

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 6th November, 1997

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No.712

COLLECTION OF HARAMBEE MONEY
FOR RIAT DISPENSARY

Mr. Speaker: Is Prof. Anyang'-Nyong'o not here? We will leave this Question until the end.

Question No.703

PAYMENT OF PENSION TO MR. AKAMA'S DEPENDANTS

Mr. Speaker: Is Mr. Obwocha not here? We will leave the Question until the end. Next Question.

Question No.697

TRANSFER OF GK VEHICLES TO PRIVATE OWNERSHIP

Mr. Anyona asked the Minister for Health.

(a) whether he is aware that Vehicle Registration No. GK 7186 (Bedford T5 Bus) changed ownership and registration as Ex-GK;

(b) whether he is further aware that vehicle registration No.KAC 103P (Land Cruiser) being used by the Principal of Kenya Medical Training College also changed both ownership and registration as Ex-GK; and,

(c) if the answers to "a" and "b" are in the affirmative, under what circumstances the two vehicles changed from GK to private ownership and registration.

Mr. Speaker: Is there anybody here from the Ministry of Health? We will leave this Question until the end.

Question No.708

NUMBER OF MOBILE CLINICS IN NDHIWA

Mr. Speaker: Is Mr. Ojode not here? We will leave the Question until the end. Prof. Anyang'-Nyong'o's Question for the second time!

Question No.712

COLLECTION OF HARAMBEE MONEY
FOR RIAT DISPENSARY

Mr. Speaker: Prof. Anyang'-Nyong'o is still not here? Question dropped.

(Question dropped)

Question No.703

PAYMENT OF PENSION TO
MR. AKAMA'S DEPENDANTS

Mr. Speaker: Mr. Obwocha is still not here? Question dropped.

(Question dropped)

Question No.697

TRANSFER OF GK VEHICLES TO
PRIVATE OWNERSHIP

Mr. Anyona asked the Minister for Health:-

(a) whether he is aware that Vehicle Registration No.GK 7186 (Bedford T5 Bus) changed ownership and registration as Ex-GK;

(b) whether he is further aware that Vehicle Registration No.KAC 103P (Land Cruiser) being used by the Principal of

Kenya Medical Training College also changed both ownership and registration as Ex-GK; and,

(c) if the answers to "a" and "b" are in the affirmative, under what circumstances the two vehicles changed from GK to private ownership and registration.

Mr. Speaker: Still nobody here from the Ministry of Health?

Mr. Anyona: Mr. Speaker, Sir, this is the second time this Question has come up and the Minister has not been here to answer it. This is a very important Question and I do not know really what we are going to do. I know that you said this many times before, but that goes to prove that the Chair is not being taken seriously. So, I really do not know what we can do as a House.

Mr. Speaker: I do not know either! The Question is deferred.

(Question deferred)

Mr. Ojode: Mr. Speaker, Sir, before I ask my Question, I wish to apologise for coming late.

Question No.708

NUMBER OF MOBILE CLINICS IN NDHIWA

Mr. Ojode asked the Minister for Health how many mobile clinics have been established in Ndhiwa Constituency during the last one year.

Mr. Speaker: Anybody here from the Ministry of Health?

(Question deferred)

Mr. Speaker: Next Order!

Mr. Ojode: On a point of order, Mr. Speaker, Sir. What are we doing?

Mr. Speaker: Mr. Ojode, are you trying to follow up your Question?

Mr. Ojode: Yes, Mr. Speaker, Sir.

Mr. Speaker: There is nothing much I can do because there is nobody from the Ministry of Health.

Mr. Ojode: What is the ruling of the Chair then?

An hon. Member: Defer the Question!

Mr. Speaker: Order! Order hon. Ojode! Unfortunately, you were also late. But the unfortunate bit about this afternoon is that there were four Questions before the House. Two of the Questioners are absent. The Questioners for two Questions were present, but the Ministers were absent. So, in a way, there is equal blame. Proceed Mr. Mutiso!

MINISTERIAL STATEMENT

FATE OF MR. PATRICK WALELA

The Assistant Minister for Home Affairs and National Heritage (Mr. Mutiso): Mr. Speaker, Sir, I wish to make a Ministerial Statement in connection with the Question which was asked by the hon. Dr. Kituyi on the 2nd July, 1997, in respect of the fate of the late Mr. Patrick Walela. The particulars which the prisoner gave when he was admitted at Kamiti Maximum Security Prison were as follows:

His tribe, Bukusu; District, Bungoma; Location, Cheptais; Sub-Location, Chepkube; Village, Kipchambis; Chief, Joshua Chesoni; Assistant Chief, Benson; Next of kin, Vincent Walela Simiyu of Chepkube.

As for the Government procedure, when a prisoner dies in prison, the local District Commissioner is informed by the Prison Authorities. In the case of the late Walela, the DC, Bungoma, was informed of his (Walela's) demise on 17th June, 1995, so that he could inform the next of kin. Reminders were sent on 3rd, 5th and 31st July 1995. The method of communication was through the prison and police signal system. Up to now, there has been no response from the DC, Bungoma, on this issue. After failure to get in touch with the claimants of the body, a post mortem was done in August, 1995 and the body disposed of as per the Public Health Act, Cap 242, Laws of Kenya. It is a requirement in prison regulations that under whichever circumstances a prisoner dies, an inquest has to be opened. In the case of the late Walela, the inquest file is still open.

As stated above, my Ministry is not aware of the release of Mr. Walela, nor did anybody go to check on him at Kamiti Maximum Security Prison when he was alive or after he died. The parents do not have to be present in order for the appeal to be heard. The judge, therefore, goes through the file and if he or she has nothing to ask the appellant, he disposes of the case. The information is communicated to the Prison authorities after a decision has been made. It is, therefore, suspected that the prisoner did not give the correct information to the prison authorities since there was no response to the signals the prison authorities sent. Prison authorities do not go searching for the next-of-kin of prisoners. They communicate the information given to them by the prisoner at the time of his admission. This is the information which is used to get in touch with the next-of-kin through the local administration in case they are required. The disposal of the bodies is done by the public health officials and the police. The body of the late Walela was listed first among the 27 bodies from various stations which had over-stayed at the mortuary. It is in this regard that on the 21st August, the OCPD, Kasarani, requested the pathologist to carry out a post mortem with a view to disposing of the body since the relatives could not be traced.

Finally, Mr. Speaker, Sir, the prison authorities do not participate in the burial of unclaimed bodies of prisoners which have to be disposed of through the Public Health Act for having overstayed in the mortuary. This task is undertaken by the public health and police authorities. In case there is any request for the body to be exhumed, the right procedure would be through the Judicial system which will then instruct the police authorities to do that.

In the case of the late Walela, the inquest has to be completed. The request for exhumation and reburial should be made during the inquest. Thank you.

Dr. Kituyi: Thank you very much, Mr. Speaker, Sir. Although I raised the original Question, the request for this statement was made by the Member of Parliament for the family of Walela.

In his original reply to the same Question which I asked on 2nd July, 1997, this same Assistant Minister said: "A message was sent through the DC, Bungoma, asking for his relatives or the next of kin so that they could be informed. No response has come from that area". I will be very pleased if the hon. Assistant Minister could let us know who the relatives are. Today, he started off answering the Question by reading out the names of the parents, brothers, next of kin and neighbours which means that he had this information which he was asking me to provide. The Assistant Minister has consistently said that Walela died on 16th June, 1995. Yesterday, we brought evidence, including a ruling by Justice O'Kubasu on 14th August, 1996, one year and two months after Walela had died. The ruling states as follows:- "The Court of Appeal has freed Walela and he is now free to leave Kamiti Maximum Prison and go home".

Mr. Speaker, Sir, let the Assistant Minister not speculate that, possibly, something was being done because it was on record. The fundamental question is: If Justice O'Kubasu was ruling that Walela was free to go home on 14th August, 1996, how could the Assistant Minister explain that the same person could have died 14 months earlier, his body disposed of and that information was not relayed to the court to terminate the proceedings in the petition against his jail term?

The Assistant Minister for Home Affairs and National Heritage (Mr. Mutiso): Mr. Speaker, Sir, the hon. Member does not have the facts to prove that the judge was aware that Walela was alive by the time he was

delivering his appeal judgement---

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. I am requesting the hon. Assistant Minister not to speculate because he is part of the Government. A person has appealed against conviction and jail term, the appeal is heard in the presence of prisons officers on 14th August, 1996 and Justice O'Kubasu rules that there is some miscarriage of justice, and therefore, Walela is allowed to go home. He says that he should be freed immediately and unconditionally.

Mr. Speaker: Were you present?

Dr. Kituyi: The ruling was made in the High Court in Nairobi, and the prison officers said; "Thank you", and they went away. The Assistant Minister is now telling us that this person, whom we only discover is dead when the family does not see him when they come to collect him, had died and been buried 14 months earlier. Why did the prison officers who came to the High Court during the appeal hearing tell Justice O'Kubasu that, indeed, Walela had died four months after he had been jailed in Kamiti Maximum Prison?

The Assistant Minister for Home Affairs and National Heritage (Mr. Mutiso): Mr. Speaker, Sir, I do not have that information, but what I know, and I am sure the Chair is aware too, is that appeal cases can be heard without the presence of the appellant. This is the issue I am raising. The prison authorities argue that this person died a year ago and, therefore, he could not have been present in court when the appeal was being made. How could this be possible?

Mr. Munyasia: Mr. Speaker, Sir, you heard this Assistant Minister say that the Ministry of Home Affairs and National Heritage asked the DC, Bungoma, to find the relatives of the deceased who live in Cheptais, which is in Mt. Elgon District. Why did this Assistant Minister not inform the DC, Mt. Elgon under which Chepkube village and Cheptais Division fall? Why did he not pass the information to the DC of the neighbouring district? In this case, it was obvious that this particular information would not reach on time because the DC, Bungoma, could not reach Cheptais. So, could he now undertake to inform the DC, Mt. Elgon, to get in touch with the father of the late Patrick Walela Simiyu who is Mr. Absalom Simiyu at Chepkube to come and collect the remains of his son?

The Assistant Minister for Home Affairs and National Heritage (Mr. Mutiso): Mr. Speaker, Sir, as I said earlier on, the address which we have was given by that prisoner on admission and it is most likely that he gave wrong information. I do not know where Cheptais is. I do not even know the geography of those areas, but what I maintain is that the prisoner might have given wrong information and that is what we have in our records.

Dr. Kituyi: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order, on the basis of his ignorance about the geography of [The Assistant Minister for Home Affairs and National Heritage] Western Kenya, to tell this House that the mistake of sending information to the wrong DC was, perhaps, because the prisoner gave wrong information when Walela was arrested at home, Mt. Elgon District, by the Government? The prison authorities did not need that information from him. Could he tell the House why he sent information to the wrong DC when Walela was arrested in another district?

The Assistant Minister for Home Affairs and National Heritage (Mr. Mutiso): Mr. Speaker, Sir, although the hon. Member should be addressing me through the Chair, I want to inform him that the Ministry of Home Affairs and National Heritage does not arrest people; it only takes care of them when they are brought to the institutions which fall under the Ministry. We do not know where the person was arrested, unless and until we have the facts as given by the person himself. This is the record we have.

Mr. Speaker: Very well, next Order.

POINTS OF ORDER

CATTLE RUSTLING IN TURKANA SOUTH

Mr. Achuka: On a point of order, Mr. Speaker, Sir. I rise to demand a Ministerial Statement from the Minister of State, Office of the President in charge of Internal Security over cattle rustling in my constituency. Since the people of Turkana South were disarmed, the Pokots have taken advantage of that to raid the people of my constituency 12 times. They have raided Lokori two times, Nakukulat, once, Kalemng'orok once, Lorokon once, and then Katilo twice. These raids are a burden to my people. They have deprived them off all their resources and left them without any reliable source of income.

I want to know from the Minister what plans the Government has to stop or control this activity which threatens to eliminate the lives of my people in Turkana South? It is a very serious problem because it has made several families to sleep outside their homes because of fear. I have tried to communicate with security authorities, but no one is coming to the rescue of my people. My people are left without any reliable source of

income as the constituency is not an agricultural area. We only depend on livestock. Their livestock has been taken away and 48 people killed within two months and nothing seems to be happening to save the situation. Even now, there is no food to feed them. What action does the Government intend to take to curb cattle rustling? If it is not controlled, it is likely to cause tribal clashes.

(Applause)

Mr. Speaker: Mr. Farah, I hope you are not on the same warpath.

ARREST OF ISLAMIC SCHOLARS

Mr. Farah: On a point of order, Mr. Speaker, Sir, there is no war like that. He lost 48 people and I sympathise with him. I know that, what he is saying is true. But mine is equally a problem with the system.

Mr. Speaker, Sir, I am also seeking a Ministerial Statement from the Office of the President. On Saturday, 1st November, 1997, people from the Kenyan Intelligence Division arrested ten very prominent scholars who worked for an Islamic Foundation called Al-Aramain. Al-Aramain Islamic Foundation is a foundation that has got so many projects and programmes in the country. Today, they take care of more than 3,500 orphans from the Islamic Community who are also receiving secular education, in addition to Islamic education. These scholars who work for this organisation, who are both Kenyan nationals and foreigners, have been arrested in circumstances we do not know and they have not been brought to court. Consequently, all the operations and the activities of the organisation are in jeopardy. Could the Minister in charge of the Kenya Intelligence Services come up as soon as possible to clear the air on this? If these people have committed a crime against the State, they should be taken to court. If they have not been taken to court, it is against the laws of this country for somebody to be kept in custody for many days without any charges being preferred against him. Could the Minister, as a matter of urgency, take these people to court if he has sufficient evidence and tell us their offenses or release them forthwith and give an explanation as to why the laws of the country have been flouted? I do not see him here, but somebody from that Ministry---

Mr. Speaker: Order! Order! Is there any Minister here to respond to the statement by Mr. Achuka and Mr. Farah?

An hon. Member: There is no Minister!

Mr. Speaker: Very well. I will give the last chance to Dr. Lwali-Oyondi.

MILITARY EXERCISES AT NAKURU SHOW GROUND

Dr. Lwali-Oyondi: Thank you very much, Mr. Speaker, Sir. I would like the Minister in charge of Internal Security in the Office of the President to give a Ministerial Statement on what is happening in Nakuru Show Ground. There are activities in Nakuru Show Ground being carried out by strangers. They are practising military-like exercises and we do not know who they are. People in Nakuru fear that these are people being trained to undertake some military-like actions similar to what we suffered the other time, during the clashes. There is fear because there are also pamphlets being distributed around, threatening members of certain communities.

Mr. Speaker, Sir, a local politician within Nakuru Town is connected with these people. If she---

Mr. Speaker: Dr. Lwali-Oyondi, you were seeking a Ministerial Statement, not issuing one. So, will you demand the Ministerial Statement?

Dr. Lwali-Oyondi: Yes.

Mr. Speaker: Alright. Very well.

DELAYED PAYMENT OF SALARIES TO KFA EMPLOYEES

Dr. Lwali-Oyondi: The last one is about the KFA employees, and it is directed to the Minister for Labour and Manpower Development. The KFA workers have not been paid their salaries for the last two months. Their families are really suffering and I would like the Minister to tell us what he intends to do with these families.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Very well.

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

[Mr. Chairman took the Chair]

THE CONSTITUTION OF KENYA REVIEW
COMMISSION BILL

(Clauses 2 and 3 agreed to)

Clause 4

The Attorney-General (Mr. Wako): Mr. Chairman, Sir, I beg to move:-

THAT, clause 4 be amended as follows:

- (a) in subsection (1) -
 - (i) by deleting the words "and the criteria for nomination of commissioners in the First Schedule";
 - (ii) by deleting the words "twenty-six" and inserting the words "twenty-nine";
 - (iii) by inserting immediately after the word "Gazette" the words "within sixty days from the date of commencement of this Act";
- (b) in subsection (2) by inserting immediately after "Attorney-General" the words "or his representative";
- (c) by renumbering subclauses (3),(4) and (5) as subclauses "(8)", "(9)" and "(10)" respectively;
- (d) by inserting the following new subclauses (3),(4),(5),(6) and (7) immediately after subclause (2)-
- (3) The President shall appoint the twenty-nine Commissioners specified in subsection (1) from lists of persons nominated and recommended to him pursuant to subsections (5), (6) and (7).
- (4) The nominations and recommendations for appointment and the appointments of Commissioners under this Act shall take into account Kenya's ethnic, regional, cultural, political, social and economic diversity and reflect the national character of Kenya.
- (5) Within fifteen days of the date of commencement of this Act, the registered political parties, religious organisations, institutional organisations, professional organisations or associations, trade unions, the business community, the farming community, women and youth organizations, associations of disabled persons and other non-governmental organizations in Kenya shall severally submit to the Attorney-General lists of nominees for appointment.
- (6) The Attorney-General shall, within fifteen days after receipt of the nominations, compile and submit copies of the lists received under subsection (5) to, and seek recommendations for appointments from those lists, from -
 - (a) parliamentary political parties;
 - (b) the Evangelical Fellowship of Kenya;
 - (c) the Kenya Episcopal Conference of Churches;
 - (d) the Muslim Consultative Council;
 - (e) the National Council of Churches of Kenya;
 - (f) the Supreme Council of Kenya Muslims;
 - (g) the Hindu Council of Kenya Muslims;
 - (h) the Association of Professional Societies to East Africa;
 - (i) the Kenya Women Political Caucus; and
 - (j) the Non-Governmental Organizations Council established under the Non-Governmental Organizations Co-ordination Act, 1990.
- 7(a) The Organizations specified in subsection (6) shall, not later than fifteen days after the date on which the Attorney-General submits the lists of nominees to them, in consultation with the Attorney-General, recommend forty-five persons to the President for appointment and the President shall appoint the twenty-nine Commissioners from that list.
- (b) For the purpose of facilitating the consultation referred to in paragraph (a), the Attorney-General shall

- convene a consultative meeting of the organizations specified in subsection (6) to -
- (i) determine the procedure for making recommendations to the President having regard to the provisions of subsection (4) and the eligibility criteria specified in subsections (8), (9) and (10); and
- (ii) recommend the forty-five nominees to the President for appointment.

(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 4 as amended agreed to)

Dr. Kituyi: On a point of order, Mr. Chairman, Sir. It is just a slight mistake---

Mr. Chairman: I have already put the question!

Dr. Kituyi: It is just a point of order, Mr. Chairman, Sir. It might be useful for the Attorney-General also.

Towards the end of Clause 4; just before Clause 6, there is part "g" which says, "the Hindu Council of Muslims." What is that? What is the "Hindu Council of Muslims?"

Mr. Chairman: It should be "the Hindu Council of Kenya."

The Attorney-General (Mr. Wako): Mr. Chairman, Sir, it is a typographical error. It should be the Hindu Council of Kenya.

(Clause 5 agreed to)

New Clause 6

The Attorney-General (Mr. Wako): Mr. Chairman, Sir, I beg to move:-

THAT, clause 6 be deleted and the following new clause inserted:-

The Secretariat.6.(1) There shall be a secretary of the commission who shall be appointed by the Commission and who shall serve on a full time basis.

- (2) There shall be at least three deputy secretaries appointed by the Commission to assist the secretary in administration, research and drafting and other duties or functions of the commission.

(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 6 as amended agreed to)

Clause 7

The Attorney-General (Mr. Wako): Mr. Chairman, Sir, I beg to move:-

THAT, clause, 7 be amended in subclause (1) by deleting the word "shall" appearing immediately after the word "President" and inserting the words and commas "may, upon the request of the Commission,".

(Question of the amendment proposed)

(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 7 as amended agreed to)

Clause 8

The Attorney-General (Mr. Wako): Mr. Chairman, Sir, I beg to move:-
THAT, clause 8 be amended by deleting the words "Second Schedule" wherever they occur and inserting the word "Schedule".

(Question of the amendment proposed)

*(Question, that the words 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 8 as amended agreed to)

Clause 9

The Attorney-General (Mr. Wako): Mr. Chairman, Sir, I beg to move:-
THAT, clause 9 be amended -

- (a) by deleting subclause (2) and renumbering the existing subclauses (3) and (4) as "(2)" and "(3)" respectively.
- (b) in subclause (4) by deleting the expression "under section 4(1) and the First Schedule" and inserting the expression "under section 4".

(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 9 as amended agreed to)

Clause 10

The Attorney-General (Mr. Wako): Mr. Chairman, Sir, I beg to move:-
THAT, clause 10 be amended by renumbering the existing provision as subclause (1) and inserting the following new subclause -

- (2) In discharging its functions under this section, the Commission shall be guided by the principles of the separation of powers, democratic governance, human rights, non-discrimination and equality.

(Question of the amendment proposed)

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

(Clause 10 as amended agreed to)

Clause 11

The Attorney-General (Mr. Wako): Mr. Chairman, Sir, I beg to move:-
THAT, clause 11 be amended in paragraph (c) of subclause (1) by deleting the word "person" appearing in the first line and inserting the words "public officer".

(Question of the amendment proposed)

*(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 11 as amended agreed to)

(Clause 12 agreed to)

Clause 13

The Attorney-General (Mr. Wako): Mr. Chairman, Sir, I beg to move:-
THAT, clause 13 be amended as follows:-

(a) in subclause (2) by deleting the word "shall" appearing immediately before the word "hold" in the first line of that subclause, and

(b) in subclause (3) by deleting the full stop at the end of paragraph (c) and inserting a colon and the following proviso -

Provided that in the absence of both the Chairman and the Vice-Chairman for any cause, the Commissioners present shall elect one of their number to perform the functions under this subsection during the absence.

(c) in subclause (6), by inserting a new paragraph as follows: -

(f) custody of all records and documents of the Commission.

(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 13 as amended agreed to)

(Clause 14 agreed to)

Clause 15

The Attorney-General (Mr. Wako): Mr. Chairman, Sir, I beg to move:-
THAT, clause 15 be amended as follows:-

(a) by deleting the word "person" in the first line and inserting the words "public officer";

(b) by deleting the expression "twenty thousand shillings" and inserting the expression "ten thousand shillings".

(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 15 as amended agreed to)

Clause 16

The Attorney-General (Mr. Wako): Mr. Chairman, Sir, I beg to move:-

THAT, clause 16 be amended as follows:-

- (a) in subclause (1) by inserting a full stop immediately after the word "Commissioners" in the third line thereof and by deleting the rest of that subclause;
- (b) in subclause (3)-
 - (i) by deleting the expression "not less than fifty of the National Assembly" in the third line and inserting the words and coma "fifty one Members of National Assembly reflecting proportionate representation of the parties in the Assembly,";
 - (ii) by inserting a capital "N" for the word "national" wherever it occurs.
 - (iii) by renumbering the existing provision as paragraph (a) and inserting the following new paragraph -
- (b) In examining and evaluating the Commission's report, the committee shall have particular regard to the matters specified in section 3 and subparagraphs d(i) to (vii) of section 10.

(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 16 as amended agreed to)

Clause 17

The Attorney-General (Mr. Wako): Mr. Chairman, Sir, I beg to move:-

THAT, clause 17 be amended - (a) by deleting subclause (2) and inserting the following new subclause -

(2) Without prejudice to subsection

(1), there may be made to the Commission, through the Permanent Secretary to the Treasury, grants, gifts, donations and bequests of movable or immovable property including such vehicles and other modes of transport, and such equipment, office and other accommodation as may be necessary for the efficient and effective discharge and performance of the Commission's duties and functions under this Act:

Provided that no grant, gift, donation or bequest shall be granted, made or donated and accepted and received on

any condition that the Commission perform any function or discharge any duty or obligation other than functions and duties under this Act aimed at achieving the object of the Commission.

(b) by inserting the following new subclauses immediately after subclause (4) -

(5) There shall be a Fund to be known as the Constitution of Kenya Review Commission Fund into which shall be paid the appropriations from the Consolidated fund for the purposes of the Commission and any other receipts under subsection (2), and out of which shall be paid all the expenses of the Commission.

(6) The Fund shall be managed on behalf of the Commission by Permanent Secretary to the Treasury who shall, subject to the Exchequer and Audit Act, consult with the Commission and so manage the Fund as to ensure that the Commission achieves its object under this Act efficiently and effectively, and for that purpose the Permanent Secretary shall open a separate bank account for the Fund.

(7) Upon the dissolution of the Commission under section 18, any assets standing to the credit of the Constitution of Kenya Review Commission Fund shall, subject to any condition of a gift, donation or bequest under subsection (2), be credited to the Consolidated Fund.

(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 17 as amended agreed to)

(Clause 18 agreed to)

First Schedule

The Attorney-General (Mr. Wako): Mr. Chairman, Sir, I beg to move:-
THAT, the first Schedule be deleted.

(Question of the amendment proposed)

Prof. Anyang'-Nyong'o: Mr. Chairman, why is he deleting it?

Mr. Chairman: Mr. Wako, would you like to respond to that query?

The Attorney-General (Mr. Wako): Mr. Chairman, Sir, if Prof. Anyang'-Nyong'o reads Clause 4 as amended, he will know the reason.

*(Question, that the First Schedule
be deleted, put and agreed to)*

Second Schedule

The Attorney-General (Mr. Wako): Mr. Chairman, Sir, I beg to move:-
THAT, the Second Schedule be amended in the heading by deleting the word "SECOND".

(Question of the amendment proposed)

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

(Second Schedule as amended agreed to)

Mr. Michuki: On a point of order, Mr. Chairman, Sir. My own recollection tells me that when you read the amendments and passage of Clause 11, you did not refer to Clause 12.

Mr. Chairman: I said that formerly.

Mr. Michuki: No! You went straight from Clause 11 to Clause 13 and you did not refer to Clause 12.

Mr. Chairman: I did refer to Clause 12.

Mr. Michuki: No, you did not, Mr. Deputy Chairman, Sir.

Mr. Chairman: I did and I am certain that the verbatim records have this information. I was so particular that I had to put a mark in between Clause 11 and Clause 13.

Mr. Michuki: Mr. Chairman, Sir, in my opinion, that was omitted.

Mr. Chairman: I think it is because Clause 12 does not appear on the Order Paper here that you think that we jumped it. We did not skip it. Please, Mr. Michuki, it does not appear on the Order Paper because there is no amendment on it. But I am telling you that as I went through the process, I did call out that Clause. So sure, am I that I marked Clause 12 in between.

(Title agreed to)

(Clause 1 agreed to)

The Attorney-General (Mr. Wako): Mr. Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Constitution of Kenya Review Commission Bill and its approval thereof with amendments.

Dr. Kituyi: On a point of order, Mr. Deputy Chairman, Sir, on the Order Paper there is notice from hon. Paul Muite to the effect that he is proposing certain other amendments. Now, although the Committee is about to report to the House, you have not gone through the process of seeking whether he is hiding around and might want to move them.

Mr. Deputy Speaker: Well, we read out the proposal and I was particularly concerned about that. Since he was not around and nothing happens. It is too late. We have already gone through that.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Speaker in the Chair]

REPORT AND THIRD READING

THE CONSTITUTION OF KENYA REVIEW COMMISSION BILL

Dr. Godana: Mr. Speaker, Sir, I beg to report that the Committee of the Whole House has considered The Constitution of Kenya Review Commission Bill and approved the same with amendments.

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Health (Mr. Mulinge) seconded.

(Question proposed)

(Question put and agreed to)

The Attorney-General (Mr. Wako): Mr. Speaker, Sir, I beg to move that the Constitution of Kenya Review Commission Bill be now read a Third Time.

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

(Question proposed)

Dr. Kituyi: Thank you very much, Mr. Speaker, Sir. Notwithstanding the fact that I never had an opportunity to contribute to this Bill in the Second Reading, I will not open debate now. I want to reflect on two important things. The first one is that in spite of the celebrations that we have been having about the Statute Law (Repeal and Miscellaneous) Bill and the Constitution of Kenya Amendment Bill, to my mind the passage of this Bill represents the most important achievement of the Seventh Parliament because it offers a consensus on infrastructure for comprehensive reform of the governance of this country. Now, recent experience obliges us as leaders to approach the next stage with caution. It was painful to reflect upon the extremely segmentary approach to the nomination of commissioners to the Electoral Commission that was done recently. Still as we approach the next millennium there is so much attention being paid to which tribesman is going to what committee; to what religion is going to what committee and to what region is going to be represented.

Mr. Speaker, Sir, I think it is important that persons of all sections of this country be represented in such critical matters as the Electoral Commission and the review of our Constitution. But it is much more, more important that the best talents in Kenya are mobilised to set the challenge of writing a new Constitution and new laws for this country. While political parties are going to have a prominent role in the recruitment of members of

the Constitutional Review Commission, I wish to urge as we gain this privilege and challenge to ourselves that we should rise above the desires to reward individuals we like, the desires to do ethnic and regional arithmetic and identify the best persons for this country. I believe many of them exist outside Parliament. Many of them, in fact, exist inside NCEC, but we should rise to the challenge of the occasion and choose the best brain, the most committed patriots who are capable of doing the job to constitute the Review Commission.

Mr. Wamalwa: Mr. Speaker, Sir, I just wish to add my voice to those who have hailed the passing of this very, very important Bill. At the moment, the Constitution of Kenya needs major surgery and I would like to implore all those institutions which are going to nominate people to serve in this Commission to nominate people of integrity, knowledge about constitutional matters and experience. I would like to urge those so nominated to be bold. They should be bold enough to carry out surgery on all those parts of our Constitution that have tended to go against the wishes of the majority of the people of this country.

Thank you, Mr. Speaker, Sir.

The Minister for Home Affairs and National Heritage (Mr. ole Ntimama): Mr. Speaker, Sir, I want to also support this Constitution of Kenya Review Commission Bill, but I want to stress one important point. No Constitution can be complete without serious considerations being given to land issues. I want to say very clearly that some of us in our communities feel that we have been robbed of our land during the colonial times and we feel that nothing has been done to redress what has happened during the colonial times and we want this thoroughly discussed including boundaries and so forth.

Mr. Speaker, Sir, the second point is that most of the laws that apply to the administration of land are colonial. Nothing really can be said to have emanated from the people and from the community and it is important that when we come to review the whole Constitution, to let the people decide on what mode of administration; what mode of allocation and what mode of distribution of land will be used so that it comes from the people themselves.

Mr. Speaker, Sir, lastly, in most areas including Maasailand, all the communities had their land being robbed by the whiteman from the Coast to Kisumu and from Moyale to the other areas of the land.

Mr. Speaker, Sir, we feel that some of these things should be told to our colonisers because most of the indigenous people who were colonised, for instance, the South Africans, the Aborigines and the Maoris got compensation for the land they lost. In fact, they have even demanded an apology from their colonisers for the sins that they committed against the people.

Mr. Speaker, Sir, I do not want to start the tribal commotion that was in this House before. As a matter of fact, that was not important. But I want to state here that the first war that was fought between the colonialists and the indigenous people was between the white men and the Maasai.

Mr. Ndicho: Mr. Speaker, Sir, I am very proud to be associated with the Seventh Parliament which has established a Commission to review the Constitution of Kenya which was drafted very many years ago. I support what hon. Ntimama said. When I was contributing on this Bill, I stated quite clearly that the issue of land ought to have been addressed, but I was told by one hon. Member that it was agreed that, that should be addressed during the total overhaul of the Constitution. I hope the Commissioners who will be reviewing the Constitution will address themselves to the issue of land because it is very contentious. It is not only in Maasailand, but also in the City of Nairobi, Thika Town and Mombasa Town, where we have contentious land issues. I hope the Commission will be explicit and not to wait for the President to be nullifying plots that have been allocated already.

Mr. Speaker, Sir, the Commissioners must also review the issue of defections. It must be entrenched in the Constitution, that if one wants to defect from the party that sponsored him to Parliament, he must pay colossal sums of money. I was of the opinion that we should remove the clause stipulating that there must be a by-election when one defects. Instead, the defector should be made to pay Kshs10 million and be left to retain his seat on the ticket of the party which he has defected to. This is because a by-election is expensive to the electorate and also to the nation.

The Commissioners who will be appointed to review the Constitution must address themselves to the issue of investment in this country by foreigners *vis-a-vis* the labourers who are Kenyans. Kenyans are being exploited to provide cheap labour by investors. They must entrench that one in the Constitution so that Kenyans are not exploited. Today, investors and more so Asians, are enjoying in Kenya than Kenyans themselves. They are enjoying the fruits of Kenya's Independence more than the ordinary Kenyans because Kenyans have been turned into slaves in their own country. They must be protected by the Constitution.

The Attorney-General (Mr. Wako): Thank you very much, Mr. Speaker, Sir, for allowing me to make final comments on this Bill. When I moved the Statute Law (Repeals and Miscellaneous Amendments) Bill, I did put on record by name some of the prominent Members of the IPPG. I wish to take this opportunity to correct

something which I forgot to mention. I forgot to mention the two co-chairmen of the IPPG, hon. James Osogo and hon. Achieng-Oneko. I mention hon. Achieng-Oneko because when the IPPG passed a resolution that they must consult with me and clear the Bills that I drafted, it was hon. Achieng-Oneko who was the first to arrive and he told me that he had woken up at 2.30 a.m. in his Rarieda home. Fortunately, at that night, it had not rained. He would have been marooned in his house. So, he was able to arrive in time to attend that meeting. Since that time, I have been impressed by the way he chaired the IPPG meeting.

Mr. Speaker, Sir, in many respects, it can be said that the Statute Law (Repeals and Miscellaneous Amendments) Bill and the Constitution of Kenya (Amendment) Bill which have already passed through this House were, but a preparation for the coming comprehensive review of our Constitution. Therefore, in that respect, this is the most important achievement of the Seventh Parliament. I do hope that Members of Parliament who have made some suggestions on what should be in the Constitution during this Third Reading will not forget to make those views known to the Commission when it is set up. There has been, of course, some misplaced belief that the Bills may not be assented to by the President. I am pleased to report to this House that since we have passed the Constitution of Kenya Review Commission Bill this afternoon, the three Bills will be assented to by His Excellency the President tomorrow.

With those few remarks, I beg to move.

(Question put and agreed to)

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

Mr. Speaker: Next Order!

Hon. Members, before we proceed to Order No.8, I would like to appraise you on the form of procedure which we shall apply. You will notice that on your copies of today's Order Papers that Order No.8 is to be dealt with in the Committee of the whole House. That is a form of procedure reminiscent of the Committee of Supply. However, the application of this procedure is in keeping with the established practice. Some hon. Members who have been around for a while, for instance, in the First, Third and Sixth Parliaments, will recall that during the adoption of similar reports, in 1967, 1979 and 1992 respectively, for the convenience of disposal of the proposed amendments, this procedure was used. The aim of moving into the Committee is to enable the hon. Members examine each of the proposed amendments, as thoroughly as they would do with heads or votes in the Committee of Supply. When we eventually resolve into the Committee I would have taken the Chair as the Deputy Chairman, so as to facilitate deliberations since I am also the Chairman of the Standing Orders Committee. But on this occasion, the Chairman of Committees will have to be the Deputy Speaker. He will instead be in the Chair. Since he served as the Chairman of the Sub-Committee which mainly dealt with the formulation of the proposed amendments, he is better-placed to guide the deliberations of the House and Committees.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

MOTION

THAT MR. SPEAKER DO NOW LEAVE THE CHAIR

The Vice-President and Minister of Planning and National Development (Prof. Saitoti): Mr. Speaker, Sir, I beg to move:-

THAT, Mr. Speaker do now leave the Chair.

I have understood the procedure to be followed in examining the Sessional Paper on the report of the Standing Orders Committee. It is for that reason I do now move that Mr. Speaker do now leave the Chair so that the House can now go into Committee to deliberate on the Sessional Paper of that Committee.

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

(Question proposed)

(Question put and agreed to)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

[Mr. Chairman took the Chair]

MOTION

ADOPTION OF SESSIONAL PAPER NO.8 OF 1997

Mr. Wetangula: Mr. Chairman, Sir, I beg to move the following Motion:-
THAT, this House adopts the Sessional Paper No.8 of 1997 on the Report of the Standing Orders Committee laid on the Table of the House on 14th October, 1997 and further resolves that the amendments to the Standing Orders recommended in the First Schedule of the Sessional Paper be made, and are hereby made, with effect from the date this Seventh Parliament is dissolved.

(Question proposed)

Mr. Chairman: We will go through the Standing Orders, one by one.

Mr. Wetangula: Mr. Chairman, I beg to move:

THAT, Standing Order 1 be amended by deleting the existing order and inserting the following:-

1.(1) In all cases where matters are not expressly provided for by the Standing Orders or by other Orders of the House, procedural questions shall be decided by the Speaker or the Chairman of the Respective Committee.

(2) The decisions made in paragraph (1) shall be based on the usages, forms, customs, procedure and traditions of the National Assembly of Kenya and other jurisdictions to the extent that these are applicable to Kenya.

(Question of the amendment proposed)

Standing Order No.1 - In Cases not provided for Mr. Speaker to decide

Mr. Obwocha: Mr. Chairman, Sir, can I get the guidance about how we are going to proceed? I have several remarks to make on certain Standing Orders, but Standing Order No.1 is not one of them.

Dr. Kituyi: Mr. Chairman, Sir, while I appreciate that explanation of the exercise of that discretion by the Speaker, I do not strictly understand what benefit is derived from extending that power to the Chairman of a Committee to decide where there is no provision. I thought it would be better to retain it with that explanation, but vest it only on Mr. Speaker and not the Chairman of a Committee.

Mr. Chairman: What is your reading of the proposed amendment?

Dr. Kituyi: It reads:-

"In all cases where matters are not expressly provided for by the Standing Orders or by other orders of the House, procedural questions shall be decided by the Speaker or the Chairman of the respective Committee."

Mr. Chairman, Sir, I am saying that I wanted as to end at "Speaker".

Mr. Chairman: Are we reading the same Standing Order? You must be having the wrong copy of Standing Orders. My copy reads:-

"In all cases where matters are not expressly provided for by the Standing Orders or by other orders of the House, procedural questions shall be decided by Mr. Speaker."

Dr. Kituyi: Mr. Chairman, Sir, I would like that to be the way it stands. But what we have here includes the words "the Chairman of the respective Committee." **Mr. Chairman:** I hope every hon. Member has this document. This is the correct version; the one with a ribbon at the end.

An hon. Member: It is only yours.

Dr. Kituyi: Mr. Chairman, Sir, considering the apparent confusion occasioned by the issue of different documents because the Chair has one document and we have a different document, I propose that there is need to adjourn debate on this Motion until we sort out that confusion.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Chairman, Sir, it is "the Chairman of respective Committee" which is lacking in the new document. Is that not so?

Mr. Chairman: Yes, that is not in my document.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Chairman, Sir, then why do we not go by what is in your document so that the understanding, therefore, of the Committee is that the phrase; "the Chairman of respective Committee" is deleted?

Mr. Chairman: I will wish to believe that that is the only error that we will find as the difference between the two documents. I am sorry about it. On that basis, then let us take the version of the document which the Chair has!

Mr. Maore: On a point of order, Mr. Chairman, Sir. For purposes of clarification and, as you had stated earlier in your conversation, if we are certain that this is the only error in this document that makes it different from what we have, then we are bound to agree to proceed. But who can reassure us that this is the only typographical error?

Dr. Kituyi: Mr. Chairman, Sir, evidently, that is not the only difference. If you look at the document you are holding, it is about twice as long as the document we are having. Therefore, the difference cannot be one sentence.

Mr. Chairman: If you tell me, evidently that the First Schedule is different in my document from yours, I will look at that.

Dr. Kituyi: Mr. Chairman, Sir, the First Schedule of this document appears on page 116. The first sentence on that Standing Order No.1 is grammatically wrong.

Mr. Chairman: In which document?

Dr. Kituyi: In the document I have.

Mr. Chairman: Let us hear the statement you are referring to.

Dr. Kituyi: "THAT, Standing Order 1 be amended by deleting the existing order and inserting the following:-"

Mr. Chairman: Now, I get it! It was Dr. Kituyi! It is evident that hon. Members got the report. The document ends at page 156. The reason for sickness evidently is that the Chairman's copy is typed on one side of the paper, whereas yours is typed on both sides. I would want to believe that the only difference is the error we noted, and I think we dealt with it, by agreeing that the Chairman's version is the correct of the documents before the House.

Dr. Lwali-Oyondi: On a point of order, Mr. Chairman, Sir. It is impossible for a sentence to be deleted from one document. Could I be in order to suggest that the House adjourns for 20 minutes so that we can check everything?

Mr. Wetangula: Mr. Chairman, I believe that the document we are dealing with is the one that I am holding. This is the document that was circulated by the Clerk's Office. As a Member of this Committee, I do recall that we went through several Motions of refining whatever amendments we were proposing. It does appear that under Standing Order No.1, the Clerk's Office may have made a mistake because our recommendations ended at the word "Speaker". What we recommended reads:

"In all cases where matters are not expressly provided by the Standing Orders, or by other orders of the House, procedural Questions shall be decided by Mr. Speaker". There is an addition of:

"Or the Chairman - which is badly spelt - of the respective Committees".

Those words should be deleted because that is not what we recommended.

Dr. Kituyi: Mr. Chairman, Sir, we are facing a very grievous problem. It has been confirmed that the document that we are looking at is the document which was circulated to hon. Members. The Chair has already ruled that the correct version is the one with the Chair. That means that hon. Members are discussing a document which is only with the Chair, and it is not with them, to the extent that we can now confirm that certain refinements were made, and already, the verses of refinement are excluded from the document in our possession.

Mr. Chairman: I want to assure the House as the Vice-Chairman of the Committee, and the Chairman of the Sub-Committee which made this Order, and as the Vice-Chairman of the Committee, I am aware of no refinements after we had tabled the document. It would seem to me, because we did go through several meetings with the Committee to refine the language, but at some point, somewhere in the computers, the correction was not done on that particular programme. I still believe that everything else in the proposed amendments to the Standing Orders are the same on my document, as it is in other hon. Members' documents. Therefore, I think with suppression of those words, it should be possible for us to proceed.

Dr. Kituyi: Mr. Chairman, Sir, could you help us to understand why, after your document has deleted a sentence of one and a half line, the length of your document is 156 pages, and ours is 155 pages?

Mr. Chairman: Let me put it this way. Your First Schedule which contains proposals for the amendment of the Standing Orders of the National Assembly runs for how many pages? In fact, it is from page 11 to page 22 with two lines. That confirms to me that the document is okay. The rest is the background information.

Mr. Obwocha: If you say that, even page 23 is not there!

Mr. Chairman: No, page 23 is on the Second Schedule!

Mr. Obwocha: No, that is on pages 24, 25 and 26! Could the Chair tell us whether we are going to proceed with the version which the hon. Members have, or the version that the Chair has? I think that is the problem that we have now.

Mr. Chairman: I am saying that with the exception of the error that we have noted, I think everything else is the same! Later, if we find that there are other differences between the two schedules, I think we have to consider---

Mr. Wetangula: On a point of order, Mr. Chairman, Sir. For clarity purpose, if you look at the booklet, the First Schedule from page 10 to page 22, are the fine details of our final recommendations on the amendment of the Standing Orders. That is what we ought to be dealing with. The remainder of the document are the Minutes of our meeting, and our first recommendations as we were going along. So, the substantive document that we are dealing with is from page 11 to page 22, which reflects the exact recommendations of each Standing Order that we intended to amend. That is what we ought to be dealing with now. The rest are details of our Minutes and other things.

Mr. Chairman: While regretting the evidence of errors present in some of the documents which hon. Members have, I want to make a ruling, that I take it that the version that I have, which reflects what Members of the Committee also remember is what they agreed upon, is the correct version, I also take it that, that is about the only error, and there must have been some mix-up in the photocopying of documents in the machine operations room. I take it that there are no further differences between my copy and your copy. On that basis, let us proceed now.

Dr. Kituyi: No! I would like to propose that the Chair, and some representatives from both sides of the House, go over the 11 pages of this document, to ascertain that the position you are suggesting is actually the factual position, before the Committee resumes. On the basis of that, I would like to propose an adjournment for 20 minutes.

Mr. Chairman: The Committee has not adjourned. I do not think it is necessary. Dr. Kituyi, I do not really think we need to adjourn to establish what you are saying. If you look at page 11, it directs us to Standing Order No.28, starting with the sentence: "The following new Standing Order" and you go down to 20 (a) (1) (2) (3) (4), I am checking with the document which is similar to yours, in the position of the Clerk to my left, and I find that it is identical. Likewise, we have also checked the next page. On this basis, I think there is no further difference with the Chair.

Dr. Lwali-Oyondi: On a point of order, Mr. Chairman, Sir. We should just use our document. Let us give you our document and you can use it. Since they are the same, why should you use yours and we are the majority?

Mr. Chairman: I have a copy of your document here. So you can take it that beyond that error, I am using both simultaneously.

Dr. Kituyi: Mr. Chairman, Sir, you had already proposed. We have only disposed of 1.1 and we are now dealing with 1.2. You are putting the Question for the entire Standing Order number 1. We want to scrutinise part 2 of the Standing Order.

Mr. Chairman: Okay, I will give you the room to look at it, if you want. When I proposed, I proposed on the whole Standing Order and I intend to put the question on the whole Standing Order. Personally, I am satisfied that part 2 of the Standing Order in both my copy and your copy is identical. Do you have any substantive comment on Standing Order number 1.2?

Mr. Maore: Mr. Chairman, Sir, when we assemble here as the National Assembly of the Republic of Kenya, we also have to copy a few traditions and practices and procedures used by other members of the Commonwealth. Why was it so much necessary to specifically state here that you have to do things that have to do with usages, forms, customs, procedures and traditions of the National Assembly of Kenya and even the jurisdiction, to the extent that these are applicable to Kenya? We do not have many other assemblies or smaller parliaments where we can go and make references or special cases. How do you confine yourself to that? What

was the motive?

Mr. Chairman: Our Standing Orders...(inaudible) certain categories of Standing Orders and traditions of Westminster and the Commonwealth systems. These are Standing Orders of this Parliament and the Standing Orders of most Commonwealth Parliaments are almost identical. There are areas within the Standing Orders where certain Parliaments have had much richer experience than others. Our intention was to make it clear that when the Speaker has to make a ruling on a noble situation, he is not acting entirely on his whims alone, but he is guided by some legal reasoning. That is why we are requiring him to go back into the past practice of our own Parliament, to find out precedence of that kind of situation. Where those may not be entirely satisfactory, we are telling him it is safe to look into the jurisdictions of other parliamentary systems of our type which may be applicable here. We are not telling him to go and "borrow" from the rules of other parliamentary systems, but only to look at the jurisdictions and procedural rules in so far as they are applicable to us. In other words, they are kind of defining the limiting parameters on the freedom of the Speaker to say:

"Our rules are not sufficient, therefore, I have to amend the rule."

We are telling him, whatever invention you do, it has to be on the basis of this guideline. I think that is good for law. In any case, our National Assembly Act does also authorise this.

Dr. Lwali-Oyondi: Mr. Chairman, Sir, I am a little bit disturbed about 1.1 in that, there is a time you have to decide. Now you are acting like a Speaker. There is a time you will have to decide as Chairman here, in the Committee Stage. How do we cater for that? While we are not referring to other chairmen of other Committees, but at the moment, you are now acting as Chairman of this Committee and you are Speaker in these proceedings, how do we cater for you in case there is a problem, and how do you decide on that?

Mr. Chairman: The Standing Orders are quite clear. When there is a serious problem where the Chairman cannot decide, then the matter gets referred to the Speaker. I think the intention is also to minimise or avoid opportunities or the likelihood of the Chairman of a Committee assuming to have the same powers as the Speaker, and therefore, going out as it were, *inventros* for potential conflict during the---

Mr. Obwocha: Mr. Chairman, there are some errors on 1.2. If you read that sentence, we did not mean "forms", we meant "norms". It should read as follows:

"The decisions made in paragraph one shall be based on the usages, norms, customs, procedure and traditions of the National Assembly of Kenya and other jurisdictions to the extent that these are applicable to Kenya."

So, it is "norms", not "forms".

Mr. Chairman: That is a typographical error. But I think it is "forms" because customs will be the "norms".

An hon. Member: What does "forms" mean? It cannot be "forms".

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Chairman, Sir,...(inaudible) sometimes, the word norms is very much synonymous to customs. The word customs does also imply norms. So, these could very well be "norms", but maybe somebody in the Committee can tell us exactly what they had in mind here.

Mr. Wetangula: Mr. Chairman, Sir, the word "forms" is correct and that is what we decided, because to use "norms" and customs is to become tautologous because they mean one and the same thing. We meant usages, forms, customs, procedures and traditions.

Mr. Chairman: Mr. Wetangula, in your recollection, what does the word "form" mean?

Mr. Wetangula: Mr. Chairman, Sir, "form" reference to precedent and so on.

Mr. Chairman: Yes, it is forms of precedents. That is what---

Dr. Lwali-Oyondi: Mr. Chairman, Sir, why do we not just use the word precedence?

Mr. Chairman: The word is actually "form" and I now recall it comes from the phrase "forms of precedents."

Dr. Lwali-Oyondi: Mr. Chairman, Sir, then let us put it so. I am not a lawyer, but in law, there are customs, precedents and statutes. So, why do we not use the normal word which is precedent?

Mr. Chairman: The intention was to cover forms of precedent. Unless you want us to amend it to read that lengthy. "Forms" refer to forms of precedent, and it is in the category of usages, customs and forms of precedents."

Mr. Murungi: Mr. Chairman, Sir, since this intention has not been clearly expressed as you can hear from hon. Members' comments, why do we not say "forms and precedents?"

Mr. Chairman: Forms of precedents?

Mr. Murungi: No, I would say forms and precedents.

Mr. Chairman: What will be the difference between your forms and precedents?

(Mr. Nassir entered the Chamber wearing a cap)

Order, hon. Nassir. You are grossly disorderly. I order you to leave the Chamber for the remainder of this sitting. Will you leave!

An hon. Member: This is nonsense!

(Mr. Nassir left the Chamber)

Dr. Lwali-Oyondi: On a point of order, Mr. Chairman, Sir. You realised that despite the fact that Mr. Nassir came into the Chamber rudely wearing a cap, he took it off and then he insisted on putting it on again, before leaving the Chamber. Could we name him for being so discourteous to the House?

Mr. Chairman: I think I have already meted out the punishment to him. I would rather not be more severe than that for today. It is a sufficient lesson to all. I think you had better be quite clear. If you want to amend the proposal that it reads "forms of precedents", put it and we put the question.

Mr. Murungi: Mr. Chairman, Sir, I think we should include the word precedents.

Mr. Chairman: Instead of the word "forms?" So, that it reads: Usages, precedents, customs, procedures and traditions? You know, all those are precedents. So you will be even more tautologous. But if you want to repeat it---

An hon. Member: Afadhali!

Mr. Chairman: Yes, you cannot. The whole point is that the whole Committee will have to pass. Mr. Murungi, you had better be quite clear. I am prepared to go on with the formulation as it is. But if you want to be that insistent that we amend, we will amend it.

Mr. Murungi: Mr. Chairman, Sir, I would like to amend.

Mr. Chairman: Then you had better propose it and I will put the Question. Let us not have a further debate on this. Both positions are known.

Mr. Murungi: Mr. Chairman, Sir, I would propose that we include the word "precedent" after the word "form".

Mr. Chairman: So we say "forms of precedents?"

Mr. Murungi: It should read: forms, precedents, customs, *etcetera*.

Mr. Chairman: Do you want it to read "forms of precedence?"

Mr. Murungi: No, Mr. Chairman, Sir. It should read: "Forms, precedents, *etcetera*."

Standing Order 1 - In Cases Not Provided For Mr. Speaker to Decide

Mr. Wetangula: Mr. Chairman, Sir, I beg to move:-

THAT, Standing Order 1 be amended by deleting the existing Order and inserting the following:-

1. (1) In all cases where matters are not expressly provided for by the Standing Orders or by other Orders of the House, procedural questions shall be decided by the Speaker or the Chairman of the respective Committee.
- (2) The decisions made in paragraph (1) shall be based on the usages, forms, precedents, customs, procedure and traditions of the National Assembly of Kenya and other jurisdictions to the extent that these are applicable to Kenya.

(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)

(Standing Order 1 as amended agreed to)

Standing Order 20A - Members' - Half-Hour Statements

Mr. Wetangula: Mr. Chairman, Sir, I beg to move:-

THAT, the following new Standing Order be inserted immediately after Standing Order 20:

20A (1) Under this Standing Order and notwithstanding the provisions of Standing Order 17, Mr. Speaker shall interrupt the business of the House every Thursday at 6.30 p.m. (or 7.00 p.m. if it is an Allotted Day) to facilitate Members'-Half-Hour-Statements.

(2) A Member who

wishes to seek leave to make a statement under this Standing Order shall, before one O'clock on the day the statement is to be made, through his Party Whip, hand to Mr. Speaker a written notification of the matter he wishes to discuss, and Mr. Speaker shall refuse to allow the claim unless he is satisfied that the matter may properly be discussed in the House.

(3) If Mr. Speaker is so satisfied, Mr. Speaker shall inform the Party Whip accordingly, and the Party Whip shall notify the relevant Minister(s) of the Matters to be raised before Four O'clock of the same day.

(4) No Member making such a statement shall speak for more than one hundred and twenty seconds without leave of the House.

Mr. Murungi: Mr. Chairman, Sir, we are happy with the new Standing Order except this one of 20 (a) (4). It says that no Member making such a statement shall speak for more than 120 seconds without the leave of the House.

Mr. Chairman, we feel that 120 seconds is very little time for any Member to make any intelligent statement in this House and I will propose that we amend it to read five minutes.

Mr. Chairman: Oh!

Mr. Wetangula: Mr. Chairman, Sir, I wish to bring to the attention of the House that, in fact, our Committee was too generous in giving 120 seconds. During our tour in other Parliaments, we found others who gave six seconds. In Australia it is 75 seconds, in New Zealand it is 60 seconds, and we decided to go above these, and gave a bonus to make it 120 seconds. We realised that in fact, in 60 seconds, Members were able to make very sensible contributions. I think this is generous enough.

Mr. Obwocha: Mr. Chairman, Sir, I wish to add my voice on this matter. The actual reason of giving 120 seconds is to enable as many Members as possible, to make personal statements, courtesy of this new Standing Order. In fact, you can notice that within 30 minutes, only 15 Members will be able to speak at most. This number is very low. That was the basis of giving these 2 minutes.

(Question of the amendment proposed)

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

(Standing Order 20A as amended agreed to)

Standing Order No. 55 - Direction of The Ayes and Noes

Mr. Wetangula: Mr. Chairman, Sir, I beg to move:-

THAT Standing Order 55 be amended-

(1) (a) by inserting at the end thereof the words "and the doors of each lobby shall be locked ten minutes thereafter"; and,

(b) by numbering the existing Standing Order as paragraph (1) and inserting the following new paragraph-

(2) Mr. Speaker or the Chairman of the Committee shall, fifteen minutes after the locking of the lobby doors, call the House to order, and any Member who shall not have voted then shall forfeit his right to vote.

(Question of the amendment proposed)

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

(Standing Order 55 as amended agreed to)

Standing Order No. 65 - Speeches May Not be Read

Mr. Wetangula: Mr. Chairman, Sir, I beg to move:-

THAT, Standing Order 65 be amended by adding the following proviso:-

Provided that Mr. Speaker may allow a Member to read his speech in particular cases where Mr. Speaker is satisfied that this is necessary for precision in the statement of facts.

(Question of the amendment proposed)

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

(Standing Order 65 as amended agreed to)

Standing Order No. 81 - Limitation of Debate

Mr. Wetangula: Mr. Chairman, Sir, I beg to move: -

THAT, Standing Order 81 be deleted and replaced by the following:-

81 (1) The time during which Members may speak in a debate on Bills shall be limited as follows:-

(a) IN A DEBATE OF PUBLIC BILLS-

- (i) The Leader of Government Business or designated Minister, when Moving or Replying no time Limit;
 - (ii) The Leader of the Official Opposition Party when submitting the official position, no time limit; and,
 - (iii) Every other Member when speaking on the Bill, a maximum of thirty (30) minutes.
- (2) The time during which members may speak in a debate of Sessional Papers or Reports of Committees shall be limited as follows:

(a) In a Debate of Sessional Papers -

- (i) the leader of Government Business or designated Minister, in moving and replying, no time limit;
- (ii) the Leader of the Official Opposition Party or a spokesman thereof, in submitting the official position, no time limit; and
- (iii) every other member, in speaking on the Sessional Paper, a maximum of thirty (30) minutes.

(b) In a debate of Reports of Committees -

- (i) the Chairman of the Committee or designated member of the Committee, in moving or replying, no time limit.
 - (ii) the Leader of Government Business or designated Minister, in submitting the official position, no time limit;
 - (iii) the Leader of the Official Party or spokesman thereof, no time limit; and
 - (iv) any other member speaking on the Report, a maximum of thirty (30) minutes.
- (3) In this Standing Order "designated Minister" means the Minister in charge of the Bill or Sessional Paper to which the debate in the House relates.

Mr. Obwocha: Mr. Chairman, Sir, I was a Member of this Committee, but looking at what was finally agreed on, I would like to propose an amendment to that Standing Order.

Mr. Chairman: You are proposing to amend your own report?

Mr. Obwocha: Mr. Chairman, Sir, I have a reason for saying this. You see, in the debate of Private Bills, the tradition has been that there is no limit of time. But in this new amendment, the Mover and the Seconder have no time limit while all the Members who wish to contribute have had their time limited to a maximum of 30 minutes. I still feel strongly that this is a short time in areas where Members have a lot of good ideas to contribute. I appreciate the spirit that, it is trying to stop some Members from taking three days while contributing to a Bill. But I think the maximum of 30 minutes for the Private and Public Bills is too minimal.

Mr. Chairman: But that is what we agreed.

Mr. Obwocha: Mr. Chairman, Sir, I would like to propose an amendment that a maximum of one hour be given to Members who are contributing. Thirty minutes is not enough.

Mr. Chairman: Well, I do play a special role in that, I was also the Chairman of the Standing Orders Committee, as I am doing so now in this Motion.

Dr. Kituyi: On a point of order, Mr. Chairman, Sir. I appreciate the concern of hon. Obwocha. I will oppose my colleague on this issue for two reasons. We have had this privilege and we have abused it. What most of the Members who have spoken for the last three days have said could have been said in half an hour. Secondly, if we are going to build the tradition of Parliamentary democracy, when you have a lot of points, you should include some of them in the speech made by the leader of your party. Whether it is the Mover or the Official Opposition representative replying, he or she should say some of the things that you would have wanted to say beyond 30 minutes. On that ground, I support the proposal as it is here.

Mr. Chairman: I fully agree with you, hon. Dr. Kituyi. The cardinal principle of Parliamentary debate is that Members should not repeat themselves or repeat what others have said. We did consider this matter at length in the sub-committee and, later, in the Committee. We felt that the person who is setting out the reasons for the Bill, be it a Private or Public Bill, should have a limited time. Every other Member will just be adding supplementary information.

The fact that we have used this detailed consideration for Bills within a specific Committee outside the Chamber does also enhance the opportunity for Members to incisively examine the provisions of every Bill in a better way than we have done. I am really inclined to the idea that we do not amend this. Hon. Obwocha should not insist on the proposal. Otherwise, I will go to the vote. Hon. Obwocha, would you now be generous, in the light of those comments?

An hon. Member: That is intimidation!

Mr. Chairman: I am not intimidating him!

An hon. Member: Put it to the vote!

Mr. Chairman: I take it that hon. Obwocha has expressed an idea wishing to propose an amendment, but he is not quite proposing the amendment. Is that the case hon. Obwocha? In which case, I will go ahead and propose the Question.

Thank you.

*(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)*

(Standing Order No. 81 as amended agreed to)

Standing Order No. 101 - First Reading

Mr. Wetangula: Mr. Chairman, Sir, I beg to move:-

THAT, Standing Order No. 101 be amended by placing a full-stop immediately after the word "put" and deleting the rest of that Standing Order.

(Question of the amendment proposed)

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

(Standing Order No. 101 as amended agreed to)

Standing Order No. 101A - Committal of Bills to Committees

Mr. Wetangula: Mr. Chairman, Sir, I beg to move:-

THAT, the following new Standing Order be inserted immediately after Standing Order No. 101:-

101.A (1) A Bill having been read a First Time shall upon a Motion by the designated Minister stand committed to the relevant Departmental Committee without question put.

(2) Where the designated Minister does not move Motion of committal under paragraph (1), a Member of the relevant Committee may move that the Bill be so committed, and Mr. Speaker shall put the question thereon forthwith.

(3) The Departmental Committee to which a Bill is committed shall present its report to the House within seven days of such committal and thereafter the Bill shall be ordered to be read a Second Time on such a day as the designated Minister shall appoint.

(4) In this Standing Order "designated Minister" means the Minister in charge of the matter to which the Bill before the House relates. Provided that this Standing Order shall not apply in case of a Consolidated Fund Bill, an Appropriations Bill, a Supplementary Appropriation Bill or a Constitution of Kenya (Amendment) Bill.

Dr. Kituyi: Mr. Chairman, Sir, I wish to make a statement that this is one of the strongest recommendations in these amendments and I hope that we can build a tradition around it.

(Question of the amendment proposed)

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

*(Standing Order No. 101A as
amended agreed to)*

Standing Order No.103 - Committee of the Whole House

Mr. Wetangula: Mr. Chairman, Sir, I beg to move:-

THAT, Standing Order number 103 be deleted and replaced by the following Order:-

103. (1) A Bill having been read a Second Time shall stand committed to a Committee of the Whole House.

(2) On the Order of the Day for Committee on a Bill being read, Mr. Speaker shall leave the Chair without question put.

(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)*

(Standing Order No.103 as amended agreed to)

Standing Order No.145 - Sessional Committees

Mr. Wetangula: Mr. Chairman, Sir, I beg to move:-

THAT, Part XIX of the Standing Orders be amended by deleting the words "Sessional Committee" wherever they occur and inserting the words "House Business Committee".

(Question of the amendment proposed)

Dr. Lwali-Oyondi: On a point of order, Mr. Chairman, Sir. Could I be in order to ask the Chairman to explain why the amendments were suggested?

Mr. Chairman: Really, I thought it was self-explanatory. What we have called the Sessional Committee deals with the business of the House. We thought that in ordinary parlance we talk of Sessional Committees. In every session, we establish a Sessional Committee. So, there is no substantive rule which is being altered. We felt that we should call things by what they really are.

Mr. Wetangula: On a point of information, Mr. Chairman, Sir. I wish to also answer Dr. Lwali-Oyondi. We also found that in various jurisdictions, the committee that manages the business of the House is commonly referred to as the House Business Committee. This is the term which is used within the Commonwealth countries as opposed to all other committees of the House which are, indeed, Sessional Committees. So, we wanted to show a distinction between the House Business Committee and the ordinary Sessional Committees of the House.

Dr. Kituyi: On a point of order, Mr. Chairman, Sir. If the other Business Committees of the House are called Sessional Committees, why are they described as Select Committees and not Sessional Committees?

Mr. Chairman: The term "session" refers to that---

Dr. Kituyi: I accept the amendment, but I do not accept the explanation given because all other committees are not called Sessional Committees, but Select Committees.

Mr. Chairman: But I think the term "House Business Committee" is what will tell the difference. The ordinary words explain this factor.

*(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)*

(Standing Order No.145 as amended agreed to)

Standing Order No.146 - Estimates Committees

Mr. Wetangula: Mr. Chairman, Sir, I beg to move:-
THAT, Standing Order No.146 be deleted.

(Question of the amendment proposed)

Mr. Obwocha: Mr. Chairman, Sir, I wish to register my disagreement with this amendment. It is recorded in the minutes that I did not agree with this amendment. The abolishing of the Estimates Committee as indicated here is purely malicious. One of the major reasons why we had said that the Budget Speech should have been rescheduled to another date during its presentation in 1996/97 Financial Year, was that the Estimates Committee had not sat and looked at the estimates. Now, the Government went ahead and introduced this amendment just to cover up what had happened, but that may not be the case in the subsequent years. I am pleading with the House not to abolish the Estimates Committee as it is an important committee for the future since we need committees to look after the business of this House. I would like to plead with the House that the Estimates Committee be allowed to continue being one of the major committees of this House. Therefore, I would like to propose that the words "deleted" be deleted.

Mr. Chairman, Sir, I do know that hon. Obwocha did take a very strong position in our sub-Committee on this matter, and I think subsequently, this resulted in us noting this dissention even in the main Committee. I think it will be proper for me, before I give the Floor to other hon. Members who, I suspect, also want to air similar objections, to give our reasons for coming to this conclusion. The Estimates Committee, as it exists in the Standing Orders now, has never been operational. I understand - in fact very wisely in 1967 when it was established - that the then Speaker, the late Sir Humphrey Slade foresaw the problem. He tried to advise the House against establishing this Committee because he felt that in the nature of things it could not be operational. Of course, the majority of the hon. Members in the House went ahead and established it.

It is very interesting to note that in the United Kingdom there is an Estimates Committee, established in virtually the same language. There too, it is inoperational and the reason is because the Government of the day everywhere would want to keep its budgetary proposals as secret as possible. There is no way, therefore, in which a Government will pre-empt the Budget proposals before they are brought to the House, by having them considered by a Parliamentary Committee. However, we felt that what was proposed to be done by the Estimates Committee, as it exists today, but which the Committee has never done, can now be better taken care of in a kind of - if you like - a revisionary way in the Departmental Committees. This is because, within the functions and powers of the Departmental Committees, we have made a provision for them to be responsible for examining the proposed estimates of each Ministry for the past year, with a view of making changes or recommendations for improvements in the next financial year.

Dr. Kituyi: Mr. Chairman, Sir, notwithstanding the explanation that you have given, the next three Standing Orders, starting with the one now under discussion, are the most contentious of all these proposed amendments. You will remember that the spirit under which the Government set out to do something about these three Standing Orders, was one of distrust and confrontation in this House between the Opposition parties and the Government. I have been a junior staffer to a Parliamentary party in a European country. One of the most important committees in that Parliament is the Estimates Committee. The reason why there was "secretiveness" about the Budget was because of the pomp involved in announcing the Treasury measures. Historically, most of the factors that were kept secret have been taken away from the Minister for Finance through liberalization. Much of the drama of Budget Day has disappeared, understandably.

It is possible to separate taxation measures from other estimates measures and to keep secret the taxation measures to be announced by the Minister for Finance on Budget Day. The matters of printed public estimates require the custodians of the taxpayers' interests to look at the fairness in the allocation of resources. During the Seventh Parliament, I have brought to this House, in two consecutive years, information showing more than 66 per cent of the total development allocation of the Ministry of Land Reclamation, Regional and Water Development going to the Kababish Dam in Baringo District. Such an anomaly could not have occurred if the Estimates Committee was operational. It is not sufficient for us to transfer these responsibilities to committees which will act posteriori.

It is necessary that projected Government priorities in allocation of resources remain Government right. The fairness in the allocation of those resources after the priorities of Government have been set out, becomes part of the processes of Parliament. To that extent, it remains very important, as we have noticed, that the Estimates Committee did not fail to work because it was bad, but because it was deliberately denied a chance to work. We have enough reasons today, to see why this country needs a Committee of Parliament to look at the fairness in allocation of resources, but not so much the priorities which is the privilege of Government. That Committee can only be the Estimates Committee.

With those remarks, I wish to strongly recommend that we adopt the provision by hon. Obwocha that we reinstate our Estimates Committee.

Dr. Lwali-Oyondi: On a point of order, Mr. Chairman, Sir. I think we are trying to build up a new Parliament that will be functional and practical to the country. We would like to have this Parliament working on a Committee system. We do not want Government to bring things in Parliament which have not been critically looked into. This is the way most Parliaments, including the Parliament in Britain, Westminster, work now just as we have worked through various Committees of the IPPG. We looked at it very critically, and came out with something substantial. Therefore, in future, we would like everything to be done through a Committee system so that we get meaningful recommendations. Therefore, I propose that this Standing Order remains there as it is, because in the future this Parliament will have to work through a Committee system.

Mr. Wetangula: Mr. Chairman, Sir, for the benefit of my colleagues across and particularly hon. Obwocha whom we worked with so closely, we found that in almost every country we went to and every Parliament, we were informed that the Estimates Committees have become moribund. In view of that, we restructured Standing Order 151 to provide for Departmental Committees and if we look at Standing Order 151(4) on page 18, one of the functions of the Departmental Committee is to investigate and enquire into and report on all matters relating to the mandate, management activities, administration operation and estimates of the assigned Ministries and Departments. If you look at page 21, the Schedule to the Departmental Committees, you will see that literally, each and every of the Government Ministries is covered. So, the new Standing Orders actually cover what would have been done under the Estimates Committee which now would be too amorphous because it presents us with a large task. When we have Departmental Committees, each Committee is going to mirror on its specific Ministry and look into, among other things, that Ministry's estimates, which can be dealt with in this House. I do not see any conflict or any need in failing to delete the Estimates Committee which has not been

functioning.

Dr. Lwali-Oyondi: On a point of order, Mr. Chairman, Sir. I think hon. Wetangula is misleading the House because these other committees do not deal with any estimates at all.

Mr. Chairman: Order! Order! Hon. Lwali-Oyondi quoted to you paragraph 4 of Standing Order No. 151 proposed 4(a) on page 18. He told you that the work of that Committee is to investigate, enquire into and report on all matters relating to the mandate, management activities, administration operations and estimates of the assigned Ministries and Departments. We looked at that Standing Orders and found that the Estimates Committee has been there in books since 1967, but it has not been operational. Wherever we went we found that where they have attempted to operate, it stands out to be moribund because it cannot be operational for the same reason that was given everywhere, that the Government of the day would want to keep its financial proposals, including its planned estimates of expenditure, as secret as possible before they come to the House.

We felt, therefore, it is of no use to continue to have an Estimates Committee on the statute books which for the last 30 years has been there and has never met or done any work and which we are certain will not be able to do any work in future. We felt we could salvage some ground by deleting that Standing Order and transferring part of that responsibility to a Departmental Committee. The only difference will be, because that is only what Government anywhere will accept, that we should be doing so in a *posteriori* manner. I would have thought the House would welcome this innovative provision proposal from the Committee. If you want to go back to it, that is up to you. However, I think it will be a loss to the House in that you will not have that mandate in that procedure under Standing Order 146 to look at the Estimates in that version, beyond what you can do through the Public Accounts Committee and Public Investments Committee.

Mr. Murungi: On a point of order, Mr. Chairman, Sir. One of the cardinal functions of Parliament under the Constitution is financial scrutiny. We are supposed to scrutinise the Government expenditure and also the Government proposals on revenue collection. We feel that by abolishing the Estimates Committee we are going to fall into a trap that we had fallen in the past. In fact, as hon. Dr. Kituyi was saying, in 1984 and 1985 Financial Years, out of KSh2.1 billion allocated to the Ministry of Water Development, Land Reclamation and Regional Development in expenditure when hon. Maalim Mohamed was the Minister in that Ministry, Kshs700 million went into one project only, the Kababish Dam in Baringo, and if there was an Estimates Committee, it would have made sure that, at least, there would have been equitable distribution, and some of that Kshs700 million would have gone to help residents in Garissa.

Mr. Chairman, Sir, the fact that this Committee was moribund and because it was made moribund by the Government, it is not a sufficient reason for us to scrap the Committee, because even these other Departmental Committees were also moribund. In fact, all the Committees were moribund. So, it is not enough to say the Committee was moribund, and therefore scrap all the Committees with respect to the idea that Government wants to make the budget secret. This is old fashioned. The Ugandan Government was talking about its budget openly before it was read in Parliament last year and nothing changed. We are now in an era of transparency and accountability and we cannot hide under secrecy. I would like to insist that we retain this Committee and that we re-activate it and make it operational, instead of scraping it on this flimsy ground.

Mr. Wetangula: Mr. Chairman, Sir, I do not see the fears being expressed because, we have made it easier for the Government expenditure to be scrutinised by this House. We have created eight Departmental Committees to "mirror" and look into, among other things, the estimates of Ministries. It is easier to have these eight departments working across the board than have one to look at about 20 Ministries. They do not have the time; the Members do not have the time. Sometimes they do not get the information quickly and over and above that, we have even created a Liaison Committee, under Standing Order 151(A), under which all the chairmen of the Departmental Committees would be sitting under one umbrella to co-ordinate their activities. I do not see the fears. We have made it a lot easier to scrutinise the estimates of Government.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Chairman, Sir, I just want to also add my voice to what has been said. It does appear to me that in the creation of the Departmental Committees, essentially what has actually been done is to split the original Estimates Committee into a number of select committees which had been grouped on the basis of the sectoral Ministry. According to the Schedule on page 21, you have got Departmental Committees running from A to H. In actual fact, one of the functions as spelt out here in the Standing Order setting up the Departmental Committees is:-

"To investigate, inquire into and report on all matters relating to the mandate, management activities, administration, operations of the assigned Ministries and departments."

In fact, the whole thing becomes even much more thorough than before. Basically, we now have eight Estimates Committee as opposed to the only one that we had.

Dr. Kituyi: Mr. Chairman, Sir, the biggest problem has already been conceded by you. The Estimates Committee deals with the Estimates *a priori* Budget. These Departmental Committees are like audit committees. They deal *a posteriori*. We did not want to look at past mistakes. We wanted corrective measures before the Budget Day. That cannot be done by Departmental Committees.

Mr. Chairman: Thank you, Dr. Kituyi. That is what we have always been saying. It is not possible in the nature of things, it is not possible in the form of Standing Order No.146(2) as it is. If you have it there, paragraph two, as it exists, reads as follows:-

"The Estimates Committee may examine such annual or Supplementary Estimates of the expenditure presented to the House as it shall think fit, or as shall be referred to the Estimates Committee by the House, and shall report to the House what, if any, economies or improvements of form should be made in such estimates for the future, consistent with the proper carrying into effect of the policies implied in or by such Estimates."

Even if you were to examine it, there is no way you can affect those proposals. Proposals can only be with regard to the future. Even so, governments, in the nature of things everywhere, are hostile to the idea of their expenditure proposals being---

(Mr. Murungi stood up in his place)

Let me finish! Governments everywhere are hostile to their expenditures being dissected before they have been presented to the House. Now, hon. Members, I am really surprised, and I would like to plead with my three or four friends here; that in fact what we have proposed is much better for the future control or supervision of Government. What we have had for 30 years was an Estimates Committee against the wise advice of the then Speaker, who foresaw, very correctly, that this thing cannot operate, and in fact he has been proved right because for 30 years, we have never had that Committee operating. We are trying to make an improvement on that. You have had a stillborn child since 1967 whose body you have kept in your arms. I am sorry to say that you have kept the body of that stillborn child in your arms for 30 years. We are now telling you to get rid of it and get some child who will be---

Dr. Kituyi: Mr. Chairman, Sir, you know we are in a unique situation where the Chairman of the Committees of the House is the chief proponent of the business before the House and you cannot control how much he talks. After you read Standing Order No.146(2) you brought out a very important consideration. The business of the Estimates Committee is referred to it by the House. That means the Government can keep it secret until after Budget Day. But the Printed Estimates, after Budget Day, are considered by the Estimates Committee before they become business of the whole House. This reduces one of the many problems we have been having here; that we look at the Printed Estimates like we look at the *Daily Nation*. You will want to read that again and notice that the House can recommend the specific estimates to the Estimates Committee.

Mr. Chairman: Yes, it says:-

"The Estimates Committee may examine such annual or Supplementary Estimates of the expenditure presented to the House as it shall think fit, or as shall be referred to the Estimates Committee by the House, and shall report to the House what, if any, economies or improvements of form should be made in such Estimates for the future, consistent with the proper carrying into effect of the policies implied in or by such Estimates."

There is no way, even in this wording, that the Estimates Committee can be seized of the matter and keep it before it comes to the House.

Mr. Murungi: I have only one comment to make, Mr. Chairman Sir. We are in a unique situation now where we can correct the defects in what you have read and also the defects in the proposals being made. We are not tied to the language in the existing Standing Orders. We do not have to follow the existing Standing Orders, neither do we have to follow the amendments. We have a unique opportunity to create a new system for ourselves. What I am saying here is that we should have an Estimates Committee which scrutinises the Estimates before they are brought to this House. I would be happy if we can amend the existing Standing Order to provide for that.

Mr. Chairman: Are you moving an amendment?

Mr. Murungi: Yes, Mr. Chairman, Sir. I would like to propose an amendment to the existing Standing Order No.146(2)---

Mr. Chairman: Order! Order! I think we have to be careful on how we proceed. You can only propose an amendment to what is proposed before the House.

Mr. Murungi: Thank you Mr. Chairman, Sir. I would like to move that, paragraph 10, Standing Order No.146, be amended by deleting the words "that Standing Order No.146 be deleted." So we delete those words and insert---

Mr. Chairman: In fact you are not proposing an amendment. You are opposing. You are giving notice that you are opposing. You just have to delete it.

Mr. Murungi: No, I want to replace it with something else. We are really here to do some social engineering. We cannot tie our hands. So, we should delete paragraph 10, which says:- "That Standing Order 146 be deleted," on page 15, and then replace it with the following words; "That Standing Order No.146 be amended", to read as follows;

"That the Estimates Committee shall examine such annual---"

We should delete any reference to the future in 146(2), so that we are in a position to examine the current Estimates in each financial year.

Mr. Chairman: Order! Order! I think we have allowed the hon. Member to ventilate sufficiently. I would wish to draw your attention to Standing Order No.48(2), which provides,

"No amendment shall be permitted if in the opinion of Mr. Speaker it presents a direct negative of the question proposed."

Now, the question being proposed is that Standing Order No.146 be deleted.

Mr. Murungi: "Amended" is as good as--- We are amending.

Mr. Chairman: The option is either to accept it or reject it. So, I think I will put the question, since I have allowed Members to ventilate. I just wish to add, before I put the question, that you should not consider this to be a closed door because if you read the reports of the Committee you will realise there were issues which we felt had better be dealt with much later in the context of the general review of the Constitution because some of the proposals which we received from Members actually would require constitutional amendment. So, I think, hon. Murungi, Members can revisit it.

*(Question, that Standing Order No.146
be deleted, put and agreed to)*

Hon. Members: No! No!

(Several Members stood up in their places)

Mr. Chairman: Order! Order! You should be oblivious of what is happening outside the Chamber including the Galleries. I think some of my friends need to read a little on the interpretation of "Ayes" and "Noes" oral votes in authoritative words on parliamentary voting.

Standing Order No.147 - Public Accounts Committee

Mr. Wetangula: Mr. Chairman, Sir, I beg to move:-

THAT, Standing Order No.147 be deleted and replaced by the following new Standing Order:-

(1) There shall be a select committee to be designated the Public Accounts Committee for the examination of the accounts showing the appropriation of the sum voted by the House to meet the public expenditure and of such other accounts laid before the House as the committee may think fit. The Public Accounts Committee shall consist of a Chairman who shall be a member who does not belong to the parliamentary party which is the ruling party and not more than ten members who shall be nominated by the House Business Committee to reflect the relative majorities of the seats held by each of the parliamentary parties in the National Assembly; at the commencement of every Session; Provided that, the ruling party shall have a majority of not more than two.

(2) The Public Accounts Committee shall elect its own Chairman

(3) In the absence of the Chairman, a member designated by him shall take the Chair; and in their absence, the members present shall elect one of them to act in his stead.

(4) The Chairman and four other members of the Public Accounts Committee shall constitute a quorum.

(5) The names of members present at each sitting of the Public Accounts Committee shall be

entered on the minutes.

(6) The Minutes of the proceedings of the Public Accounts Committee shall be brought up and laid on the Table of the House with the report of the Committee.

(Question of the amendment proposed)

Mr. Obwocha: Mr. Chairman, Sir, I happen to be the villain and it is documented very well on page 98 that I objected to the introduction of this proposal. These two Standing Orders Nos.147 and 148 are being amended out of malice. This House knows what happened in the PAC and PIC and the Government never appreciates what happens in those two Committees.

The reason for having the Leader of the Official Opposition as the Chairman of that Committee is that when he is absent, the Acting Chairman should also come from the Opposition. That is the spirit of having a Chairman from the Opposition. If you look at that Standing Order, it is stated: "In the absence of the Chairman, a Member designated by him shall take the Chair, and in their absence, the Members present shall elect one of them to act in his stead" In the past, we have had a chance in this Committee where the Government has taken over the Committee in total disregard of the spirit of that Committee.

Mr. Chairman, Sir, I will still plead with this House to allow me to propose an amendment to the proposed Standing Order No.147(3) so that it reads as follows:- "In the absence of the Chairman, a Member designated by him shall take the Chair and in their absence, the Acting Chairman shall be from the Opposition". In that case, we will leave out the phrase "Members present shall elect one of them to act in his stead". We want a proviso that the Chairman shall not come from the ruling party.

Dr. Kituyi: Mr. Chairman, Sir, I have, more than anything else, been pained by the proposal of removing the inherent Opposition majority in the two audit committees. I have listened to presentations by Members of the sub-committee which toured different jurisdictions and looked at what they are doing. The main argument has been that in all other comparable legislatures, there is no provision for the Opposition majority in the audit committees. This is a very dangerous argument because none of the parliaments that have been visited by the sub-committee has the type of political culture that we have in Kenya. In none of the countries visited did they find a State where heads of government can allocate public resources as if they were personal estates. In none of the countries visited did they find that persons who are close to the centre of power can authorise criminal conduct in the name of the State and look for ways of disguising it.

The uniqueness of Kenyan condition is that the culture of corruption is overwhelming in this country and the countries we are comparing ourselves with have no such pervasive corruption. The uniqueness of Kenya's corruption requires a unique watchdog in Parliament. If there is any uniquely Kenyan feature that should be imbued in the Standing Orders of the House, particularly on audit committees, is a conscious acceptance that we are a corrupt society, and that the Opposition can attempt to be a referee of the Government on some of the excesses which can come through the audit report. Under those unique conditions, it does not do Kenya any good for this National Assembly to meet in the period immediately after we have been talking about looking at the future of our country, forgetting partisan interests and committing ourselves to what is good for the country. After that exultation, it is unforgivable for us to sit together and say that, because in New Zealand there is no provision for the Opposition majority in the audit committees, we should not have a provision for that. What is good in Kenya does not need to stand only because it is similar to what happens in New Zealand. It has served us well. We should strengthen the tradition that the majority at all times in audit committees of the National Assembly of Kenya should come from the Opposition side rather than the Government side.

Mr. Chairman, Sir, through you, I would like to request hon. Members on the other side of the House to look at this matter that the historical circumstances under which the Government felt it needed to take control over audit committees are now behind us. In fact, looking with the benefit of hindsight, we can see that this could have been dealt with better if during the deliberations the spirit of dialogue had arisen. With that benefit, I want to request those eloquent hon. Members on the other side to think seriously; aware that there is not going to be any party that will be a parliamentary majority in the next Parliament; and aware that none of us can be in the Government forever, that we are doing something bad, however well we can explain it on the basis of other peoples precedents.

Mr. Otieno: Mr. Chairman, Sir, I do not see the concern of hon. Dr. Kituyi because we do not know which party will be in the Opposition in the next Parliament. So, the concern that the majority in this particular Committee be Members of the Opposition will be overtaken by a situation where we have a coalition or any mixture of different parties. Really, I thought that the sub-committee should have said that, first, the Members must be backbenchers and not Ministers or Assistant Ministers because there is a possibility of those people being

included. By practice it has not, but I do not know why the practise is not made in the rules.

Secondly, as to the question of the chairmanship, Chairmen have come from the Opposition and then we designate somebody else in their absence. If we were to say that it has always to be in the Opposition so that the Chairman is given a chance to be absent and then also to designate nobody, then the Opposition can hold these Committees at ransom just by sheer absence. So, there has to be a limit to which any protest activism of the Opposition can be stopped from withholding the business. So, it is adequate to give the chairmanship to the Opposition and then the Chairman to designate, depending on how the Committee is working, who will be in his place. But we cannot limit further than that; where two people can decide to be absent thereby blocking the work of the committee.

Mr. Wetangula: Mr. Chairman, Sir, you will recall that when we went to the House of Commons, we met the Chairman of the Public Accounts Committee who had been the Chairman of that Committee for over 15 years, and he did tell us that, it has never occurred to him, as to which party or which side of the House he belongs. He considered himself a Chairman of a Committee of the House, doing a national job. I would expect the Members who will be selected to serve on any Committee of this House, to look at themselves, first and foremost, as Members of the House rather than Members of which side of the House. That way, they will do a better job.

Mr. Chairman, Sir, secondly, on the issue of corruption, I am a firm believer in the fact that, it does not matter how many Committees we have and how much they look into our accounts. That alone cannot eliminate corruption. Corruption is a moral fibre that is eroding away our society. It is the attitude we have, not the Committees we have, that is bolstering corruption. If you go out there, a matatu man is bribing a policeman; what will the Public Accounts Committee do to stop it? Out there, a watchman is soliciting money from you to look after your car. How will the Public Accounts Committee stop that? We, as leaders, should be more concerned about preaching to the public the morality of refusing to be compromised other than which Member belongs to which Committee. Be that as it may, I think that, on the issue of chairmanship, we have said that the chairman shall be from the Opposition and we have given him an opportunity to designate a chairman, if he is not there. If he is not there and the person he has designated is not there, we should not hold the Committee at ransom. The Committee should elect a Chairman and carry on.

Mr. Murungi: Thank you very much, Mr. Chairman, Sir. We all know the history of the amendments to Standing Order Nos. 147 and 148. These two Standing Orders have been the subject of intense debate in this House in the past. I remember when Jaramogi Oginga Odinga was alive, he said that the Goldenberg scandal was so big that it was even rocking the House of Commons in England. I am afraid that Goldenberg has come to rock the Kenyan Parliament by amending these critical Standing Orders. This is an attempt to cover-up Goldenberg that has brought in this idea of removing an Opposition majority from both the PAC and PIC. It is a very sad day; that we are now sitting here and smiling as we are putting a stamp of approval to that particular cover-up.

Mr. Chairman, Sir, Parliament is supposed to be the watchdog of the people in financial matters and the effect of these two amendments is to make Parliament a toothless bulldog. Once you have the majority of the ruling party in the Public Accounts Committee, you are just endorsing an executive control of financial matters of a Parliament. I would think that, we should not merely vote because we have larger numbers in this House today. We should question ourselves on issues of morality; what is it that we are voting in? Are we helping this country or are we not helping it? I think it is going to be very sad because our friends on that side are more than us. They will just pass these amendments and kill the capacity of Parliament to control public scandals and the plunder of public resources in this country by a few corrupt individuals.

Mr. Chairman, Sir, my suggestion is that, we leave Standing Order Nos. 147 and 148 the way they are and we reject these amendments.

Thank you.

Mr. Nyagah: Mr. Chairman, Sir, I want to make an appeal. May I appeal to that side, for once, to support what the Committees have been doing in the past. There has never been an occasion, as far as I can recall, when PAC or PIC ever went without a Chairman or a person to act in that capacity. Therefore, the argument that was given by my good friend hon. Wetangula, does not arise.

Mr. Chairman, Sir, we have never known of a situation where a Government can audit itself. It is not fair on the part of the Government to want to bulldoze the situation. In the past, when this idea was mooted, that the KANU side should control PAC and PIC, there was very strong resistance from this side and that resistance to-date, has not stopped. There are certain times when history should not be looked at. For instance, for anybody to argue that the House of Commons has had a tradition where this control has been by the Government, does not arise. Kenya and Britain are totally different countries. Currently, Kenya is known to be the third most corrupt country in the world. Therefore, special consideration should be given to this.

Lastly, let me appeal to our good friends on that side not to stab us on the back. We agreed to discuss with

them in the IPGG. Once this is over, what do we get? A stab on our back!

(Several hon. Members stood up in their places)

I have not finished! I am just finishing.

Mr. Chairman: You had said, "lastly."

Mr. Nyagah: The definition of the word "lastly," as we were told by hon. Prof. Anyang'-Nyong'o is that: When you are writing a book, you can say "lastly", but you can go on for another 30 pages. I am not intending to go on, neither do I want to be naughty. I want to remind my friends that, because we are very serious in this request we are making--- When we go to the loos, the last thing that we do is that when we finish with that toilet paper, we flush it down. Kindly, do not flush the request by the Opposition down the drain.

Mr. Chairman: Order! Order, hon. Members! Let me make some observations. I know that I am in the Chair, but this is a kind of a special procedure we have adapted for the reasons you know. I chaired to the Sub-Committee and, I am in a position to give guidelines to the House on the amendments.

Hon. Members will recall that the whole process of studying the Standing Orders in detail, with a view to making a comprehensive review, was born out of a move by the Government, through a letter from the Leader of Government Business, proposing that there will be amendments to Standing Order Nos.147 and 148, so as to give a majority to the party with a majority seats in the House, so that membership in those two crucial Committees will reflect the party's strength in the House, in terms of numbers of seats. Hon. Members will recall that the matter did generate a lot of heat in the House and, in the end, the matter went before the Standing Orders Committee and the Committee considered the proposals and, by vote, decided to adapt amendments. In the meantime, other Members of the House, notably hon. Orengo and Muite, submitted proposals for comprehensive reforms. So, the Committee, after accepting---

Mr. Obwocha: And hon. Obwocha!

Mr. Chairman: And hon. Obwocha! I beg your pardon. Hon. Obwocha is a very good Member of my Sub-Committee, I must say. They felt that, perhaps, we can hold up the amendment to these two Standing Orders which we had accepted; to bring it a long with such amendments which would come out of the appointed sub-committee.

The sub-committee, therefore, felt in a sense that, on these two proposals, the main committee itself had agreed on the format of change. We felt, unless there was something minor, our mandate really did not include defending the committees. Nonetheless, we looked at it as practice in other parliaments. Obviously everybody agrees that these are the two most powerful committees.

I would like to be a little gratuitous to some Members and reveal perhaps something which I have not revealed publicly in the past. The situation that you have in the standing orders, of this Parliament where the Opposition, by express commission in the standing orders, has a nominal majority on the two most powerful committees of the House is very unique only to this Parliament. It does not exist anywhere in the Commonwealth for instance. In about every parliament that we visited and met with Members, the committee chairmen, the speaker, deputy speaker and experts, and raised questions on this subject, they kind of laughed on our face and said: How on earth? How can the minority be the majority? How can the minority in the Parliament have a majority on a committee? The whole idea to them was completely strange.

Now, obviously, there are special historical circumstances beyond the provisions of these two Standing Orders. I am meant to understand that, the special circumstances are, that in 1960s the late Sir Humphrey Slade wanted to promote the culture of Parliamentary Opposition. So he singled out the provision when KPU was formed. It was a very small party, but he wanted to give them power in the House a little beyond the actual sense. That is why the provisions were done as they were done.

I would like to come back to what I said I did not reveal. We know that the Government proposals themselves came out of a feeling of stalemate or breakdown over Goldenberg in this case. There was a feeling of stalemate or breakdown within the Public Accounts Committee which is the most crucial audit Committee of Government. I think it is very important that Members do not lose sight of the role of Parliament as a watchdog; to know what it means to be a watchdog for the Opposition. I think that is where he made a mistake. I remember calling a leading Member of the Official Opposition and telling him: "The way you are pushing this issue into a stalemate, you are going to erode the most important power of the Opposition". I think that is precisely what happened. It seems the Government looked around and said: "Why this stalemate?" "How does it happen elsewhere?" And in the process realised that in fact, it is not like this anywhere else. They said: We have been so generous to them, so we take it back. I think that was the genesis of the proposals. I will allow everybody to

ventilate, but I am afraid we will not filibuster and in the end we will go on to take the decision by the procedure that we use.

Mr. Obwocha: Mr. Chairman, Sir, we appreciate your comments. But I would like to make two observations. First, the brief you have given was only possible at that time when this side of the House was not talking to that side of the House. But we have moved a step further than that. I would like to congratulate and back hon. Nyagah, that if indeed, by trying to save this country, this is what KANU is going to give us again, then I am very sorry for myself. I really pity myself, that we have to go to a situation---

Mr. Chairman: Mr. Obwocha, without stopping you, I cannot help remembering that this is the proposal from the Committee of which you are a Member. It is our joint proposal.

Mr. Obwocha: Mr. Chairman, if you look at page 19, it is written in bold that: "Hon. Obwocha objected to having---" I made my objections and so you cannot put it on me, just because I was a Member.

Mr. Chairman: Why did you not bring them up in the IPPG? You knew these proposals were coming!

Mr. Obwocha: Mr. Chairman, Sir, all I am saying is that, I am appealing to my colleagues on the other side of the House, that in the spirit of what we have been doing, and in the spirit of promoting transparency in this country, Standing Orders 147 and 148 should remain the way they are now, and that we drop these new proposals by Government.

Mr. Chairman, Sir, it is very hurting that we are going to pass this today, after having agreed on many other crucial issues that are going to save this country.

The Minister for Commerce and Industry (Mr. Angatia): Mr. Chairman, Sir, first of all, it is wrong that people should create the impression that the IPPG was for KANU. The Inter-Parties Parliamentary Group was for all of us and it does not belong to KANU. So nobody should threaten that KANU is going back on its word. It is for all patriots and nationalists. That misleading statement should be forgotten from now onwards. Nobody should use it.

Secondly, all of us are opposed to corruption. I am afraid that now the Government is even more opposed to corruption than the Opposition side. Therefore, nobody should think that anybody is going to check on corruption on either side.

Mr. Chairman, Sir, the majority in a committee must not necessarily be a majority at a sitting. The committee on paper may have a majority which is a ruling party. But at their sitting, anything can happen. A chairman or anybody else can be absent. So, it is really the consensus of the committee, as it is sitting on that day, that matters. I do not want to suggest that while in the committee we are going to argue according to our parties. It is true that we are nominated to that committee proportional to our strengths in the House. This is everybody's proposal. It is not the party that has the majority that takes everything. It is proportional to how we are in the House. The way we are in the House is proportional to how wananchi outside there expect us to perform. Therefore, I do not see anything wrong in putting the majority party in the National Assembly, to also be the majority in those committees, proportional to how we sit in this House.

Mr. Chairman, Sir, finally, the spirit of patriotism and nationalism will be nurtured if all of us are working in a committee as one team. But not by preaching or carrying the arguments from this House to the Committees again. After all the Controller and Auditor-General belongs to Government and he is the one who brings out those issues. Government is as concerned as the Opposition about corruption and any weaknesses in accounting procedures. Therefore, those arguments need not be used in this particular case. The amendments should remain.

Mr. Nthenge: Mr. Chairman, Sir, this is very simple. Today KANU is in charge of the Government and tomorrow it could be the Opposition in charge of the Government. The truth of the matter is that these two committees act like auditors and judges. It is known and common sense that, there is nobody who is a good judge for his own case. The way the system has been working in Kenya is not the way it has been working elsewhere. If it is the best system for us, we should not stop it. It is others to copy from us, if it has been working well.

Mr. Chairman, Sir, it was good of you to disclose the Goldenberg affair as one of the reasons for this. We should be intelligent enough to know that we could start something and win. Because, the persons who discovered different kinds of medicines were different. The fact that the other doctors use this medicines does not mean they are wrong. We are working very well in Kenya and because of personal interests, we are killing Kenya. Even Members of Parliament who were elected by very many people to look after their interests are personalising issues. We are likely to make a mistake.

Mr. Chairman, Sir, we are likely to make a mistake and since I am about to die from, old age, I would like to be on record as saying that this was a very good policy which Kenya used to have and if we are changing it just to suit a few people at the moment, one day we will regret. There will come many other Goldenbergs.

Mr. Chairman, you happen to be a lawyer by profession and you very well know that the best person to speak on a case is the one who has no interest in it. A good judge does not take sides and regards two opposing advocates appearing in his court as his friends.

With these few remarks, I insist and, I beg the House as a whole, that the two Standing Orders should remain the way they have been. They have been working very well, but because of the selfishness of other Members of Parliament they want the majority to have the majority.

Mr. Shikuku: Bw. Mwenyekiti, hii pengine itakuwa ni siku ya huzuni mkubwa katika historia ya Kenya. Nimesoma Standing Orders 148 na 147. Kati ya amendments zote ambazo zinaletwa kwa kanuni hizi, hiyo ndiyo hatari. Wabunge wote wanajua kwamba kufuatana na yale masikilizano ambayo tulikuwa nayo juzi hiyo itakuwa ni kinyume cha hayo masikilizano. Sisi hatutaki wezi na Serikali haitaki wezi. Kufuatana na ujuzi wangu kwa miaka ambayo nimekaa katika Public Accounts Committee, naweza kusema wazi kwamba tulikuwa na shida nyingi. Controller and Auditor-General, kila mara, hutuambia kwamba mambo si mazuri na anatuletea ushahidi. Controller and Auditor-General hafanyi kile wazungu wanaita guesswork. Anatuletea figures kuonyesha ni kitu gani ambacho kimepotea na ni wajibu wa kamati hiyo kukata shauri.

Bw. Mwenyekiti, nakumbuka kulikuwa hii habari ya Bw. Pattni na Bw. Somaia. Ilifika wakati sisi Wabunge wa Upinzani tulisikilizana na Controller and Auditor-General lakini wale waliokuwa upande wa Serikali walikata kusikilizana nasi na ikatubidi tupige kura. Kwa sababu Wabunge wa Upinzani walikuwa wengi, tuliwashinda na ripoti ikaletwa hapa ambayo ilikuwa ya mgawanyiko.

Bw. Mwenyekiti, ikiwa kweli sisi tunataka dunia iamini kwamba sisi hatutaki ufisadi na wizi, imekuwaaje kwamba ni lazima kile chama ambacho kinatawala kinataka kiwe na wingi kushinda Upinzani? Hata kesho Upinzani ukiunda Serikali, hatutaki kuwa na majority katika Public Accounts Committee; hatutaki kuwa na majority katika Public Investments Committee. Hii ni kwa sababu sisi ndio tutakuwa tukikaguliwa. Sisi ndio Serikali na sisi ndio tumefanya makosa hayo na hali tunataka kuwa na majority kufunika makosa hayo! Hata mkisema lugha ya kimalaika, hakuna mtu anaweza kukubaliana nanyi. Tukipitisha hizi kanuni mbili, hata tukisema kimalaika, hakuna mtu ambaye anajua hesabu---

An Hon. Member: Hata ukisema Kimaasai!

Mr. Shikuku: Hata useme lugha gani, hakuna atakayeamini kwamba una nia nzuri. Unataka uwe na wingi katika kamati hii ya kutoa makosa ili ufunike makosa yako. Na mimi naamini kwamba wenzangu upande ule hawataunga mkono hayo makosa ili Serikali ambayo inachunguzwa iwe na wingi wa kura kufunika makosa. Ufisadi umeleta taabu katika Kenya. Umasikini ulioko umetokana na ufisadi. Zile fedha "zilizoliwa" na Bw. Somaia na Bw. Pattni zote zikiwekwa pamoja watoto wa Kenya hawatakuwa wanaenda bila chakula na hatungekuwa na waombaji katika barabara. Na wakati huu tunaambiwa eti Bw. Pattni anawaonea huruma watoto ambao wanatembea mijini yaani wale "chokora mapipa". Ana huruma baada ya kuwamaliza baba na mama wa hawa watoto, eti anataka kuwaletea msaada!

Mr. Chairman: Mr. Shikuku, I remind you of Standing Order No.87. Keep to the amendment before the House.

Mr. Shikuku: I am opposing the amendment before the House. Sitaki wale walio katika Serikali kuwa na wingi katika kamati hiyo ambayo itagundua makosa yao. Na hata tuseme nini, watakaopitisha na sisi tukiweko, mimi nitapinga mpaka Mohammed Salalaaa Wale Wasalamu, au Yesu Kristo arudi. Napinga kabisa! Tuachane na Standing Orders Nos. 147 na 148 zindelee vile zilivyo. Lakini mkipitisha hizo amendments lile jina ambalo tunatengza litaharibika.

Dr. Ombaka: Thank you very much, Mr. Chairman, Sir. Despite the fact that I am a member of the Standing Orders Committee, because of my indisposition when this particular issue was being raised in the Committee, I was not present. So, I want to use this opportunity to add my voice in appealing to Members to leave what is working well alone.

(Applause)

Mr. Deputy Chairman, Sir, I speak purely on a non-partisan basis. I do not see this as an Opposition or a Government issue. I see it as a national issue. Members will recall that fairly recently, the International Monetary Fund (IMF) froze funds to this country on the basis of corruption. This move, in the history of the Fund is unprecedented internationally. It is the first time that the Fund used the issue of corruption to block support to a member country. We are under extremely close scrutiny internationally. We would be sending the very wrong signals at a time when we have won some international support on the recent reform measures that this House took bold steps on. If the Government feels so strongly about these two Standing Orders, it surely can wait because

the timing is totally, totally wrong even if you were to support those amendments. So, I appeal in the strongest possible terms, that for the sake of Kenyans, let us not pass those two amendments to Standing Orders 147 and 148.

Thank you Mr. Chairman.

Mr. Chairman: Order! I think we have done everything sufficiently. I will now put the Question.

Hon. Members: On a point of order, Mr. Chairman, Sir!

Mr. Chairman: Order! I am calling everybody to order!

(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)

(Standing Order No.147 as amended agreed to)

Hon. Members: No! You are unfair. Division!

Mr. Mulusya: This is the last day for the Chairman to sit there!

Mr. Obwocha: How can you do this to us?

(Opposition Members walked out of the Chamber)

Standing Order No.148 - Public Investments Committee

Mr. Wetangula: Mr. Chairman, Sir, I beg to move:-

THAT, Standing Order No.148 be deleted and replaced by the following:-

(1) There shall be a Select Committee to be designated the Public Investments Committee for the examination of the working of the Public Investments. The Public Investments Committee shall consist of a Chairman who shall be a member who does not belong to the parliamentary party which is the ruling party and not more than 10 Members who shall be nominated by the House Business Committee to reflect the relative majorities of the seats held by each of the parliamentary parties in the National Assembly at the commencement of every Session. Provided that, the ruling party shall have a majority of not more than two.

(2) The Public Investments Committee shall elect its own Chairman.

(3) The Chairman and four other Members of the Public Investments Committee shall constitute a quorum.

(4) In the absence of the

Chairman, a Member designated by him shall take the Chair, and in their absence, the Members present shall elect one of them to act in his stead.

(5) The functions of the Public Investments Committee shall be:-

(a) To examine the reports and accounts of the public investments

(b) To examine the reports, if any, of the Auditor-General (Corporations) on the public investments; and,

(c) To examine in the context and autonomy and efficiency of the public investments, whether the affairs of the public investments are being managed in accordance with sound business principles and prudent commercial practices:

Provided that the Public Investments Committee shall not examine any of the following:-

(a) Matters of major Government policy as distinct from the business or commercial functions of the public investments

(b) Matters of day-to-day administration; and,

(c) Matters for the consideration of which machinery is established by any special statute under which a particular public investment is established.

(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)

(Standing Order No.148 as amended agreed to)

Standing Order No.151 - Departmental Committees

Mr. Wetangula: Mr. Chairman, Sir, I beg to move:-

THAT, Standing Order No.151 be deleted and replaced by the following new Standing Order:-

151 (1) There shall be a Select Committee to be designated Departmental Committees which shall be nominated by the House at the commencement of every Parliament.

(2) Unless the House otherwise directs the Departmental Committees shall be as set out in the Schedule.

(3) Each Departmental Committee shall comprise of a Chairman and not more than 10 other Members.

(4) The functions of the Departmental Committees shall be:-

(a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries;

(b) To study the programme and policy objectives of the Ministries and departments and the effectiveness for the implementation;

(c) To study and review all legislation after First Reading, subject to the proviso of Standing Order No.101A;

(d) To study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with its stated objectives;

(e) To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister; and,

(f) To make reports and recommendations to the House as often as possible, including recommendations of the proposed legislation.

(5) In their deliberations, the Departmental Committees shall enjoy and exercise all the powers and privileges of the Parliament including the summoning of witnesses and the request for and receipt of papers and documents from the Government and the public.

(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)

(Standing Order No.151 as amended agreed to)

New Standing Order No.151A - Liaison Committee

Mr. Wetangula: Mr. Chairman, Sir, I beg to move:-

THAT, a new Standing Order be inserted immediately after Standing Order No.151 as follows:-

151A (1) There shall be a Select Committee to be designated the Liaison Committee which shall consist of the Deputy Speaker as Chairman and the Chairmen of the Departmental Committees.

(2) The Liaison Committee shall:-

(a) Guide and co-ordinate the operations, policies and mandates of the Departmental

Committees;

(b) Deliberate and apportion the annual operating budget among the Departmental Committees;

(c) Consider the programme of the Departmental Committees, including their need to travel and sit away from the precincts of the House;

(d) Deliberate and decide on which reports of the Departmental Committees shall be debated in the House.

(Question of the amendment proposed)

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

(New Standing Order No.151A agreed to)

Standing Order No.172 - Seating in the Chamber

Mr. Wetangula: Mr. Chairman, Sir, I beg to move:-

THAT, Standing Order No.172 be deleted and replaced by the following new Standing Order:-

172 (1) All seats in the front benches of the Chamber to the right of Mr. Speaker shall be reserved for the exclusive use of Ministers;

(2) All seats in the front benches of the Chamber to the left of Mr. Speaker shall be reserved for the leaders of Opposition parties and Members of the Official Opposition party designated as having responsibility in particular matters.

(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)

(Standing Order No.172 as amended agreed to)

Standing Order No.173 - Members Travelling Outside Kenya

Mr. Wetangula: Mr. Chairman, Sir, I beg to move:-

THAT, a new Standing Order be inserted immediately after Standing Order No.172 as follows:-

173 (1) Members intending to travel outside Kenya whether in an official or private capacity, shall give Mr. Speaker a written notice to that effect, indicating:-

(a) The destination intended to be visited;

(b) The dates of the intended travel and period of absence from Kenya; and,

(c) Their telephone contacts and postal or physical address during the period of absence from Kenya.

(2) All information submitted under this Standing Order shall be kept in the register which the Clerk may establish and maintain for that purpose.

THAT, Standing Orders 173 and 174 be renumbered as 174 and 175 respectively.

(Question of the amendment proposed)

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

(Standing Order No.173 as amended agreed to)

*(Question, that Standing Orders No.173 and 174
be re-numbered as 174 and 175 respectively,
put and agreed to)*

(Schedule to the Standing Orders agreed to)

(Sessional Paper No.8 adopted without amendment)

Mr. Wetangula: Mr. Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of Sessional Paper No.8 of 1997.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT

SESSIONAL PAPER NO.8 OF 1997

Dr. Godana: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered Sessional Paper No.8 of 1997 and approved the same without amendments.

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said report.

The Minister for Commerce and Industry (Mr. Angatia) seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Mr. Ndotto): Next Order!

MOTION

APPROVAL OF ELECTORAL REGULATIONS

The Minister of State, Office of the President (Mr. Koech): Mr. Temporary Deputy Speaker, Sir, I beg to move the following Motion:-

[The Minister of State, Office of the President] 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 the House on 5th November, 1997

Mr. Temporary Deputy Speaker, Sir, during the IPPG, it was agreed that the laws governing the Presidential and Parliamentary Elections be reviewed. It has now become necessary to bring these regulations to be in line with the recent developments. The regulations which I am going to propose are; the Presidential and Parliamentary Elections (Amendment) Regulation, 1997. This in essence means that the nomination for Presidential and Parliamentary Elections is going to take two days. In the previous regulation, the nomination exercise took only one day and it occurred between 8.00 a.m. and 1.00 p.m. The period of nomination for Presidential and Parliamentary candidates will now last for two days; from 8.00 a.m. to 1.00 p.m and 2.00 p.m. to 4.00 p.m, for two consecutive days.

Mr. Temporary Deputy Speaker, Sir, in line with the election procedure, all regulations as proposed will be stringent so that we have total transparency in elections. During the polling day, all the ballot boxes will bear the serial numbers of the polling stations which will be published widely in the media, posted prominently and in full view of the electorate in every polling station. This means that before the polling day, the ballot boxes will bear serial numbers for each polling station in order to avoid ballot papers which are not genuine. Initially, in case of a natural catastrophe during the election day, it was necessary to extend the time of election. Now, during the voting day, in case of shortage of equipment or other administrative difficulties, there will be an extension of election time to enable people who might not have voted, because of these hindrances, to cast their votes. This will give the voters time and they will not be hindered from voting by any problems which may occur. Election rules will also be very stringent because any officer who deliberately refuses to mark any ballot paper shall be guilty of an election offence and be liable to a fine of Kshs20,000 or imprisonment for a term of one year or both. In the past, this rule was not there. So, quite a good number of officers might have refused to mark ballot papers in order to make sure that the candidates of their choice were elected. This regulation will make the presiding officers to be very serious in their work and ensure that elections are free and fair. In other words, these regulations will make elections free and fair. Therefore, there need not be any fear that elections will not be free and fair.

In the past, the voter was required to use only the identity card to cast his vote. However, another element has been introduced in the election procedure that will allow the voter to use either an identity card or the passport to vote. Another stringent measure which has been introduced is that, during counting of votes, if a ballot paper does not bear a serial number of a given polling station, then it will automatically be rejected. This will prevent any malpractice by anybody who may be out to rig the election by introducing fake ballot papers. This measure will ensure that elections will be free and fair. All the points that I have raised are in line with the recommendations of the IPPG proposals that the elections must be free and fair. These regulations have been brought up in order to make sure that elections will be free and fair.

According to the National Assembly Elections (Registration of Voters) (Amendments) Regulations 1997, the identity card was the only valid document for registration. In future, any adult Kenyan with an identity card or passport will be allowed to register as a voter. These regulations on the nomination period, the registration of voters and the election procedures are very clear and will make sure that there will be no malpractices in the election process.

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

The Assistant Minister, Office of the President (Mr. Shamalla): Mr. Temporary Deputy Speaker, Sir, in seconding the Motion, I will not add much to what the Mover has said. These amendments are consequential to the Statute Law (Repeals and Miscellaneous Amendments) Bill already passed by this House, and they are meant to harmonise those parts of the Bills that have been approved with regard to the National Assembly and Presidential Elections Act. The only point that I would like to add to what the Mover has said is the amendments regarding regulation 25 of the National Assembly and Presidential Elections Act. In this particular regulation, the shortage of equipment has been recognised as a good reason to warrant the suspension of the election process until equipment is acquired. When we were looking at this very matter, we considered the case of the election in Mathare during the 1992 General Election, where the presiding officer chose to use some old stamps or identification of his own, because the official materials were not available in sufficient quantity. The marks that he made were ruled to constitute a spoiled paper. That is the reason why we had to take that particular case into account.

The only other point about amendments regarding the National Assembly and Presidential Elections Act is that what we have before us strictly relates to the forms; the forms that are part of the regulations of the Act. They merely spell out how we fill in the dates and hours of nomination. In the regulations to the National Assembly and Presidential Elections Act, they do have forms dealing with identification of the person, so that where we have passport numbers, and the like they are accepted as valid identification papers.

With those few remarks, I beg to second.

(Question proposed)

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Ndotto): Hon. Members, it is now time to interrupt the business of the House. The House stands adjourned until Tuesday, 11th November, 1997, at 2.30 p.m.

The House rose at 5.45 p.m.

DISSOLUTION OF PARLIAMENT

Seventh Parliament dissolved on 10th November, 1997 - Legal Notice No. 527 of 1997.