But as this Bill is now being read a third time here, I would like to brief you of an incident taking place in my constituency where the KANU candidate in Juja Constituency is going round telling people that he is going to bring electricity to the area. He has even started digging holes for the poles. He is misusing the KPLC staff at Thika who go digging holes for electric poles and he is telling people that it is him who is doing that and because of his good relationship with KANU, they are going to get electricity. When this Board comes into effect, it should remove such characters and stop them from misleading the people.

The Assistant Minister for Information and Broadcasting (Mr. Nassir): Jambo la nidhamu, Bw. Naibu Spika. Hii Wizara ya Kawi imefanya kazi nzuri miaka yote, na kupeleka nguvu za umeme hata mpaka Kikuyuni. Je, kulikuwa na nguvu za umeme huko Kikuyuni wakati wa Bw. Njonjo?

Mr. Ndicho: What is your point of order?

The Assistant Minister for Information and Broadcasting (Mr. Nassir): Jambo langu la nidhamu ni kwamba usiseme maneno ambayo si ya kweli. Hii Wizara imefanya kazi yake sawasawa. Serikali ya KANU haidanganyi watu kwa sababu wakati wa kupiga kura unakaribia, lakini inawatumikia wananchi vile inavyotakikana.

Mr. Ndicho: Mr. Deputy Speaker, Sir, let me complete my point. The Kipipiri incident is still fresh in our minds where after KANU lost, all the poles were collected and they never got the electricity they had been promised before the by-election. I am saying that this Board has come now to remove the patronage of politics from the power sector. It is my hope that this person who is misleading people in Thika should be told in no uncertain terms that from now on, it will be the responsibility of this Board to take power to the people but not KANU, FORD(A) or any other party.

Mr. Deputy Speaker, Sir, lastly, this Board should take into account that they are in business and looking for as many customers as possible, so that they can make as much money as possible. Before, even if you had all the money that was needed and wanted to organise yourselves into a group in a village in order to bring electricity to your village, if you were not politically correct, you would not get that power. I am very proud that this Board has come in now, to rid all that and we are going to deal with the Board rather than KANU to get power supply.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Achola: Thank you, Mr. Deputy Speaker, Sir. My brief comment on this is to appeal to the Minister to try and distribute rural electrification fund as transparently as possible.

(Mr. Mwaura consulted Mr. Gichuru of KPLC)

Mr. Muite: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for hon. Mwaura to go to negotiate with Mr. Gichuru, probably about electricity? **Mr. Deputy Speaker:** Hon. Muite, what did you say? I did not hear you.

Mr. Achola: Thank you, Mr. Deputy Speaker, Sir. Hon. Mwaura was trying to canvass for something.

I was saying that I would like to appeal to the Government to try and ensure that Rural Electrification Fund is utilised in a transparent manner. Rural Electrification Fund has been used corruptly in this country. For example, in certain areas, politically correct individuals have had electricity right inside their areas without consideration on how viable or how economical that supply was. So, my appeal is that the Government should try as much as possible, to supply electricity to those unviable areas in a transparent manner. For God's sake, keep corruption out of it because it is known that KPLC has supplied electricity to areas where only certain individuals are supplied with power and the people surrounding those areas are not given electricity.

Thank you, Mr. Deputy Speaker, Sir.

The Minister for Energy (Mr. M'Mukindia): Mr. Deputy Speaker, Sir, I just want to answer a few questions because this is actually the third reading. The major debate has already been done in the second reading, as well as during the Committee Stage. People should not take advantage of some of the members of my staff who are here at the moment, to try and bring back a debate which was dealt with in the second reading.

Mr. Deputy Speaker, Sir, Mr. Muite's statement that Tanzania and Uganda are in a position to supply us with electricity is not correct. At the moment, Tanzania is rationing about 100 megawatts of electricity and Uganda about 60 megawatts. The only country in East Africa that is meeting its electricity demand is Kenya. This is because of the actions that we have taken appropriately, to ensure that this country is well supplied with power. In future, the question of regionalism will come automatically. Any private sector distributor, transmitter or generator will buy power from the cheapest source in the region. So, it is almost automatic in the event that both Uganda and Tanzania do go ahead and---

Mr. Deputy Speaker: What is your point of order, hon. Ndicho?

Mr. Ndicho: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Minister in order to mislead this House and---

Mr. Deputy Speaker: You know that is not really a point of order!

Mr. Ndicho: No! No! You do not know my point of order, Mr. Deputy Speaker, Sir. You cannot say it is not a point of order.

Mr. Deputy Speaker: Nobody is ever in order to mislead the House.

Mr. Ndicho: But you should listen to my point! The Minister has said that Kenya is the only country in East Africa which is self-sufficient in electricity supply. Is he in order to say that when we know that more than three-quarters of Kenyans are not supplied with electricity?

The Minister for Energy (Mr. M'Mukindia): Mr. Deputy Speaker, Sir, the hon. Ndicho is not listening. In fact, he did not even listen to the debate. I have already said and accepted that in fact 90 per cent of this country is not covered by electricity and that is why we have to levy 5 per cent on electricity consumption to ensure that we distribute electricity all over the country. Nevertheless, what I am saying, and this is what he does not understand, is that the supply and demand is balanced in this country. It is not balanced in Tanzania or Uganda.

Mr. Deputy Speaker, Sir, just to answer the other important question raised by the hon. Muite, the question of possible ownership between East African countries, yes indeed, we support that and the question of the extension of the pipeline to Uganda is a case in point and it will be considered. As you know, we have already signed an agreement between the European Investment Bank and Uganda and Kenya to carry out a feasibility study into the extension of the pipeline to Kampala. Soon it will come along. It is a good suggestion.

Mr. Deputy Speaker, Sir, as to the question of people claiming that they are the ones putting electricity here or there, we in the Ministry of Energy have absolutely no control over either a KANU or a FORD(A) candidate claiming that he or she is the one who supplies electricity all over the country. That is not our business as a Ministry. Therefore, I think the hon. Ndicho should deal with that man or woman in Thika accordingly.

Mr. Ndicho: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Minister in order to antagonise that fact when that man is using the personnel of the Kenya Power and Lighting Company in Thika to go and dig those holes yet when they are doing that, he says that it is him and KANU who are doing it?

An hon. Member: There is nothing wrong with that.

Mr. Ndicho: If there is nothing wrong with that, then let the Minister not say that it is not KANU or FORD(A) doing it. It is the misuse of those personnel by this man.

That is what I am complaining about.

The Minister for Land Reclamation, Regional and Water Development (Mr. Nyachae): On a point of order, Mr. Deputy Speaker, Sir. We completed the debate on this subject much earlier. This is the Third Reading. We are drifting back to the debate. Could we finalise this matter.

Mr. Deputy Speaker: I fully agree with you but the Minister will have to finalise.

The Minister for Energy (Mr. M'Mukindia): Mr. Deputy Speaker, Sir, I want to finalise by saying that in any case, at the end of the day, it is the Government of the day, which is the KANU Government, which is doing everything in this country. That is a fact, there is nothing you can do about.

Finally, the question of political correctness does not arise. It is really the question of scarce resources and that is why I thank hon. Members for approving 5 per cent levy on consumption so that we can actually expand electricity supply and distribution in this country.

Thank you.

(Question put and agreed to)

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

THE CO-OPERATIVE SOCIETIES BILL

Mr. Wetangula: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered, the Co-operative Societies Bill and approved the same with amendments.

The Minister for Co-operative Development (Mr. Muniyi): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Energy (Mr. M'Mukindia) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Co-operative Development (Mr. Muniyi): Mr. Deputy Speaker, Sir, I beg to move that the Co-operative Societies Bill be now read the Third Time.

The Minister for Energy (Mr. M'Mukindia) seconded.

(Question proposed)

Mr. Nthenge: Mr. Deputy Speaker, Sir, the co-operative movement is the one which can help this country to advance because it includes very poor people who, on their own, can do very little, but once they co-operate they become many and can even buy large buildings and big farms. If 100 farmers with one cow each, form a co-operative society, they can market their milk as a group. I am asking the Minister to have his staff re-organise their thinking because the co-operative societies are not there to benefit a few, but the whole nation. For instance, what happened the other day in Machakos, where a lot of poor farmers lost so much money through a co-operative society which was called a union--- Please, let the Minister make sure that this is not repeated. The most important thing in nature is that if a dog is not known to have a teeth, it will not be feared. We fear dogs because they bite. I am suggesting that the Minister for Co-operative Development should make sure that those who interfere with the co-operative movement are taken to court. This is because the co-operative movement is a body which helps the poor people become united and do one thing which they, individually, cannot do. So, when their money is stolen by a few cunning and unfair people, whether they are members of the Board or not, let them be taken to court and face the law.

With these few remarks, I urge the Minister to take his job seriously in the Ministry of Co-operative Development.

Mr. Michuki: Mr. Deputy Speaker, Sir, now that we have passed this Bill, the officers in the Ministry of Co-operative Development should turn to civic education and teach members how to conduct their affairs within the co-operative societies during this era of liberalisation. Unless this is done, there will continue to be a conflict between the co-operators and the officials of the Ministry. Secondly, the economy is liberalising very fast and the Minister should ensure that the role of the District Co-operatives is completely minimised so that everything takes place at the primary society. He must work out a method, particularly in the coffee sector, through which the KPCU or any other mills or the Coffee Board, pay money directly, accompanied by all the accounting documents stating the prices at which the produce was bought. Auction should not be by private treaty. They should also be prepared to explain to the primary societies how they have benefited or have been

adversely affected through price fluctuations.

Mr. Deputy Speaker, Sir, the Minister comes from an area which grows coffee---

Mr. Deputy Speaker: Mr. Michuki, I think you are advancing your own argument. This is the Third Reading Stage of the Bill.

Mr. Michuki: Mr. Deputy Speaker, Sir, now that the Bill has been passed, I am trying to indicate to the Minister what I consider to be areas of priority. If these things are not followed, it will not be strange to see coffee farmers uprooting their own coffee in preference for other crops. So, time has come for this crop to be safeguarded because opportunities are widening within the agricultural sector, in terms of supply and demand. That is what is going to guide farmers. The crops that are being developed, and I am glad that the Minister for Agriculture, Livestock Development and Marketing is here, must be safeguarded because farmers, in exercise of their own freedom, can uproot the coffee or tea in preference for other crops. The retention of these crops will depend on how they are treated both by the Ministry of Co-operative Development and also the Ministry of Agriculture, Livestock Development and Marketing.

Thank you.

The Minister for Co-operative Development (Mr. Munyi): Mr. Deputy Speaker, Sir, I have listened attentively to what hon. Members have said during the debate on this Bill. They did give very good views and I will consider them. Since the Bill has already been passed, I am sure that most of the issues raised will be implemented.

With those few remarks, we should go ahead.

(Question put and agreed to)

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

Mr. Deputy Speaker: Next Order.

BILL

Second Reading

THE CONSTITUTION OF KENYA REVIEW COMMISSION BILL

(The Attorney-General on 14.10.97)

(Resumption of Debate interrupted on 4.11.97)

Mr. Deputy Speaker: Prof. Anyang'-Nyong'o is not in. Proceed, Mr. Nassir.

The Assistant Minister for Information and Broadcasting (Mr. Nassir): Bw. Naibu Spika, nina furaha kwa kupata fursa hii ili nitoe maoni yangu kuhusu Mswada huu. Baada ya kurekebisha Katiba yetu, Kenya yetu itakuwa Kenya ya leo na wala si ya jana ambayo maskini na tajiri wataishi kwa amani. Pia itawalinda watu wale wanaofikiria kwamba wanaonewa. Kwa hivyo, Katiba hii itakuwa nzuri sana ikiwa watu wetu wataelezwa yale mabadiliko ambayo tumefanya. Ombi langu ni kwamba Tume hii ambayo itasikiza maoni ya wananchi kuhusu mabadiliko ya sheria zetu, ifanye kazi nzuri. Miaka iliyopita, tulikuwa na tume ambayo ilikuwa inasikiza maoni ya watu fulani peke yao kiasi kwamba watu walitoka Nakuru au Eldoret na kutoa maoni yao katika mji wa Mombasa au Nairobi. Kwa hivyo, ni jukumu la viongozi wa Tume hii kuchukua maoni ya wakaazi wa eneo fulani bila kuwaruhusu watu kutoka miji mingine kuja na kutoa maoni yao. Ninataka Tume hii ifanye kazi yake sawasawa na kuhakikisha kwamba watu wametoa maoni yao. Hatutaki isikize maoni ya pahali pamoja tu, lakini maoni ya kila pahali na watu wanaoishi sehemu hiyo wapate nafasi ya kutoa maoni yao. Ikiwa wakazi wa eneo fulani hawatapewa nafasi ya kutoa maoni yao, basi, kazi hiyo haitakuwa na maana yoyote.

Ombi langu ni kwamba wakati wa kuchagua viongozi wa Tume hii - sisi Wakenya tunajulikana sana kwa ukabila - tusiwachague viongozi wenye fikira za ukabila na chuki. Ikiwa Katiba hii itarekebishwa vizuri italinda wanyonge kutokana na udhalimu wa matajiri na wenye nguvu. Katiba hiyo itaangalia kwamba unyonge umeondolewa miongoni mwetu. Ninawaomba wale wanaoteta juu ya ardhi wasifanye hivyo kwa sababu Katiba

hiyo itamlinda kila mtu.

Bw. Naibu Spika, mambo ya zamani hatuna haja nayo. Mtu anataka atajirike, apeleke pesa benki na kulima mashamba kwao. Huko pia ni kwao, lakini hakutaki. Ataenda alime kwao na kuchukua mkopo na hata kuyauza mashamba. Hayo ndio mambo tutakayozungumzia katika Katiba na kwa hivyo, hatuna haja ya kuyasema watu wayajue. Mambo haya tutayesema na tunamuomba Mungu atusaidie tena, wale ambao tunazo fikira za kuweza kuangalia Katiba ya Kenya. Wengine hujiona kama ni malaika; watu wazuri sana.

[Mr. Deputy Speaker left the Chair]

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

Bw. Naibu Spika wa Muda, haya mambo ya ardhi yatasemwa kila pahali, na ninataka watu wasikilizwe kwa sababu kilio chetu kitatolewa hapo. Nawaomba wenye hasira katika Kenya hii juu ya mambo ya ardhi, waache chuki.

Mr. Michuki: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for hon. Nassir to imply that whoever is taking land somewhere is from outside, knowing very well that there is freedom of movement and freedom of ownership of property? Who is this coming from outside--- Ni nani anayetoka kwao na kwenda mahali pengine? Kwao ni wapi? Si kwao ni hapa Kenya? Is it in order for him to imply that whoever moves from one part of Kenya to another is moving to a place which is not his?

The Assistant Minister for Information and Broadcasting (Mr. Nassir): Bw. Naibu Spika wa Muda, nina furaha kwa kuulizwa swali hili na mtu anayelijua ndani na nje. Mhe. Michuki ndiye anayejua kwa sababu alikuwa katika Serikali kutoka zamani mpaka leo. Yeye anajua mambo haya kamili. Kama anataka nimletee orodha ya watu siyo tabia yangu kuleta chuki katika Kenya. Nataka watu wapendane. Usichokoze nyuki kwa sababu watakudunga. Kwa hivyo, ninamuomba achunge tena, kwa sababu tutayasema mengi Tume ikija; pamoja na mambo kuhusu hati za kumiliki mashamba. Katika rekodi zilizo kando, haina haja kuambiwa kwamba tutaletewa Tume huku. Leo tunapitisha huu Mswada tu, ambao utawasaidia Wakenya.

Bw. Naibu Spika wa Muda, yafaa tuangalie udhaifu wa wananchi, na kujua ni kitu gani wanachoweza kufanya ili waondoe udhaifu. Katika kuajiri watu kazi, ikiwa mtu ana hoteli, analeta jamaa zake; ikiwa ana ardhi katika mahali fulani, analeta watu wengine kutoka kwao. Na ikiwa mtu ni mkubwa katika shirika fulani au kampuni ya Serikali, kunakotokea nafasi ya kuajiri mtu, anapiga simu na kuleta jamaa zake kutoka nyumbani kwao. Mungu aniongezee siku mpaka Katiba hii ibadilishwe kwa sababu mambo ya watu kuoneana na kudharauliana yatakoma. Kama mtu yeyote anataka kubadilisha Katiba, nilikuwa nimesema awali kwamba hayo hayatakuwa mazuri kwake. Yapo matokeo mazuri ya kisiasa lakini si ya kiuchumi, na maskini nao watasikilizana vile vile.

Bw. Naibu Spika wa Muda, nitafurahi ikiwa dini zitapewa nafasi sawa. Wakristo na Waislamu wamepewa nafasi ili watoe maoni yao. Wale Wabunge watakoachaguliwa yafaa wawafanyie kazi yao. Baada ya kubadilisha Katiba, wale watakoachaguliwa sio wenye vyeo Msikitini watakoleta maneno. Baada ya kubadilisha Katiba, yafaa wachague Wabunge ambao watawakilisha Bungeni. Tusiwe kama Indian Bazaar ambapo, kila mmoja anasema mambo yake mwenyewe. Leo katika Kenya hii, kila mmoja akitaka kusema asubuhi, hutoka tu, hakuchaguliwa wala hana lolote. Yeye anajisemea tu. Hii ni kwa sababu tunasema kwamba kuna uhuru wa kuongea. Lakini Katiba na mambo wanayofanyiwa Wakenya, si uhuru wa kuongea, ni mambo ambayo wayapenda wao wenyewe.

Bw. Naibu Spika wa Muda, ninafuraha kwamba mambo yatakayozungumzwa zaidi ni ya heshima. Heshima ni kitu muhimu sana. Siku hizi, kazi kubwa ya mwanasiasa ni kujaribu kumchafua mwenzake. Badala ya kuwajengea watu, kuwafanyia watu kazi na kuwatafutia mikopo--- La! Hafanyi hivyo. Ukiangalia shamba lake, utapata kwamba ana ekari 100 na hawezi kumpatia mwenzake hata ekari mbili. Lakini kwa kutoa uchafu yeye hashindiwi. Nadhani hata siku moja uchafu wa suruali zetu utaweza kujulikana. Hii ni kwa sababu kuna uhodari wa kusema na kuchafua, lakini vitendo hatuna. Kwa hivyo, katika Katiba, lazima tuweke heshima. Kama ni Waziri, Rais, au awe ni nani, sharti awe na heshima.

Bw. Naibu Spika wa Muda, watu wengine katika mila zao hawajui maana ya heshima. Lakini mwaka huu tutafundishana. Sharti mtu ajue heshima ni kitu gani. Katika Kenya hii yetu ni lazima tuheshimiane. Hakuna haja ya kudharauliana hata kidogo. Yafaa tuishi kama ndugu Kenya yote na kila mahali. Lakini kila mtu apate haki yake sawasawa. Pia tutaondosha mambo ya fitina. Katika Katiba, hatuwezi kusema habari ya siasa tu, lazima tuseme mambo ya kuondosha fitina. Hii ni kwa sababu katika Kenya hii, mtu ambaye anapingana na mwanasiasa mwingine, ni lazima atafute mtu wa kumtumia kwenda kumtilia fitina. Akiona kwamba

ameshindwa na watu hawamtaki, atamtafuta mtu Nairobi; kama ni Mkuu wa Sheria, Amos Wako, au Waziri Masinde--- Yafaa tusiwe na mambo ya fitina tena katika Kenya kwa sababu tumechoka. Mtu akichaguliwa na wananchi ni sawa. Lakini ukiona kwamba hutakiwi, hata ukienda na kutia fitina hiyo ni kazi bure.

Bw. Naibu Spika wa Muda, nawashukuru wale walioanza kusema kwamba yafaa twende tukabadilishe Katiba. Wamefungua mlango wa heri katika Kenya na kuwawezesha maskini kujisaidia. Taabu ambayo inatukumba zaidi ni umaskini. Sisi Wabunge, Mungu anatupatia kidogo. Nikisema kwamba Wabunge waweke mfuko wao wazi, watasema hapana. Maskini hatatupigia kura. Mtu anapata pesa kiasi cha Kshs40,000 au Kshs50,000 na hana hata soda ya kumpatia mtu! Hutapewa kura! Kwa hivyo, ningependa kusema kwamba wale watakaokuja yafaa kila mtu atoe maoni yake. Mtu asiye kuwa wa Mombasa akija, anaambiwa atoe maoni. Hapa ndipo tunakuja kutoa maoni yetu. Hayo ndiyo makubwa.

Bw. Naibu Spika wa Muda, tutaenda kupiga kura, lakini Mswada huu ukiwekwa kwa muda mrefu kwa mfano, miezi mitano, sita au mwaka, itakuwa ni vibaya. Baadhi ya watu watatoa maoni yao kwa muda wa miezi miwili au mitatu, ili hii sheria iletwe hapa Bungeni tuifanyie kazi. Hii ni kwa sababu unyonge ni mwiko.

Bw. Naibu Spika wa Muda, inafaa tuwapende watu maskini. Lakini kuna wengine ambao wanapenda kuwanyonga na kuwamaliza. Kuna taabu ikiwa wale watu walio na ardhi ni wacheche kuliko wale wasio nayo. Inafaa tutafute njia ya kuweza kugawana ardhi hii. Ikiwa mtu fulani ana ekari nyingi za shamba asione ubaya kumgawia Mkenya mwenzake kipande fulani. Ni kwa nini tunaongea tu, na hatuwapatii mashamba? Hakuna haja ya kuwa na mali nyingi, hadithi nyingi na siasa nyingi, ilhali siasa ilimalizika nchini Kenya wakati wa kupigania Uhuru. Wale waliopigania Uhuru walikufa maskini, na Mungu aweke pahali pazuri.

Bw. Naibu Spika wa Muda, nilimwona Sheikh Balala wakati alipozaliwa. Jina lake haswa ni Shehe wala siyo Sheikh. Yeye ni mtu aliyekuwa akizunguka barabarani. Wakati huu, anatoa matusi makubwa zaidi ambayo hata mimi sijawahi kuyasikia. Akienda kwa mhe. Raila anamtukana mhe. Muite, na akienda kwa mhe. Muite anamtukana mhe. Kibaki ama mhe. Matiba. Ndio nikasema kwamba, ikiwa tunataka kuongoza nchi yetu, inafaa tuiongoze kwa heshima na tuheshimiane. Inafaa tumheshimu Rais, Makamu wa Rais na Mawaziri wote wa nchi hii. Lakini, ikiwa watu watapewa nafasi waanze kuwatukana watu wakubwa, wale watoto wengine wakiwasikia, wataanza matusi vile vile, na mwisho, kutakuwa na taabu. Kwa hivyo, inafaa tuheshimiane kwa kuamkuana na kucheka pamoja. Lakini kuwatukana wengine ni vibaya.

Kwa hayo, naunga mkono. Asante.

Dr. Ombaka: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for the opportunity to contribute to this Bill. I rise to support the Bill, because I think it provides a framework for the process, which can lead to a new constitutional dispensation in the country.

Mr. Temporary Deputy Speaker, Sir, I would like to focus on three aspects of the Bill, with a view to appealing to the various parties and the Attorney-General on the various issues. The first aspect of the Bill that I would like to address is Section 4. This is the Section that deals with the nomination and appointments of the Commissioners. I think the provision covers most stakeholders and interested groups in the constitutional debate process. There is, however, a difficulty in implementing the desire contained in that Section.

Mr. Temporary Deputy Speaker, Sir, it is likely that when nominations are invited from the various groups - I counted about 11 categories of groups - the President could end in fact, with over 5,000 to 6,000 nominations. From there, he would be expected under the law, to appoint only 29 commissioners. That provision also does not put in place the modalities by which this nomination process will be conducted. We had a recent example of how that type of provision could lead to very unjust results. For example, in the nomination for the new Commissioners for the Electoral Commission, the various political parties gave in the names of their nominees for the President, to appoint to the Electoral Commission. In the end, quite important stakeholders were omitted in the appointment. For example, we heard from the Women Political Caucus and the Muslim community that their constituencies were not considered when the nominations, and the subsequent appointment of the new Commissioners, were made.

Mr. Temporary Deputy Speaker, Sir, the process where the organizations or the stakeholders simply submit names of their nominees to the President, is not adequate. It is not really the President's fault, because he will appoint from the list he is given. Yet, Section 4 of the Bill in question sets out a certain criteria for appointment. For example, issues like minimum level of education, integrity, lack of a criminal record and the rest. There is no way that one can ensure that those eligibility criteria are met without introducing into that Section of the Bill, some process whereby, there is a pre-nomination consultation among the various stakeholders. So, in this respect, I am appealing to the Attorney-General to consider introducing into that Section, a mechanism for a meeting probably held under his auspices, whereby all the parties that are to consult with the President in the nomination process, meet and consider most likely the thousands of nominations that will come from the trade unions, youth, women organizations and professional organizations, with a view to determining that the pool from

which the President will pick and appoint, first of all meets the legislative criteria, and constitutes a balanced group in terms of all stakeholders and takes into account the diversity of this nation. Such a meeting will also facilitate a narrowing down of that pool to a level from which the President can reasonably pick the 29 final Commissioners that will discharge this important task.

Mr. Temporary Deputy Speaker, Sir, the second comment relates to the constitutional and democratic duty of the parties that have been given, or are to be given the power to nominate the Commissioners. I am saying this again, because, from the debate that has been going on, and even the debate that preceded the appointment of the new Electoral Commissioners, there seems to be a belief, not only in the political parties but also other stakeholders, that when the law says that they have the right to nominate individuals to a forum, this power to nominate is a license to do whatever meets their whims. There seems to be a belief that when the parties are empowered to make their nominations, they can disregard democratic principles. They can disregard other criteria as to the qualification or capacity of the individual in question, to discharge the duty of the function at hand.

Mr. Temporary Deputy Speaker, Sir, in my view, the legal obligation is not only on the President or the appointing authorities, but on the nominating parties. In this regard, for the constitutional review process to succeed, it has to be inclusive. So, I am appealing to the parties that nominate to bend backwards to ensure that every interest and every stakeholder is considered in making those appointments.

Mr. Temporary Deputy Speaker, Sir, in this regard, it is a matter of regret, in my view, that some hon. Members have used the forum of this House to vilify members of, for example, the NCEC. I think the time has come, within the context of this Bill being debated, for us to be Kenyans once again. The people who will nominate the Commissioner's should go out of their way and, in fact, one hopes that they will nominate some members of the NCEC. This is because whether we like it or not, there is a pool of expertise, there is a lot of research and good quality work that has been done under the auspices of the NCEC that would enrich the constitutional reform process. So, my appeal in this regard, is for the appointing organisations and political parties that will have the power to nominate, to reach out to that important stakeholder and go above the smallness and pettiness of name-calling, by becoming inclusive in this important process.

Mr. Temporary Deputy Speaker, Sir, the second area that I would like to make a comment on is Section 10 which deals with the functions and powers of the Commission. Whereas I have no problem with the details within that section, I think it could be improved by very minor amendments. It seems to focus more on the technical operations of the Commission. Sections 10(a), 10 (b) and 10(c) spell out the duties and the functions of that Commission with regard to the process of collecting views and all that is quite fine. But I think the substantive heart of that section is actually Section 10(d) which deals with the details of what the Commission is to examine. That section handles fairly adequately, in my view, well known constitutional principles which would form any good constitution. For example, Section 10(d)(1), I believe, deals with the question of the separation of powers. The section that follows this one also deals with the question of governance and human rights. That section, I think, could be expanded to include another category of rights which is a new generation right - gender equality. The third part of that section deals with the independence of the Judiciary. The fourth one deals with the devolution of power. The fifth part of that section deals with the property rights. The sixth part of that section deals with the question of change of Government and the seventh part of that section deals with the international obligations.

Mr. Temporary Deputy Speaker, Sir, it is that section in my view that is the essential substantive part of this Bill. Unfortunately, it is made as if it is the secondary and not the primary section and my proposition to the Attorney-General is to consider elevating Section 10(d) to be the controlling terms of reference for the Commission. This can be done quite simply by stating that in doing their work, the Commission will be bound or shall adhere to this principles enumerated in Section 10(d).

Mr. Temporary Deputy Speaker, Sir, the final section of the Bill that I would like to make a comment on is Section 16, which I believe, deals with the reporting process. In that section, the requirement is that the Commission hands over the report to the President. I find that quite logical because the President may want to see the Government capacity and commitment to various aspects of that proposition. Then it is passed on to the Speaker of the National Assembly who in turn is supposed to pass the report to a select committee of Parliament. As currently placed, there are no terms of reference for the select Committee. One envisages a situation where this Commission has been sitting for up to two years. Presumably the Commission would have expert advice. There would be consultants. There would be probably visits to various constitutional jurisdictions. The Commission will have amassed considerable expertise and they would have done what we hope is a good job in compiling a report together. When this report comes before Parliament, there is no legislative direction in the present Bill as to how that select Committee should treat the report. We are speaking of a totally different Parliament because it would not be the Seventh Parliament. We do not know how the composition of Members is going to be in that

Parliament. We cannot assume goodwill or good faith in a Parliament that we do not know because it has not been elected. I think it is our constitutional duty to direct that select Committee or give them guidance on how they are to do their work.

Mr. Temporary Deputy Speaker, Sir, I think this can quite simply be done again by simply stating that, that select Committee of 51 members will guide their work in accordance or shall be bound by the principles earlier stated in Section 10(d); that is those constitutional principles like the separation of powers, independence of the Judiciary and also bound by the section that sets up the Commission which I believe is Section 3. I believe that if the Bill is strengthened in those three respects, and as I have stated, the amendments called for are quite minor, but they will shape the substantive thrust and balance of the Bill. It will be strengthened. If those amendments are accommodated by the Attorney-General, I think the Bill will provide quite a sufficient framework to allow for an inclusive and acceptable constitutional review process.

Mr. Temporary Deputy Speaker, Sir, in concluding my very brief comments on this Bill, I will say that by-legislation can be very good and, I think, this is the point that needs to be stressed in this whole IPPG reform package. I do not think the main problem with Kenya has been simply the fact that we have had bad laws. I think there has been a deeper problem. There has been a problem of lack of political will and commitment of Government to democratic governance and principles. No law, however good, will breach that gap of political will, and in this constitutional review process, Government commitment and political will be more important than the quality of that legislation. Apart from the commitment to a thorough review of the resulting recommendations, and apart from political will, there are financial provisions in this Bill. In my summation, for a thorough review of the Constitution to take place and for a new constitutional dispensation to take place, it will cost money. It will not be cheap. One way that the Government could frustrate this process quite easily is not to commit sufficient funds to it. Therefore, it is important that the Government gives sufficient financial support to the process so that it can be thorough and all aspects are examined. In this respect, if the process inclusive, that is, if it represents the Government, political parties and the civil society in a true sense of co-operation then, I think it will be right for that co-operative effort to appeal for donor support for the constitutional review process. Donors have shown a laudable commitment in supporting the democratic process in the developing countries in general and Kenya in particular. They are supporting civic education process and election monitoring which are very important. But when one is talking about the constitutional review process, it should be understood that it is one of the most fundamental issues and we would wish to see the Constitutional Review Commission of Kenya as being truly reflective of a co-operation between the Government and all the stake holders. By so doing, donors will generously support it so that it does not become another excuse for the Government in terms of implementing the full package.

With those few remarks, I beg to support the Bill.

The Assistant Minister for Tourism and Wildlife (Mr. Kisiero): On a point of order, Mr. Temporary Deputy Speaker. I beg to move that the Mover be now called upon to reply.

Mr. Muite: No! No! No! That cannot be done! Just sit down, hon. Kisiero. Some of us, who represent the NCEC, have not had a chance to contribute.

The Temporary Deputy Speaker (Mr. Wetangula): Order, Mr. Muite! I have given the Floor to Mr. Moiben and you have no authority to do what you are doing. You are here as the Member for Kikuyu and not a member of the NCEC.

Mr. Moiben: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me an opportunity to contribute to this Bill.

Mr. Temporary Deputy Speaker, Sir, the opportunity to discuss the constitution of any country is a very important one. The Constitution of Kenya Review Commission Bill should be taken seriously. I have in mind the recently concluded nominations of the Electoral Commission Commissioners. In this country, as in other countries in the world, there are areas where the people, due to their remoteness, are daily pre-occupied with their instincts for survival. Under such circumstances, they cannot have a chance to participate in the luxuries of joining political parties as the case obtains elsewhere. The idea of giving political parties a chance to nominate the would-be Commissioners and also the idea of giving some church organizations, like the NCKK, the sole responsibility of identifying the would-be Commissioners, should be taken very carefully because in the Electoral Commission, some communities have got upto four Commissioners and others have upto six! I think it is high time we considered as much as possible, all the parts of the country, like the Elmolo area and Lake Turkana where Christianity is free and even in the caves of Mt. Elgon where there is no Christianity whatsoever.

Mr. Munyasia: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Moiben not misleading this House by claiming that there are people living in the caves of Mt. Elgon? I am from the area and

I know that there are no people living in the caves of Mt. Elgon. Who will be appointed from there?

Mr. Moiben: Mr. Temporary Deputy Speaker, Sir, the hon. Member is exhibiting his ignorance. In some parts of Trans Nzoia, we have a cave called *Kool(?)* and there is a family called *Krioni* who live in that cave. Can he be guided accordingly because I have evidence to that effect? He should stop interfering.

In this Bill, the NCK has a role to play in identifying a Commissioner and so is the Fellowship Churches of Kenya, the Episcopal Churches of Kenya and the political parties. I am suggesting, in good faith, that the Attorney-General should consider some communities who cannot be a party to the activities of the above bodies. We want this country to be in safe hands. We want to be assured of peace in this country, so that there is no excuse whatsoever for anybody to resort to any form of thuggery as an excuse to propel himself to power. We want the Constitution of this country to affect the prospects of our people and everybody to contribute, so that when it comes to land issues people like the Ndorobos who live in Ndoinet Forest and the Endoris are taken care of. We should also take care of people like the Njemps and the Turkans who live in the Elemi Triangle. So, I think this is the right time that we should de-tribalise our nation and make sure that even the communities that have been represented in the Electoral Commission do not nominate members to this Commission.

With those few remarks, I beg to support.

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

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

Mr. Munyasia: Thank you very much, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill.

First of all, I want to say that I am extremely happy but this particular Bill to constitute a Commission to collect views from Kenyans on the Constitution has come a little too late. It was promised in 1993 by the Attorney-General while responding to a Motion moved by hon. Muita, which attempted to remove detention without trial. He did promise that the five years from 1993, were going to be years when we would sit together and deliberate on the reforms that were required to make the society match with the new democratic culture that was being introduced. It is very disappointing that it has had to take the NCEC, IPPG and the lives of 14 Kenyans before we could come up with proposals like the ones contained in this Bill.

The first problem that we have now with the Government is the question of credibility. When they promise anything, people are bound to ask: How serious are they? There are several issues which I hope will be corrected when we set up that particular Commission. The first is the issue of petitions. I have suffered a petition for three years. I have been attending a petition case in the High Court for the last three years. The constitutional issue that has never been raised is that petitions are supposed to be heard by the High Courts. The High Courts, at that time, I think are set up as courts of civil jurisdiction. So, they are merely supposed to find out whether the election was held fairly and whether the person who was declared as having won the election was fairly elected. If not, their duty should be merely to say that, that election was not held properly and so the person who was declared to have won the election should go back and seek a fresh mandate from the electorate.

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

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

Mr. Temporary Deputy Speaker, Sir, what these courts have been doing is that, they have gone a step further to find out whether the person who had been elected had committed an election offence. For committing that offence, they give a penalty. The penalty has been to bar that particular person from participating in elections for a period of five years. Finding someone guilty of an election offence is finding him guilty of a criminal offence. When the High Court, which is established as a court of civil jurisdiction, comes to find someone guilty of a criminal offence and yet that person was not tried according to the Criminal Procedure Code, that is something anomalous as far as the Constitution is concerned. That is one of the issues that I hope will be looked into, should the petition courts find any one guilty of an election offence.

Mr. Temporary Deputy Speaker, Sir, there was something curious in one case which I attended. That

was the petition case of Webuye Constituency. The court found hon. Musikari Kombo guilty of an election offence because he participated in an oath ceremony. The very people who administered the oath that Mr. Kombo was alleged to have taken part in were called upon to witness against him. So, accomplices in the offence became witnesses against one of their own. The Attorney-General then promised---

The Temporary Deputy Speaker (Mr. Wetangula): Mr. Munyasia, which part of the Bill are you referring to? I thought that was in the Statute Law (Repeals and Miscellaneous Amendments) Bill.

Mr. Munyasia: Mr. Temporary Deputy Speaker, Sir, we are talking about changes that we shall have to come up with. I am merely giving a history so that I make the points that I have been making. I have said petition courts have been finding people guilty---

The Temporary Deputy Speaker (Mr. Wetangula): Those points were dealt with under the Statute Law (Repeals and Miscellaneous Amendments) Bill.

Mr. Munyasia: Mr. Temporary Deputy Speaker, Sir, I am talking about whether the petition court should find anyone guilty of an election offence. I am saying that the election offence would be a criminal offence. One of the people was penalised, but those others were not penalised by the same court. So, it has double standards. How do you penalise one person and then you leave the others? That is the point that I am making. I hope that this will be corrected.

The Temporary Deputy Speaker (Mr. Wetangula): Order, hon. Munyasia! The correct position in law is that the election petition court will do what it did and then recommend to the Attorney-General to take further action against any other people.

Mr. Munyasia: Mr. Temporary Deputy Speaker, Sir, I would like to go on to another matter regarding the freedom of individuals. We might put provisions into the Constitution, and we have had to put in quite a bit on the freedom of persons--

Mr. Michuki: On a point of order, Mr. Temporary Deputy Speaker, Sir. Are you aware that there are hon. Members who are organising a closure of debate on this Bill? It appears as if the only people who should speak on it are the hon. Members who are in the IPPG and nobody else. We have a right to speak on a matter of this important nature, and I am not sure that you are aware of those moves.

The Temporary Deputy Speaker (Mr. Wetangula): Mr. Michuki, first of all, I am not aware. Secondly, when a closure is moved, it is my discretion to assent to it or not.

Mr. Muite: We have been here since last week, trying to talk on this!

The Temporary Deputy Speaker (Mr. Wetangula): Carry on, hon. Munyasia.

Mr. Munyasia: Mr. Temporary Deputy Speaker, Sir, I was saying we might put provisions in the Constitution about freedom, but we must be honest to ourselves and ensure that what we have put in the Constitution is adhered to. There was a serious violation of the freedom of the people of Sirisia in 1995 when a number of our people were arrested and it was claimed that they were members of an organisation called the February Eighteenth Movement (FEM). This so-called FEM does not mean anything in my language; neither does it mean anything to the people of Sirisia. People were held for more than 60 days without being brought to court. One of those people was a Mr. Patrick Walela Simuyu who was held on 4th November, 1994. He was kept in custody up to 20th February, 1995 without having been brought to court. There was no provision that would have allowed the policemen to keep that man in custody for that long. When he was brought to court on 20th February, 1995, he was convicted on his own alleged plea of guilt. He was then sentenced to five years imprisonment. The man appealed and it was on the appeal that the learned Judge, Emmanuel O'Kubasu, rebuked the Magistrate for not having questioned the police about why they kept that man for so long in custody, from 4th November, 1994 to 20th February, 1995. On that account, the Learned Judge did free Patrick Walela Simuyu on 14th August, 1996. There were many who suffered like Patrick Walela Simuyu. There was Mzee Lukaba Wekesa and Senior Chief Jonathan Barasa, who were held for a long period in custody without ever being brought to court. He was held for more than the 14 days that are allowed by law. So, my submission is that, while we are talking of a constitutional review, there must also be goodwill on the part of the Government. It is the Government which is supposed to ensure that the Constitution is adhered to. There must be good will on the part of those who claim they have sworn to defend the Constitution of this land; to ensure that it is followed.

Mr. Temporary Deputy Speaker, Sir, even after Justice Emmanuel O'Kubasu had ruled that it was wrong in the first place to accept that plea without having asked the police what they were doing with that young man for three months in custody, which was against his constitutional rights, there were others like Christopher Khaemba and Leonard Buteta who have not even been released yet just because they did not appeal. By now, it should have been clear enough to the Government that the cases of those young men, whose pleas were taken at the same time with Patrick Simuyu, should have also been reviewed. So, the Constitution has been violated there. It is very

clear that, according to the Constitution, these people should not have been held for more than 14 days without being brought to court. I do not know whether we should put a provision that the Government itself must then be taken to task. Maybe, it must be prosecuted for violating the Constitution. There are hundreds of young men from Sirisia who were held for over 60 days on account of being members of the February Eighteenth Resistance Army (FERA). When we pressed the Government to produce them in court, it then framed up charges against them and claimed that those people had murdered the policemen who were killed at Sirisia Market on 12th March, 1195. We have a big grievance against the Government over that matter of violating a Constitution that was already in existence.

When the time comes to write the Constitution, we shall need to be a little more specific than we have been, even in the reforms that have already been passed. We talked of Opposition parties nominating ten Commissioners, without stating the method that was going to be used. It was left to three or four leaders to share out the seats. If this is not corrected, there is going to be a lot of trouble in deciding who becomes the Commissioner when the terms of those who have been appointed end.

With those few remarks, I wish to end my comments on this particular Bill.

Mr. Kariuki: Mr. Temporary Deputy Speaker, Sir, I would like to join my colleagues who have contributed to this Bill. Since this debate started, I have been listening to my colleagues' contributions to this Bill, and sometimes, I feel a little bit disturbed as to why we just stand here to condemn and criticise the previous and present regime. I think what is more important is to go back to the history of this country, and ask ourselves when Independence was granted to this nation by the British Government, what kind of independence did we receive? Were we made free by the kind of Constitution we got at Independence? Our Independence was conditional by the British Government, that those who participated in Government and Parliament should be following whatever the British Government wanted at that time. Since then, we were given a Constitution which was not for the people of Kenya. It was to support foreign interests. The foreign interests which my friend hon. Michuki was serving before Independence resulted in the kind of Government that we are talking about.

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

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

Mr. Michuki: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Kariuki in order to cast aspersions, when he himself swore to serve that Constitution, which he now calls colonial, as a Minister, Assistant Minister and a person who was in a position to dish out land that was talked about in that Constitution?

Mr. Kariuki: Mr. Temporary Deputy Speaker, Sir, I think I am quite in order in what I am trying to say, if hon. Michuki can give me the chance. What I am saying is that, we must look back and see how the laws were formulated and whose ideas those were. Was it for Kenyans? Did we ever have an organisation like the one we are proposing now, which will go to the public, and ask them to explain and declare the type of Constitution and Government that they want? This is a very important period. This is because we are talking about the review of the Constitution at a time when we are almost in a crisis. This crisis was not brought in by the NCEC, the Opposition or by the Government. It is because change has taken place internationally. We cannot be justified if we stand here to condemn those who are in the Government, and the way they are running it, without asking ourselves the cause and effect of what had happened since Independence.

During the Cold War, the leaders in Africa were given all the opportunities by either the East or Western Governments, to do whatever they wanted to do, in protection of their interests, and not the interests of a particular country.

Bishop Njeru: On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Member is repeating himself! We have exhausted most of the points that he is raising! Would I be in order to call upon the Mover to reply?

The Temporary Deputy Speaker (Mr. Ndotto): There have been several attempts to move the closure before. I hope the Chair will not be forced to keep on refusing. It is for the House to decide whether it wants to continue or not. Therefore, I will put the question for the House to decide.

*(Question, that the Mover be
now called upon to reply,*

put and agreed to)

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

First of all, I would like to pay tribute to all the hon. Members who have contributed to this debate, including hon. Ms. Karua who seconded this Motion, Prof. Saitoti, the Leader of Government Business, Prof. Mzee, who also contributed to this debate, with the sympathy of the NCEC or the IPK - I do not know; Prof. Anyang'-Nyong'o, Dr. Ombaka, Messrs. Nassir, Moiben, Munyasia and Kariuki.

I want to, particularly, single out the contribution of Dr. Ombaka, a member of my legal profession, and a person that I have known for many years, both at high school and thereafter, and as a founder-director of the Public Law Institute, a position which I was privileged to appoint him, when I was the founding Chairman of the Board of Trustees of the Institute. I would like to say that he has made a very positive contribution this afternoon.

It showed that he understands fully what this Bill is all about. I was very impressed by the fact that, he was able to refer to what is contained in many clauses of this Bill. I can only wish him well. By what I have said, it will be fairly obvious that the excellent suggestions that he made will be taken into account. I believe he made one comment which I want to underline, that in this issue of constitutional reforms, let us all be Kenyans for once.

Let us all be Kenyans, for once, let us put the interests of Kenya first and that which is best for Kenya. I want to underline that message. Therefore, all Kenyans, irrespective of whatever groupings they belongs to, irrespective of political parties they belong to, irrespective of whatever Non-Governmental Organisation he belongs to, even NCEC, all Kenyans have an obligation, a duty, to think hard on what is good for Kenya and to utilise this very golden opportunity, this first opportunity that Kenya has had, to have a constitution, to have an autochthonous constitution, which meets the needs and aspirations of the people of Kenya.

Therefore, Mr. Temporary Deputy Speaker, Sir, I want to underline that. But when it comes to contributing ideas about the constitution, let us think, submerge, obliterate and blot out whatever differences we may have in other areas. Let us focus on what is really good for Kenya. Because, as the Bill states, what we want at end of the day is a constitution that meets the test of time, a constitution that will usher us into the 21st Century, and a constitution that would usher us into the third millennium. It is a constitution that would enable us enter into the next stage of our life as a nation, as a dynamic and a vibrant nation. I would like to underline that message, that we should approach this constitution as Kenyans.

Secondly, I believe this came from the contribution of others, but I can now remember very freshly, from the contribution of hon. Munyasia, and it underlines what I did say when I was moving this Bill; that, it is also important to realise that a constitution in itself, although important, is not one that will guarantee human rights, it is not one that will create this nation as a stable and a progressive nation. It is very important and it can contribute to that, but it is not all. Sometimes you get the impression that Kenyans believe that once you have a new constitution, a pervasive constitution, that is a solution to all the problems. That is not the solution to all the problems.

In addition to the pervasive constitution, we must have the right attitude and the right perception; the right way of looking at this thing. That is why I did emphasise that we must have the right type of culture. We must have ingrained in the hearts and minds of our people the willingness to defend their human rights and the willingness to enforce constitutional provisions.

Therefore, Kenyans should have this balance in mind. We want a pervasive constitution, yes, but at the same time, it depends on each one of us, leaders and the rest, to change our hearts and minds about the way we do our things, the way we carry out democracy in this country, our own attitudes and so on, which, by the way, may include not just assertion, but a complete assertion of your rights. It includes being aware of your responsibilities in the exercise of those rights, it includes being aware of your duties in the exercise of those rights. Too often, many Kenyans think that once they are given the freedom, it is freedom to do anything that one wants to do under the sun. It is not so. In countries where people really enjoy their rights, we find that those people are aware of their responsibilities and duties in exercise of those rights. Time has now come when the responsibilities and duties that go with rights must also be emphasised for Kenyans to know. Those are the general comments that Dr. Ombaka and other Members made in their contribution, which I think must be emphasised.

Mr. Temporary Deputy Speaker, Sir, a lot of comments have been made on Clause 4 of the Bill, which touches on the issue of appointments. You may recall that both my Seconder, hon. Martha Karua, and I stated that, we indeed welcome ideas to improve Clause 4 that dwells on appointment of commissioners to the Constitution of Kenya Review Commission, provided that the discretion of the Head of State to appoint is preserved. But those nominations should be done in a manner that is seen to have been made meaningfully.

Mr. Temporary Deputy Speaker, Sir, I am glad to say that, after consultations from both sides of the House, we have come to a consensus which will be reflected at the Committee Stage tomorrow. Basically, it will

provide a process through which the names of the nominees will be given to the President, so that he can exercise his discretion in appointing members from such a list. As was stated, a number of the organisations which are stakeholders will be asked to nominate. I would like to emphasize two things on this matter: That when providing the list of nominees, the criteria of eligibility should also be taken into account as contained in the Bill. More important, focus should be put on the need to have a balanced commission. According to the Bill, the Commission should take into account Kenya's ethnic, regional, cultural, political, social, and economic diversity so that the national character is reflected. All these organisations, which cover literally all Kenyans, should, when making their recommendations, have in mind the criteria of eligibility of the nominees, so that a Commission desirable for Kenyans is constituted.

Mr. Temporary Deputy Speaker, Sir, the second point I would like to emphasize is that what we are looking for is expertise. We are looking for persons who are able to listen to Kenyans' views and gauge what they want. In other words, these organisations, whether political or non-political, are not supposed to appoint persons who will espouse particular views within the Commission. The structure of the Commission itself is not like the boardroom affair which will sit in an office somewhere and make decisions. Its work will be, first and foremost, to know what the people of Kenya want because it is what the people of Kenya want that must be reflected in the Constitution. This, as stated in Clause 3, must meet the needs and aspirations of the people.

That is why this Bill emphasises the aspect of going round the country, collecting peoples' views and organising symposia to provoke discussions on various issues relating to the Constitution, so that a consensus can emerge on what the people want. That is why we have said, in Clause 4 (5), that once the Commissioners are elected, they are not there to represent the organisations which may have been instrumental in submitting their names for appointment. Instead, they are there to serve the Commission in their personal capacity. They have to put their brains into the work of the Commission in order to produce the best Constitution that we will ever have.

As I said earlier, these organisations will submit many names of the yet to be appointed Commissioners. The names will then be forwarded to another select group which will be formed by the Attorney-General. The select group will peruse all the names, taking into account the various factors that I have talked about. At the end of the day, we will short-list those nominations to 45. The 45 nominations will then be submitted to the President who will appoint 29 Commissioners out of that list.

Mr. Temporary Deputy Speaker, Sir, I do not want to go into details. There were a number of comments that were made in this House, which I can briefly talk about. Prof. Anyang'-Nyong'o mentioned that we must ensure that the Commission's work is done properly. I think he was satisfied that the objectives and principles of the Bill are excellent, although he was doubting whether the Commission that will be set up will be allowed to function properly. I can assure this House that the Government is committed to ensuring that the Commission, once appointed, functions properly, collects the views of Kenyans properly and makes appropriate recommendations. In this regard, there will always be the question of expenses. Unfortunately, the Government has limited resources, but it will ensure that the Commission has adequate finances to enable it operate properly.

Mr. Temporary Deputy Speaker, Sir, that does not mean that we do not welcome any form of assistance that may be given by the donor community, particularly those communities that have been interested in the democratic processes in this country. If they are genuinely interested in these matters, then let them demonstrate their genuineness by assisting us in various ways; be it transport, office equipment or any form of assistance that can help the Commission function properly. However, as we have made it clear in the Bill, such assistance must be without strings attached. There should be no pressure from any party that our Constitution must be this way or that way. This is because issues concerning the Constitution must be determined by Kenyans and not by outsiders, who either participate directly or indirectly. Therefore, I would like to take this opportunity to once again, in support of the appeal by hon. Dr. Ombaka, Prof. Anyang'-Nyong'o and Muite, call upon the donor community to come up and help this Commission in whatever way, so that it can function and work properly, within the limited time space of two years.

Mr. Temporary Deputy Speaker, Sir, an issue was also raised concerning---

Mr. Achola: On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Attorney-General has just asserted that the Commission established will be allowed to do its work properly without interference. Now, how are we to believe this when we know that similar commissions which have been set up before have been interfered with by the Executive arm of the Government? Can he give this House an assurance that this will not be the case in this particular Commission?

The Temporary Deputy Speaker (Mr. Ndotto): Are you asking a question or raising a point of order?

Mr. Achola: I said from the beginning that the Attorney-General was misleading the House, because we know that similar commissions have not been allowed to do their job properly.

The Temporary Deputy Speaker (Mr. Ndotto): I am asking you whether you are asking a question or

raising a point of order.

Mr. Achola: I am raising a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ndotto): Mr. Achola, that was a question and this is not Question Time.

Proceed, the Attorney-General.

The Attorney-General (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I can assure you that this is the first time in the history of Kenya that a commission of this nature has been established. This Commission is established by an Act of Parliament. Its duties, functions and operations are under an Act of Parliament. You should prepare your people in your areas to make their submissions to the Commission and I hope that you also have your own views that you will submit to this Commission. So, co-operate with it.

The other issue that was raised was the issue of the level of expertise. Obviously, under Clause 7(2) the Commission may employ experts or consultants to assist the Commission as appropriate and necessary under this Act. Also, under Clause 12, the Commission may establish committees and those committees may also call for people with knowledge, experience and expertise to help them. Within Kenya, I believe that we have enough constitutional experts who can give the necessary knowledge and advice to the Commission when called upon to do so. In matters of this nature, sometimes it is useful to know how constitutions in other countries actually operate. I believe that when the Commission decides to call experts from other countries, they will be real experts. They will be experts who will come and give knowledge on how particular constitutional provisions in their countries actually operate. I can assure this House that the Commission will not employ second or third rate lawyers to come here and advise it. We are now operating at a very high level. We shall be calling for top experts from those countries to come and assist the Commission in its work.

Mr. Temporary Deputy Speaker, Sir, I am aware, of course, that a number of people may have said: "Let us not have the Commission, but rather a Constituent Assembly". I can say from this House that a Constituent Assembly, the way it is envisaged by those who are calling for it, has actually been discredited in other countries.

Mr. Temporary Deputy Speaker, Sir, top constitutional experts, even from the United States of America, have described those types of constituent assemblies as inherently undemocratic. You cannot have something that is inherently undemocratic being used to make recommendations to promote democracy or human rights. These constituent assemblies have been viewed to be utterly undemocratic, and have been discredited, even in those countries which do not have a Parliament. This is a point that I really wanted to make.

I will not go very far, but will take the example of Uganda. Uganda did not have a Parliament. It was, as we know, a dictatorship with a military Government. That is the type of country where, in the past, a constituent assembly would have been held and used to enact a constitution. But by the time it came to Uganda, this system of constituent assembly, particularly in the former French colonies, had been utterly discredited. The Uganda Government opted then to have a presidential commission first on its Constitution. The Commission went round the country collecting people's views, and we are proposing the same procedure for the review of our Constitution. Somehow, the Commission came up with a Constitution which Ugandans felt met their wishes.

Ugandans did not have a duly elected Parliament, but they did not just appoint a constituent assembly at random to discuss the recommendations of the Commission. They went through an elective process and elected a constituent assembly, representing the people of Uganda, to consider those recommendations. They went through that process because they did not have a Parliament. Here, we have a Parliament which is duly elected. That is why this Bill says that this Commission will, at the end of the day, make recommendations to a duly elected Parliament, which represents the people of Kenya.

I know that we are approaching a general election. When this general election is held, people will know that the matter of the Constitution is going to be discussed. I am sure that they will elect Members of Parliament whom they know are going to consider the recommendations of this Commission and, hopefully, come up with a new Constitution for Kenya.

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

(Question put and agreed to)
(The Bill was read a Second Time and Committed
to a Committee of the Whole House tomorrow)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ndotto): Order, hon. Members! We have only five minutes to go and I do not think the Minister is here to move the next Motion. Therefore, the House now stands adjourned until tomorrow, Thursday, 6th November, 1997, at 2.30 p.m. The House rose at 6.25 p.m.