

Mutiso

ORIENTATION SEMINAR FOR MEMBERS OF THE SEVENTH PARLIAMENT

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**VERBATIM REPORT OF THE PROCEEDINGS
OF THE ORIENTATION SEMINAR FOR
MEMBERS OF THE SEVENTH PARLIAMENT
HELD AT THE SAFARI PARK HOTEL,
NAIROBI, FROM 3RD TO 5TH AUGUST, 1993**

Introductory and Welcoming Remarks by the
Speaker of the Kenya National Assembly, Hon.
Francis Kausai ole Kaparo, MP (the Session
Chairman), on the Opening Day

The Chairman (Mr. ole Kaparo): Your Excellency, the Vice-President and Minister for Planning and National Development and Leader of the House; Hon Members; our Distinguished Visitors and Panellists; Ladies and Gentlemen, I feel specially honoured and privileged to welcome you all to this occasion marking the inauguration of the first ever Orientation Seminar for Members of the Parliament of Kenya. The mounting of such seminars is a phenomenon which is fast acquiring acceptability as the way to set the ball rolling or to usher Members into the niceties and intricacies of the chores of Parliament after general elections. In the recent past, Orientation Seminars have especially fitted very well as a prelude to settling down to business by Parliaments that have opted to embrace such major structural and philosophical innovations as our Parliament has in the last few years. Indeed, processes to orientate and assist Members, especially those making a maiden tour of service, to contend with the sometimes unpredictable parliamentary scene, have always been provided through the Offices of the Speaker and the Clerk of the National Assembly.

Your Excellency, the main objective of this orientation seminar, which will run for the next three days, therefore, is to avail to Members a less formal environment, void of the often across-the-Floor-adversarial-action-packed exchanges, so that they may acquaint and remind themselves of the value, position and application of parliamentary practices, procedures, privileges and etiquette, to proceedings of the House. It has often been expected that Members would use such briefings as background on which to launch an exploration into the bottomless depths of what Parliament is; its practices, procedures, etiquette, privileges, roles and functions; and their own position in that realm. Such cursory briefing has been borne out of the very well grounded and firm democratic belief and practice that Hon Members were enlightened and knowledgeable persons who understand and carry out their roles and functions with the firm revered desire to live up to the expectations of their voters. It is also borne out of the fact that their work is to be done diligently and with dedication to justify the mandate vested in them by the peoples of Kenya. Thus the mounting of this seminar is not purported to be an opportunity to teach Members their work or role, but if anything, it is hoped that it would go a long way in contributing to equipping them with the tools for sharpening their wits for effective operation.

Hon Members, the mounting of this seminar at this time in the history of parliamentary democracy in our country is yet another of the features contributing to the special status the Seventh Parliament has cut for itself. This is the first multi-party Parliament after nearly a quarter century since the last of its kind; i.e. The first Parliament, 1963-69. In the intervening years, though taken up by one-party parliaments, the resilience of the Westminster model inherited at Independence remained conspicuous in the procedures,

[The Chairman]

practices and the structural layout of the Chamber. Thus the birth of the Seventh Parliament did not demand immediate drastic modifications. However, lurking deep in the minds of most of us was a sincere feeling that perhaps the change needed was to mount this seminar so as to augment the usual pre-session Members' orientation briefings. It was felt that a forum such as this would assist Members recollect their reflections on what it was that they actually set out to accomplish when they sought the electorate's mandate to lead. In the process of the search, recollection and reflection, one aspect which legitimizes the presence of each Member here to day is that you are the elected representatives of our people. That legitimacy in turn confers an aura of equality of status and purpose on each one of you.

Your Excellency, this Orientation Seminar aspires to assist Hon Members to shape and enhance the effectiveness of the tools they need to protect their status while enabling them to fulfil their purpose or *mission d'entre*. The programme of this seminar affords Members a rather peculiar opportunity to accompany the resource persons on a detailed and extensive journey on an exploration of the parliamentary procedures and practices, the etiquette and decorum, and the privileges by which the proceedings of our House are conducted. I am confident that at the end of the exploration, the Hon Members' tools of operation will be sharper as their determination to put the procedure to work will have been strengthened. Also, any lingering fears as to the seminar being a return to the classroom would have been quashed.

Hon Members will have seen from their copies of the programme the list of the eminent resource persons and the subjects they are to lead during the discussion. I wish once again to emphasise that this is meant to be a corporate exercise of discussions and deliberations which should create enduring rapport between and within the various parliamentary parties and individual Members in the House. The discussions at this seminar are intended to throw more light on the various subjects, bearing in mind the role of Parliament and the Parliamentarians in the entire body politic.

Your Excellency, in my concluding remarks, it is my humble and privileged duty to express the gratitude and appreciation of the Parliament of Kenya to the organisations and persons that have worked round the clock to put together that which was necessary and required to mount this seminar. In this context, I wish to thank most sincerely the Commonwealth Parliamentary Association (CPA), and especially the Secretary-General, Mr. Arthur Donahoe, for the great assistance extended towards mounting this seminar. I wish to thank sincerely the Friedrich Ebert Stiftung of Germany, through their Resident Director, Dr. Felix P. Schmidt, for their generous contribution in making the seminar a reality. I wish to thank the Government for the assistance extended and the consent to mount the seminar. My gratitude and warm appreciation to the distinguished resource persons, both local and foreign, who consented to lead the discussions on the various subjects at very short notice indeed. Further, my gratitude goes to Hon Members of our Seventh Parliament who, in a variety of ways, had indicated their desire to have such a seminar. Last but not least, my profound gratitude goes to the Clerk of the House and his staff for the inordinately invaluable work and effort they have put into the preparations and arrangements for this first ever Orientation Seminar for Members of our Parliament.

Your Excellency, it is my pleasure to welcome you to address the participants and officially inaugurate the seminar.

Thank you.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Chairman and Speaker of the National Assembly, Hon ole Kaparo; Hon Jaramogi Oginga Odinga, Official Leader of the Opposition; Hon Members of Parliament, Distinguished Guests, Ladies and Gentlemen, on behalf of the Government of Kenya and on my own behalf, I welcome all of you to this seminar. I am especially pleased to welcome our Commonwealth friends and colleagues, and particularly the Chairman of the Executive Committee of the CPA, Hon. Clive Griffiths, MLC, and the Secretary-General, Mr. Arthur R. Donahoe. We look forward to sharing with them experiences on parliamentary democracy and to learn how we can improve our own system here in Kenya.

I would also like to thank all Members of Parliament for agreeing to hold an all-parties parliamentary seminar. Kenya, like most countries of the Commonwealth, has now got a multi-party Parliament. The most important thing before us now is to ensure that our multi-party Parliament functions well to enable us to fulfil the expectations of all Kenyans by serving them better. However, this will not be possible if Hon Members are not aware of what is expected of us, or if we do not follow the procedures of the House. This Seminar, titled "Orientation Seminar For Members of the Seventh Parliament" will provide us with the opportunity of discussing how best our multi-party Parliament could function. I therefore wish to call upon all the Hon Members not to view this seminar as a forum for putting forward individual party ideals, but rather as a forum to seeking consensus through consultations.

For us to succeed in doing so, it is vital that we, Hon Members, feel free to contribute effectively and objectively for the common good of this country and for the benefit of all irrespective of our party affiliations. During the next three days, we will, therefore, examine parliamentary procedures in the hope of improving the quality of our deliberations in the House. As I have already just noted, we look forward to sharing experiences with our Commonwealth colleagues in meeting these objectives.

Mr. Chairman, Sir, as we go about accomplishing what is ahead of us, allow me to share with you a quote from the great political philosopher and orator, Edmund Burke, whose definition of a parliamentary ideal was presented by the Hon Ingram during the 38th Commonwealth Parliamentary Conference in the Bahamas. This definition needs some consideration by those of us privileged enough to serve as Members of Parliament in Kenya. He said, and I quote:-

"Parliament is not a congress from different and hostile interests, which interests each must maintain as an agent and as an advocate against other agents or advocates. But Parliament is a deliberative assembly of one nation with one interest, that of the whole, where not local purpose, not local prejudices ought to guide, but the general good resulting from the general reasoning of the whole. You choose a Member indeed but when you choose him or her, he or she is not a Member of the constituency demarcated by your electoral boundaries. He or she is a Member of Parliament."

Mr. Chairman, Sir, this amply tells us that an ideal Parliament is one where the Members are duty bound to subjugate their personal desires, party interests and ambitions for the common good of the nation. This is what we should strive to achieve in our Parliament and I trust that this seminar will help us to do just that. Various reasons exist as to why the common interest of our country should always come first. Like most African countries, our country is going through social and economic hardships. These problems include the

[The Vice-President and Minister for Planning and National Development]

mounting debt burden, balance of payment deficits and shortage of development and investment capital. Other problems include declining terms of trade, the effects of the Structural Adjustment Programmes and unemployment, to mention but a few. These problems are common and affect all our people irrespective of party memberships. All of us are aware that when the economic situation deteriorates, it becomes much more difficult to develop. Indeed, much more important, it even becomes most difficult to sustain democracy. Our people are looking upon all of us as their representatives to solve the economic problems. These problems cannot be solved in an isolated manner. We, therefore, need to work together for development so that democracy can have more fertile ground in which to flourish. Besides economic problems, our country has also been experiencing political challenges.

Our people are currently going through a transitional period in the political arena, where they are trying to adjust to the realities of a multi-party political system. Like any other social process, this transition requires a stable social environment if we are to make the multi-party system a permanent feature of our political landscape. Any new system is bound to have teething problems at the beginning. Nevertheless such problems could be minimised if all the political parties represented in Parliament are tolerant. We need to learn from one another and to gain from the experiences of other countries. A multi-party political system should offer us more peace and prosperity but not the opposite. All of us stand to gain from such political stability and economic prosperity. In the past, Kenyans have made virtues out of diversity of their ethnic backgrounds, religions, race and culture.

After Independence, Kenyans adopted the rallying call of "*Harambee*" which, as we all know, means pulling together. This unity of national purpose has made our country weather down storms especially when our national interest has been threatened from within and from without. Our national unity, coupled with a strong mutual social responsibility, has enabled our country to achieve stability and make great strides in development. Indeed, Kenya is proud of her uninterrupted history of parliamentary Government and Independence.

Mr. Chairman, Sir, we should use the diversity of the multi-party democracy for the promotion of the welfare of our people. It will be a tragedy for this country if we, as people's representatives, fail to make our diversity in Parliament our main asset in social and economic development.

In conclusion, Mr. Chairman, Sir, I wish to assure all of us here that the Government is committed to making the multi-party democracy a viable system for the benefit of all Kenyans. In doing so, the Government will protect the virtues which enable democracy to flourish, including all the freedoms enshrined in our Constitution. I am sure you will all agree with me that Kenyans are not prepared to allow the democratisation process to be derailed by any individuals who invoke the tenets of democracy for selfish motives and in total disregard of the freedom of others. I have no doubt too that as representatives of our people, we are of one mind in that resolve and that we shall take the lead in placing the interests of our beloved country first.

With those remarks, Mr. Chairman, Sir, it is now my very great pleasure to declare this seminar officially open.

Thank you very much.

(Applause)

The Chairman (Mr. ole Kaparo): Hon Members, before we get into the real business of discussing some of the items that are on our agenda today, I should like to invite all Hon Members to have some tea. I am mindful of the fact that a lot of Members had to travel long distances during the very early hours of the morning and I, therefore, invite all of you to tea at this particular moment.

Thank you.

Hon Members: Yes, let us have tea first!

The Chairman (Mr. ole Kaparo): Order! Hon Members, since you insist I must use this word that, I think, you dread, then I will have to use it occasionally. We will break for tea for one hour and re-assemble at 10.30 a.m. I invite those Hon Members who have not had breakfast to have tea. I think out of my usual generosity I will give it to them.

An Hon Member: You are right!

The Chairman (Mr. ole Kaparo): Thank you.

*(The Seminar adjourned at 9.35 a.m.
and resumed at 10.35 a.m.)*

The Chairman (Mr. ole Kaparo): The meeting is now called to order. Before we begin our proceedings I should like to bring out certain procedural matters. First, this seminar is for Members of Parliament and it is not an open seminar. It is only open to Members of Parliament, the panellists and staff of the National Assembly. All others will please excuse themselves. So, can we have everybody else who is not a Member of Parliament, staff of the National Assembly or a panellist clear out of the hall?

(The Press withdrew from the Hall)

Secondly, this Seminar is non-residential but nevertheless, we shall provide morning and afternoon tea, and lunches, to all Members free of charge. Thirdly, all Hon Members, other than Ministers and Assistant Ministers, will be entitled to their daily attendance allowance including their usual mileage allowances. So, they can claim these allowances from the National Assembly.

I think we are alone now, and what I am saying is that all Hon Members who are not Ministers or Assistant Ministers will be entitled to their attendance allowance of KShs.1,000/- per day and, in addition, they will be entitled to their usual mileage allowances, as if Parliament were sitting. You normally do not get the attendance allowance but you will be paid this time. So, you will get two forms of allowances: the attendance and mileage allowances. My officers are keeping a register of those who are attending.

The panellists, both local and foreign, will be introduced when they come to the dais here to present their papers on their subjects. For the current subject we do have three panellists whom I will introduce to you. But I may also add here that on some occasions I will personally have to allow somebody else to chair the meetings. So, occasionally, I will call upon a panellist or any other Member to chair the meeting. For the discussion we are, going to have now, we have three panellists to assist us in leading the discussions. After they have made their introductory remarks, the discussion will be open to all Members either by way of comments or questions and things like that. Since we would like as many Members

[The Chairman]

as possible to have an input, I would very kindly ask that all discussions be as brief as possible. Speakers can go through their salient points briefly so that they can allow intervention from the Floor. For the topic at hand now, which is the Constitution of Kenya -

The Fabric of Constitutional Government - we do have a very distinguished gentleman and Professor of Public Law, who was also my teacher, Prof. Okoth-Ogendo. We also have our Attorney-General, Hon Amos Wako here together with the Chairman of the Electoral Commission, Mr. Justice Chesoni.

Having done the introduction, I will now call upon Prof. Okoth-Ogendo to give his speech and he will be followed by Mr. Justice Chesoni and the Attorney-General will come last in that order. Could we please now begin. Prof. Okoth-Ogendo.

Mr. Anyona: Mr. Chairman, Sir, with regard to this topic we had been told that Members would be issued with copies of the Constitution of Kenya. I do not know whether that has been done.

The Chairman (Mr. ole Kaparo): I am told that it is being done and if it has not been done, it will be done. I think that is very valid.

Proceed, Prof. Okoth-Ogendo.

THE CONSTITUTION OF KENYA

THE FABRIC OF CONSTITUTIONAL GOVERNMENT

- The Status, Powers and Functions of the Presidency, Legislature and Judiciary.
- Principles of Cabinet Government.
- Provisions Relating to the National Assembly and the Place of the House in the Legislative Process.
- Amendment of the Constitution.

- Panel*
- (i) Prof. Okoth-Ogendo, Professor of Public Law, University of Nairobi.
 - (ii) The Hon S. Amos Wako, The Attorney-General.
 - (iii) Mr. Justice Z. Chesoni, The Chairman, Electoral Commission of Kenya.

Prof. Okoth-Ogendo: Thank you very much, Mr. Chairman, Sir. Hon Members of Parliament, I do not think it will be proper for me, on this particular occasion, to tell you what the Constitution of Kenya says and means because it seems to me that, that is something that when you are constituted as Members of Parliament of the Republic of Kenya, you are competent to determine and to change. So, my concern is simply to share with you some ideas about what it means to say that ours is a system of Constitutional Government and the country's political processes ought to conform to certain basic norms and principles of constitutional governments.

[Prof. Okoth-Ogendo]

Before I do that, Mr. Chairman, Sir, I would like, as a starting point, to clarify what a constitution is, what a state of constitutionalism implies and what a system of constitutional government entails. That will allow us to place the Kenyan system in the global community of systems that are generally described as constitutional as opposed to those that may be described as military or anarchic systems.

Let me start, in the first instance, by saying that there is no single definition of what a constitution is. Throughout history, different societies have recognized particular philosophical conditions as equivalent to a constitution. Therefore, a single constitutive act, a fundamental norm or value, a set of aspirations and expectations or even a social and economic programme is as much a constitution as a document that bears that particular title. What is important is that, that which is recognized as the constitution should have some organic or generic character or should be universally recognized as the primary point of reference for governance in society. In this sense, therefore, there is no society without a constitution. In our case, therefore, having a constitution did not originate with facts surrounding Independence. The idea of constitutionalism, therefore, implies, in the first instance, that a society has, or acknowledges the existence of a basic or reverential norm or value. But constitutionalism also means other things and these include fidelity to life under that norm or value. In other words to say there is a reverential norm in society must imply that the society owes allegiance to that particular norm or value. It also implies acceptance of that norm or value as a basis of criticism in ordinary political discourse. In other words, it should be possible in political discourse to be able to stand up and say that such-and-such an act is wrong because it is unconstitutional. It also implies the use, more or less as a matter of routine, of that norm or value as a basis for the resolution of conflict between power and obligation, or between tradition and change. In other words the medium for the resolution of conflicts in the political arena ought to recognise the existence of the basic norm that we are calling the Constitution.

A system of constitutional government means, therefore, that a society's power map is reflection of its constitutional system and that the structures and processes derived from that map answer to the essence of constitutionalism. But constitutional government is not simply about the production, distribution and exercise of power in accordance with the constitution. It also presupposes the existence of certain basic thresholds and most obvious of these include sufficient civic consciousness and maturity that is capable of tolerating diversity where homogeneity is not necessary or possible. It also implies a great deal of what I would like to call *political hygiene*; that is the ability to manage competing interests and struggles for power on a level playing field basis. It also implies a level of economic development which is capable of absorbing the cost associated with constitutionalism.

Let me explain here that the process of running a constitutional system can be extremely expensive. Those of you who have been in the courts will understand what I mean by that. That takes me to the Constitution of Kenya and what I describe as a triple function of the Constitution of Kenya. Although what we are calling the Constitution of Kenya now was handed down in 1963 as a single document, the Constitution does and has always been intended to do three separate things. The first thing that it does is to constitute the State. The second is to define the primary organs of State power, which are called the power maps and the third function is to prescribe the basic rules for the exercise of State power.

For some reason many African countries still believe that the basic law of the land

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should also be the act which bestows the polity with legitimate or sovereign existence. Thus, the very first Article of what we call the Kenya Constitution declares that Kenya is a sovereign Republic. That declaration is, of course, unnecessary because otherwise we will be content to say that a nation has no sovereignty without an explicit declaration to that effect or that the mere existence of such a declaration is sufficient evidence of sovereignty. Article 1 of the Kenya Constitution is, in this particular sense, a piece of superfluity. But that Article is of enormous importance in another sense. This is because the proclamation in that Article means and implies the existence of a legal order, a large part of which pre-dates the Constitution, but which was revalidated at Independence for reasons of juridical completeness and effective government. In other words, the reason for Article 1 is to constitute the State and its legal order, not just the State. In this sense, therefore, Kenya, like all other post-colonial entities, is a constituted State; a fact which has far-reaching implications. One of the implications, of course, is that if it is a constituted State the contents of that State can always be altered in the same manner as the manner of its constitution.

As I have also indicated, the constitution is a power map. It goes on in Chapters Two to Four, to draw the basic power maps. That is, to define the basic Arms of Government in the classic Euro-American tradition. Therefore, it establishes the Executive, the Legislature and the Judiciary. The Executive, as described in Chapter Two, consists of the President, the Vice-President and Ministers of Government operating collectively as the Cabinet.

Parliament, as defined in Chapter Three, Article 30, consists of the President and the National Assembly, a composition which, as I shall indicate presently, has important implications for the exercise of legislative power. The Judiciary, which is the third branch and by no means the least important, is defined in Chapter Four as consisting of the High Court which is the most superior court of record, the Court of Appeal and others courts, including courts martial, subordinate to the High Court.

Although the President is the Head of the Executive, the Presidency, as an institution, is quite distinct from the Cabinet referred to in Article 17 of the Constitution. In most analysis, we are only aware of the three branches of Government, that is, the Executive, the Judiciary and the Legislature. I am suggesting that because of the history and development of constitutional systems in Africa, which have borrowed extensively from the British model, the French model and the American model, it might be useful to think of the Presidency as a distinct institution as opposed to the Cabinet that forms the Executive. Some elements of that distinction are evident in the Constitution. There is direct election of the President. The Constitution also vests in the President the power to complete the legislative process. The Constitution grants immunities against criminal and legal proceedings against the President while he is in office and, of course, it vests in the President the power for the prerogative of mercy.

It is for this reason that our system, as is the case elsewhere in English-speaking Africa, is more than just a parliamentary system of Government; it is a form of presidentialism that is quite different from that which the British, the French or the Americans know of. It is upon the Executive that lies the heavy duty of ensuring that constitutional norms and principles are respected and seen to be respected. The Executive must, therefore, ensure that the exercise of power lies within the bounds set by the law and the Constitution.

As I have already indicated, the legislative authority of the State is vested in Parliament which consists of the President and the National Assembly. What it means is that

[Prof. Okoth-Ogendo]

a Bill passed by the National Assembly cannot become law until it has received Presidential assent in the manner that is set out in the Constitution. The Constitution sets out how that process of assent can be obtained and how any conflicts between the President and the National Assembly with respect to the signification of consent is to be resolved. But I want to note here that I myself do not remember any occasion when there has been a conflict between the National Assembly and the President with respect to the question of obtaining assent.

For purposes of convenience, the legislative authority of Parliament may be analyzed at two levels. The first one is the authority to enact ordinary legislation and, secondly, the authority to enact constitutional legislation. I need not say too much about the former, other than subject to provisions relating to quorum, a simple majority of Members present and voting, is competent to pass laws. Constitutional legislation, including the enactment of an entirely new Constitution, however, requires special procedures which are set out in Article 47 of the Constitution. Some of these include first, that a Bill to amend the Constitution must be supported on its Second and Third Readings by at least 65 per cent of all Members of the National Assembly excluding the Ex-officio ones. Secondly, no alteration may be made to such a Bill once it is introduced into the National Assembly. In other words, a Bill for Constitutional Amendment, must be passed or rejected *in toto*. It cannot be amended on the Floor of the House.

As a general rule, any law which is enacted by Parliament, whatever its character, will operate prospectively. That is to say, it affects matters that happened after it had been passed. But this notwithstanding, Article 46 allows Parliament to make legislation with retrospective effect but that power when exercised, must be expressly invoked; it cannot be implied. Secondly, it may not be exercised so as to render ineffective provisions of the Constitution relating to the rule of law, unless, of course, Parliament first amends that Article and then proceeds to amend those parts of the Constitution that deal with the rule of law. In fact, that is, perhaps, the only case in the Constitution where the legislative power of Parliament is limited.

The legislative process requires informed judgement and, therefore, Members of Parliament must take time to research, ruminate over, and understand the coverage and consequences of the legislation that they pass. I have had occasion to note, one, that after Members of a previous Parliament - not this one - had passed some complicated legislation relating to land law, the Attorney-General - not the present one - came back to Parliament and said "Some Members asked me to explain what they had just passed." That exercise is extremely untidy and it should never happen.

I now come to the Judiciary. There has been a tremendous amount of controversy surrounding the status of this particular branch of Government. I want to state that it is important that this audience should understand that the Judiciary is central to the legislation, the operation and constitutionality and sustainability of constitutional systems. That role is, however, somewhat diminished by the fact that Parliament has virtual supremacy over the process of legislation in the land. Thus, although an Act of Parliament, other than a Constitutional Amendment, can be struck down by reason of inconsistency with the provisions of the Constitution, the fact that Parliament can override the Judiciary by virtue of its powers of legislation continues to hang like the Sword of Damocles over the Judiciary. My own observation of what has gone on in Africa, suggests to me that the greatest potential

[Prof. Okoth-Ogendo]

threat to Judicial independence is not the Executive, but Parliament. Judicial independence, however, goes beyond the ability of the third branch to fend off subversion, if you like, from the two other branches. It also requires individual integrity and commitment to the principle of legality by members of the Judiciary itself at all times.

The third character of the Constitution, as I have indicated, is that the Constitution is also the basic law of the land. This is not merely because the Constitution says in Article 3 that it is the supreme document. That classification also stems from Chapter Five of the Constitution which enunciates individual rights and freedoms which the exercise of State power must respect.

In 1963, Chapter Five of the Constitution was listed as Chapter Two. The reason was to emphasize the importance of individual rights and liberties and their nominative significance in the hierarchy of issues dealt with by the Constitution. Somehow, in 1969, Chapter Two was taken to Chapter Five as if symbolically that particular Chapter is not significant. The House is the legislature which has men and women in whom is vested the ultimate authority of determining the structure, if not steering, the destiny of a constitutional Government in this country.

I want to leave you with a number of questions under this particular character. The first question is: Should individual rights and freedoms be enumerated in the Constitution at all? There has been an argument to the effect that if you set out what the rights and liberties are in the Constitution, you are inviting Parliament and the Executive to negate them. Therefore, they should not be inserted in the Constitution, but should be developed in the political process. The second question is: How firmly should rights and freedoms be embedded in the Constitution? We have heard a lot of arguments from lawyers to the effect that certain rights are enshrined in the Constitution. The fact of the matter is that the Constitution as we have it now, does not enshrine those rights. The third question is: Are there, and can there be, any legitimate or acceptable justification for derogating from such rights and freedoms? The last question is: What are the limits of parliamentary supremacy in respect of legislation touching on and concerning individual rights and freedom?

I do not propose to find answers to these questions because I am sure you will be dealing with them in your ordinary lives as Members of Parliament.

Thank you, Mr. Chairman, and Hon Members of the National Assembly.

(Applause)

The Chairman (Mr. ole Kaparo): Thank you, Prof. Okoth-Ogendo, for that very stimulating paper.

Before I call the next panellist to lead us in our discussion, I would like again to seek the indulgence of the Hon Members on this matter. I had promised that a copy of the Constitution would be circulated. I am informed that we did not have enough copies, but we ordered the Government Printer to make them available this morning. We have dispatched officers to collect those copies and hopefully, before we finish with the final panellist, they should be available.

I would now like to call upon the Hon Justice Chesoni, Chairman of the Electoral Commission, to lead us in the discussion of our current topic.

Mr. Icharia: Mr. Chairman, will we also be supplied with copies of the paper which has been presented by the learned Prof. Okoth-Ogendo?

The Chairman (Mr. ole Kaparo): It will be circulated.

We will make copies of all papers presented here available. We will make sure that you get all of them. If a panellist is reading a paper, we will make copies of it available, but when he or she is off the cuff, the only way we can get what he or she is saying is through the HANSARD which cannot be reproduced right away. Nevertheless, we will try our best.

I now call upon the Hon Justice Chesoni, Chairman of the Electoral Commission, to lead us in further discussion of this topic.

Mr. Justice Chesoni: Thank you very much, Mr. Chairman, Sir.

The Assistant Minister for Public Works and Housing (Mr. Mwamzandi): Mr. Chairman, Sir, I have a question to ask Prof. Okoth-Ogendo.

The Chairman (Mr. ole Kaparo): You will do so at a later stage. The floor will be open after all the panellists have presented their papers and you will choose from the three panellists whom to ask a question.

Mr. Justice Chesoni: Thank you, Mr. Chairman, Sir. Hon Members, there is always an advantage when you have a professor and the Hon Attorney-General on your panel, particularly when discussing a matter relating to law. For me, it is a great honour to be able to share with the Hon Members some views about certain parts of our Constitution. It is a great honour because you, Hon Members, have a lot to do with the Constitution of this country. You have an opportunity to re-examine the Constitution; you have an opportunity to make it a working Constitution, and you have an opportunity to produce for Kenyans the Constitution that this country needs if at all you find that there is need to improve on the existing one. Consequently, this Seminar is important in as far as discussion on the Constitution is concerned. Our existence is attributed to this Constitution.

One of the great minds had this to say about the Constitution. "The good or bad of a nation depends on three factors; its Constitution, the way it is made to work and the respect it inspires." We have a written Constitution and as my learned friend, Prof. Okoth-Ogendo, has observed, attempts have been made to define the Constitution. I do not think that is necessary at a Seminar like this one. That is for the classroom academics to give whatever meanings there may be.

What one would want to look at is: Could we in Kenya today say what Charles Dickens said to our mutual friend when he was speaking of the British Constitution and saying how proud they were? Can we say today that we Kenyans are very proud of our Constitution and that it was bestowed upon us by Providence? What does our Constitution mean to us? Indeed, what I intend to concentrate on are the three chapters of the Constitution and not the whole Constitution of Kenya. I am only going to refer to Chapter One which relates to the Executive; Chapter Two which relates to the Legislature and Chapter Three which relates to the Judicature.

The first three chapters of our Constitution were sort of modelled on the basis, or with the view in mind of the separation of power theory or system of Government, whereby the Government is expected to operate in three compartments or with three institutions; that is, the Executive, the Legislature and the Judiciary. These powers have been separated and allocated to different institutions. Different meanings have been attached to the issue of separation of powers. I do not think that separation of powers is a divorce. All it means is actually sharing of powers by different institutions in such a way that power is not

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concentrated in the hands of one institution, consequently, creating a situation of absolute power.

Our system of Government is known as a "Responsible Government". Why do I call it a "Responsible Government"? It is so known because those who govern are, through the people's representatives - that is, yourselves - responsible to the persons they govern. The Government is answerable to the people who are governed. Thus, the Government is accountable to the Parliament of this country. This is a political responsibility. There is, of course, legal responsibility but which is enforced in court. What we are concerned with in this first approach is the political responsibility which is through the august House. The separation of power envisaged under our Constitution creates the Executive, that is, the President and the Cabinet, with, of course, distinctions which relate to the powers that are given to the Ministers and to the President. There are certain powers exercisable by the President, which are not exercisable by the Ministers as I will later show. It also creates the powers which are exercised by the Legislature which, as I will emphasize later on, is the supreme body in this country as far as making the laws of the country is concerned. We also have laws which are made by the courts when they create precedent. Sometimes, if the courts do not like what the Legislature has done, they will, of course, say, "This was not the intention of the Legislature", when actually they are trying to create their own law.

The three institutions that we have, that is, the Executive, the Legislature and the Judiciary have some meeting points within the operation of our Constitution. For example, the President and the Ministers who form the Executive are also Members of Parliament. In fact, under our Constitution, no-one can be elected a President unless he has first been elected in a constituency. Also, under our Constitution, the President cannot appoint anyone a Minister in the Government unless he is a Member of the National Assembly. The Constitution itself has forced a fusion within our system by requiring certain things to be observed.

To that extent, we find that the Legislature and the Executive are fused in that the Ministers and the President are Members of Parliament. You also find that the President, who is a member of the Executive, appoints the Chief Justice, Judges of the High Court and Judges of the Court of Appeal. Consequently, you find that here is one institution within the separation of power, under the Constitution, which has the powers of appointment of the members of another institution within the separation of powers. You then have the courts, as I have said, exercising powers over the Ministers. If the Ministers have acted *ultra vires*, that is, if they have exceeded their powers or if some public officers under the Ministers have not done their duties; and if a citizen wants certain work done, he can go to court and the court will issue an order of *mandamus* compelling that particular person to do a particular act, or an order of prohibition can be issued stopping a particular person from acting in a particular manner. There are also actions of a judicial nature which will be taken by Ministers which will be quashed under an order of *certiorari*.

All that I am trying to explain is that there is that close interaction amongst the three institutions that are created under our Constitution. You will also find that under our Constitution, the President has this power which is given to him of exercising a prerogative of mercy. Under that, he is actually overruling the decisions of the courts in a way. This is because he can reduce the sentence passed by the courts, he can reverse the conviction, or a person who has been sentenced to death may be set free. The same also applies to the

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amendment which came sometime after Independence giving the President the power to pardon a person who has been declared by the Election Court to have committed election offences and, therefore, barred from standing for election. The President can pardon that person, and he can go back and campaign for re-election. I believe that Parliament was happy to pass that particular amendment when it came up.

(Laughter)

That was with good intentions. I was on the Bench at that time and I remember the speed with which it was rushed to Parliament after the court had actually disqualified one Hon Minister from standing. He was able to stand and he went through again. You find that the Constitution has been generous enough in that it sees certain problems that would arise if it were just to be very strict and rigid in its application. It made provisions which would actually draw strict boundaries between one institution and another.

What I have tried to illustrate, therefore, is that there is nothing like "absolute separation of powers" in any country whatsoever. That attributes to the theory of "separation of powers". Our Constitution was made in such a way that we tried to borrow from the British unwritten and written Constitution and merge it with the American Constitution, in that the British do not have the exact expression system the Americans have. So, we borrowed theirs.

Then when we come to appointments, I said that there is nothing like "absolute separation of powers" because taking an example of the United States, the President puts out propositions for appointments of key positions like members of the Judiciary which has to be approved by the Congress. Although the Congress might block that appointment, all the same it is a presidential appointment. The President, therefore, appoints judges of the Supreme Court in the United States.

Let us go to England, for example. The Prime Minister, who is a political leader and the Head of the Government of the day, recommends to the Queen the appointment of the Lord Chief Justice, the Master of Rolls, the judges of appeal and the President of the Family Division. There is always some allowance given to one of the other groups, and that is the necessity of our having to go into a situation of saying, "How far is there the separation of powers in a particular state?"

Let us now come back home to the institutions that I had mentioned; that is, the Legislature and the Judiciary. Let us start with Section 4 of the Kenya Constitution that deals with the Presidency. Section 4 of the Constitution of Kenya establishes and pronounces the status of the President. The status that the Constitution gives us of the President in this country is that he is the Head of State and the Commander-in-Chief of the Armed Forces of the Republic.

Then you come to Section 23(1) of the same Constitution which makes it clear that the President we have in this country is not just a mere ceremonial or titular, but an executive President, as my learned friend here referred to him. This particular executive President here, he is vested with authority of the Government. Now, the Constitution, therefore, vests in the President of Kenya all the executive authority. This means that the administrative authority of the Government is vested in the President as the Head of the Executive as a whole. That is why we find that Section 23(1) of the Constitution permits the President to exercise the

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authority which is vested in him, either directly or through officers subordinate to him. That by itself gives us an indication that the "Executive" does not refer only to the President as a person; it refers to the President and his team of Ministers. So, he can exercise the powers vested in him either directly or through the people who are subordinate to him. Under this system of Government and the Constitution, the fact is that there is the President and the Ministers, in practice, to rule the country.

THE POWERS AND FUNCTIONS OF THE PRESIDENT

These have been stated in various sections of the Constitution, and there is no exhaustive list that you can make about the powers of the President. When you get a copy of my paper, you will see that I have attempted to list some of the powers and functions of the President as stated expressly in our Constitution. For example, under Section 24 of the Constitution, the President, subject to the Constitution, has the power to:-

- constitute and abolish offices for the Republic of Kenya,
- appointments to the offices that he has constituted,
- terminates office appointments to those offices,
- appoint and remove the Vice-President,
- appoint and remove Ministers and Assistant Ministers without giving any reasons whatsoever,
- appoint the Chairman and Members of the Electoral Commission, but not to remove them!

(Laughter)

We did not make the law; it is you, gentlemen, who made it;

- nominate 12 Members to the National Assembly, under Section 33,
- summon Parliament and direct, in fact, where each Session of Parliament shall be held, so long as it is within Kenya, Section 58 of the Constitution,
- prorogue Parliament at any time, under Section 59 of the Constitution,
- dissolve Parliament at any time, under Section 59 of the Constitution,
- mandatorily required to dissolve Parliament if there is a vote of no confidence in Parliament; he must then act within a particular time,
- appoint the Chief Justice and the puisne judges of the High Court and judges of appeal,
- appoint Members of the Public Service Commission; for these two - judges and the Members of the Public Service Commission - he does not have the powers to remove them except after undergoing through a very laborious procedure,
- appoint the Commissioner of the Police,
- appoint the Attorney-General, but, again he does not have power to remove him except after undergoing through that laborious procedure of having a tribunal; this is meant to create security of tenure of office for the Attorney-General so that he may be able to carry out his functions under Section 26 of the Constitution without fear of any repercussions,
- appoint Controller and Auditor-General under Section 110,

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- appoint Permanent Secretaries and the Director of Personnel Management,
- appoint Ambassadors on the advice of the Public Service Commission,
- give notice for setting aside trust lands because since Independence this power has been vested in the county councils for the good of the residents of a particular district; consequently, for the Central Government to interfere with it, it must be for a public purpose, and when land is required for that particular purpose, the President is the only one who is supposed to give that notice; he does that, of course, through the Commissioner of Lands because Parliament did enact a law saying that the President may delegate that power to the Commissioner of Lands; this is under Section 118 of our Constitution; then, after the purpose for which that land was set aside has been exhausted and there is no need for using that land for that purpose, the President is also supposed to give notice under Section 119 of the Constitution, and
- exercise, as I said earlier, the prerogative of mercy under Section 27.

Those are the powers of the President. What about his functions? His functions include:-

- as Head of State, addressing the National Assembly at any time he thinks fit to do so, under Section 52 of the Constitution,
- attending meetings of the National Assembly and taking part in all proceedings, including voting,
- allocating portfolios to the Vice-President, Ministers and Assistant Ministers, under Section 18 of the Constitution,
- giving consent to the Vice-President, Ministers and Assistant Ministers to absent themselves from the country; this has actually been extended even to public servants; I think this was done through the usual administrative circular; I do not know how constitutional that is; I think this provision only applies to the Vice-President, Ministers and Assistant Ministers; other people travelling outside the country cannot constitutionally be required to obtain permission from anyone, even if they are civil servants; I state this emphatically because a number of times a civil servant will go to the airport, and the Immigration Department will chase him away asking, "Where is your letter allowing you to travel?"; there is no requirement. The Constitution refers only to the Vice-President, Ministers and Assistant Ministers,
- giving consent to the laws that are passed in Parliament, and
- acting as Ambassador No.1 for the country; he represents the country at international conferences or meetings of Heads of State and Government, either directly or through officers subordinate to him. In other words, the President is the symbol of the State.

It is to be observed, from what I have just said above, that the functions of the President have a residual character. What do I mean by that? In other words, in exercising the prerogative of mercy, the President has that "residual power" to be able to review what has been done by the court. He does not, of course, act because the court has gone wrong, but he is given that power to say perhaps the last word of whether the person who has been sentenced to hang for an offence of murder can hang or not. In most cases, it is robbery with violence in which one is sure that a death sentence may not be reversed by the President.

The functions that we have tried to outline here are not a complete catalogue of the

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functions of the President and none can be drawn. I would, therefore, rest there, as far as the Executive and the President are concerned, and move to the Legislature.

In Kenya, the legislative authority is vested in the Parliament of Kenya under Section 30 of the Constitution. In brief, we can say that the functions of Parliament are basically as outlined in the constitutional writers or authors of constitutional books elsewhere. Our Constitution, other than vesting this legislative power into Parliament, does not outline precisely any other function. However, we can safely say that the functions of Parliament are to support, watch, criticise and preserve legitimacy in the Government; and also to hold debates in which the Government is given an opportunity to explain and justify its policies to the electorate. This educates the citizens in the merits of alternative approaches to the leading issues of the day.

It is the function of Parliament also to preserve the rights of the individual in his relationship with the Administration. It is also the function of Parliament to control the raising and spending of money, and to make law. This is actually the most important function of Parliament of the day in any country. Parliament also expresses the opinion of the electorate through its Members.

The status of Parliament may be described - and it is correctly described - as the supreme legislative authority consisting of the President and the National Assembly. That is the context I understand the Parliament in Kenya. It is the supreme legislative authority in this country which consists of the President and the National Assembly. The powers of Parliament are legislative.

THE JUDICATURE

One of the great writers - Francis Bacon - said that the place of justice is a "hallowed place". I do not know whether that is the position with our courts or not. I do not know whether you can say they are hallowed places or not. The Judiciary is the branch of Government which is entrusted with the interpretation, construing and application of the laws of this country. Our High Court has unlimited original jurisdiction or power in both civil and criminal matters. It also has such other powers as may be conferred by the Constitution or any other law which Hon Members might pass.

Unlike the High Court, however, the Court of Appeal, which is the highest court in this country, does not have unlimited powers. The Court of Appeal can only exercise powers that have been given to it by the law.

The jurisdiction and the powers of subordinate courts are, of course, spelt out in various Acts, like the Magistrates Courts Act. Their powers and jurisdiction are usually extended, like in mandatory cases where you want a court which has unlimited jurisdiction. For example, if a magistrate's court handles only cases in which the fine is limited to Shs.20,000/=, the Chief Justice may, by notice in the *Kenya Gazette*, extend those powers so as to give extra powers to the magistrate, if need be.

Members of the Bench, that is puisne judges and judges of appeal, are constitutional officers, just like the Attorney-General, the Controller and Auditor-General, Members of the Electoral Commission and Members of the Public Service Commission. They enjoy security of tenure of office under the Constitution. In other words, they are only removable for a cause as stipulated under the Constitution. Even when there is cause to remove them, for

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example, if you want to remove a judge for inability to discharge the duties of his office, the President would have to observe the procedure of appointing a tribunal to investigate the case, as laid down by the Constitution, and report back to the President whether the member should be removed or not. The Constitution does not give a precise list of the functions of the Judiciary, except in Sections 10 and 44 of the Constitution where it is stated that the High Court shall have jurisdiction and powers to hear and determine any questions, as to whether a person has been validly elected as President, or whether a person has been validly elected as a Member of the National Assembly, or whether a seat in the National Assembly has become vacant or not. However, there are other functions of the Judiciary.

The functions of the courts, as we know them, include the following:-

- declaration of the law where Parliament has not been sufficiently explicit,
- where a citizen is in conflict with the authority, ensuring that the law is applied impartially without allowing arbitrary action on the part of the Government,
- enforcing the law by trying law breakers and determining the punishment to be meted out,
- deciding disputes between citizens,
- restraining any person and persons from interfering with the rights of others, and
- providing a channel through which an aggrieved person can get redress for the grievance suffered,

THE PRINCIPLES OF CABINET GOVERNMENT

In a Cabinet Government, the Cabinet is the principal executive body, the head of which is the President, like in our case. Under Section 16(1) of our Constitution, it is mandatory that there be offices of Ministers in the Kenya Government. The Ministers, together with the President, form the Cabinet whose functions are expressly provided for under the Constitution. This supreme directing authority plays the major role of integrating what, in other words, as *Sir Ivor Jennings* said on Cabinet Government, would be "heterogenous collection of authorities exercising a vast variety of functions". The Cabinet provides unity to our system of Government through collective responsibility, as I will now attempt to explain.

The Kenyan Cabinet is mainly based on the Westminster model and, consequently, the functioning of the system is, to a greater extent, by convention. The composition of the Cabinet, in the absence of parliamentary provision otherwise, is determined by the President. The President makes all appointments to the Cabinet only from Members of Parliament. Section 7 of the Constitution seems to limit the President to appointing the Cabinet from Members of the political party that nominated him as a candidate for President. Impliedly, this negates the formation of a coalition Government in Kenya, at present.

As part of its functions, the Cabinet forms and co-ordinates policies, including plans for the future. It cannot, therefore, be considered as "a mere executive arm" of the Government. It provides a division of the separation of powers in that it is part of the Executive as well as the Legislature.

The Kenyan Constitution, under Section 17(2), expressly provides that the function of the Cabinet shall be to aid and advise the President in governing the country. Again, the Constitution requires the Cabinet to be collectively responsible to the National Assembly for

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all things done by or under the authority of the President, the Vice-President or any other Minister in the execution of his office. In other words, the issue of collective responsibility in Kenya is not by practice, but a requirement of the Constitution: that all Ministers must act collectively. They are collectively responsible to the Parliament of Kenya.

In 1878, Lord Salisbury, of course, headed the doctrine of collective responsibility in a manner that I would like us to think about regarding how it applies. If I may quote:-

"For all that passes in Cabinet, every Member of it who does not resign is absolutely responsible and has no right, afterwards, to say that he agreed in one case to a compromise while in another he was persuaded by his colleagues. It is only on the principle of that absolute responsibility undertaken by every Member of the Cabinet who, after a decision is arrived at, remains a Member of it that the joint responsibility of Ministers to Parliament can be upheld, and one of the most essential principles of parliamentary responsibility established".

Thus, every politician who serves as a Minister, or accepts an appointment as a Minister, must share in the collective responsibility of all Ministers, in that he may not publicly criticise, or dissociate himself from Government policy. While a Cabinet Minister may request for his dissent from a Cabinet decision to be recorded in the private minutes of the Cabinet, he is all the same expected, if not required, to support the Government by his vote in Parliament. This can be illustrated in our own case here in Kenya in what happened in 1975 when the late President Kenyatta had to relieve a Minister and an Assistant Minister of their Ministerial appointment for voting against the Government in the House.

In a Cabinet Government, therefore, there is an inherent "element of concealment" in that the process by which policy decisions are reached is kept secret. In their own offices, Ministers swear to maintain Cabinet secrets. So, unless the Cabinet or the President decides that disclosure should be made, Cabinet discussions, documents and proceedings of Cabinet Committees remain secret. It is not clear how the "era of transparency" will affect this practice of secrecy. There are occasions when you have leakage of Cabinet matters, and in such cases transparency does dictate that perhaps the matter be made public.

On the other hand, strict party discipline, as we have it today in most countries, and especially in this multi-party era of democracy, does enhance collective responsibility. Whatever may be said, the Cabinet still remains an essential linkage between the Executive and the Legislature. I believe that the Cabinet can do a lot or contribute much in strengthening a cordial relationship between the Executive and Members of Parliament.

To date, the functioning of the Cabinet system in Kenya is, to a great extent, still determined by the convention of the Westminster model from which we have heavily borrowed. I have deliberately, in my discussions of the Executive, the Legislature and the Judicature, avoided commenting on any provision relating to the National Assembly as a place of making laws following the process that is clearly established. That is in accordance with the practice in the National Assembly, and I would rather learn that from Hon Members, which is the privilege that I referred to. In discussing this, you will also educate some of us on the process of the House as a law-making body.

I would like to leave the question of amendment of the Constitution to my learned friend, the Hon Attorney-General. I would however say that our Constitution needs revisiting in some key areas and that, for a thorough job to be done, the Attorney-General should be

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given ample time to exhaustively consult with Hon Members before introducing any amendments which, if possible, should not be piece-meal. In the end, all of us who sincerely love this country should be able to say that we are proud of our Constitution.

Thank you very much.

(Applause)

(Mr. Michuki raised his hand)

The Chairman (Mr. ole Kaparo): Hon Michuki, I thought we agreed that it would be after all the panellists have spoken that we will have interventions. Let us hear from the last panellist now, the Hon Attorney-General.

Mr. Mucemi: On a point of order, Mr. Chairman, Sir. By the way things are going, the panellists here will be giving us lectures for-most of the time, and we will have no time to discuss those lectures. It is now about 11.50 a.m. and, bearing in mind that this session is ending at 12.30 p.m., we will have no time to discuss these ideas. So, I suggest that half of the time in the afternoon session be allocated to the panellists and the other half to discussions. Otherwise we will be sitting here just listening to the panellists.

The Chairman (Mr. ole Kaparo): I pointed out much earlier and I had requested the panellists to be brief in their presentation so that Hon Members may participate in discussions. So, let us hear from the last panellist, the Hon Attorney-General.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): On a point of order, Mr. Chairman, Sir. I think it is true that the panellists have been very exhaustive in their presentation, and I am sure that we all agree that we are in a process of learning. This is a very important learning session, and I would like to urge my colleagues Hon Members to try to listen and absorb whatever is being said so that when we eventually come to discussing the issues presented to us, we will have got all this information. If we rush the panellist, then they are going to leave a lot of gaps in their presentation.

The Chairman (Mr. ole Kaparo): Have we agreed on that?

Hon Members: Yes! Yes!

The Chairman (Mr. ole Kaparo): I think we called all these people here because we wanted to hear from them.

The Attorney-General (Mr. Wako): Mr. Chairman, it is a great pleasure for me to be able to make a few remarks on our Constitution. I am glad that I am the last one to speak today, because everything that there is to be said about the Constitution has been stated by an eminent professor of law and a former judge of the Court of Appeal. Who am I, a mere practitioner, to add to what they have said? I also take into account that fact that time is not on our side. Therefore, I will just make a few brief remarks. I would also like to say that I do not have a written speech. What I have here are just notes that I have been making as the two previous speakers were speaking.

The two contributors who have spoken before me have touched on the power map, which deals with the separation of powers. I do not have to go into the details of the separation of powers and our Constitution, except just to add that the idea of separation of powers is found even in the works of such ancient political philosophers as Aristotle. Many years later, the principle of separation of powers was found expressed in Bordin's *Republic*

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in 1576 and, more particularly, in John Lock's *Civil Government* in 1690. However, it was Montesquieu, a celebrated French jurist, who first elaborated what has come to be known as "the Doctrine of Separation of Powers". The basis of this doctrine is that in all that secure political liberty and to prevent abuse of power, the three kinds of powers should serve as checks on one other. In his work, *The Spirit of Law* in English, published in 1748, Montesquieu stated the doctrine as follows and I quote:

"When the legislature and the executive powers are united in the same person or body, there can be no freedom because apprehensions may arise lest the same monarch or senate should enact tyrannical laws to execute them in a tyrannical manner. There is no liberty if judicial power be not separated from the legislative and the executive. Were it joined with the legislature, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislature. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end to everything for the same man or the same body, whether of nobles or people, to exercise those three powers: that of enacting laws, that of executing public resolutions and that of cause les coup (?) individuals."

I want to emphasize that Montesquieu did not mean to suggest, as some of his more enthusiastic followers have thought, that this department ought to have no partial agency in or control over the acts of the other. His view was that, where the whole power of one department is exercised by the same hands which possess the whole power in another department, the fundamental principles of pre-constitution are subverted. The essence of Montesquieu's doctrine seems to be that unless there is a distribution of powers in state, there can be no freedom. Therefore, I associate myself with the numerous examples that have been given by my two learned colleagues, to the effect that although the separation of powers is, in itself, an essential principle, there have to be balances and cross-checks among the powers as such. Therefore, those aspects of our Constitution which we have quoted are not unique to Kenya; they apply to every other Constitution, be it of the United States of America, France, the United Kingdom or any other country.

The previous speakers have, of course, given examples of that situation, and we also have other examples within our Constitution relating to the powers of the President over Bills passed by Parliament, and the procedures of over-riding that veto are in place. In the United Kingdom, for example, the Lord Chancellor is more or less the Speaker of the House of Lords and also the Head of the Judiciary. At the same time, he is also a senior Cabinet Minister. So, you have in England one person who straddles, at least, all the three branches together.

The complete separation of powers has to be balanced by a few cross-checks and balances here and there. We talk of the National Assembly as being the body to enact laws, and so on, but we are all aware that even making laws, particularly subsidiary legislation, cannot be done by Parliament all the time. This is delegated to the Administration, and so on. We also know, for example, that the Judiciary has to decide cases, make decisions on conflicts or disputes, and so on. We all know that there are many quayside divisional functions which have been given to various administrative bodies and persons in public offices which effectively determine disputes between people, and so on. Although the guidelines should be separation of powers, checks and balances must also be there because we cannot have a complete separation of powers as we think. The degree of these checks and

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balances will vary from state to state. We can discuss whether we have enough checks and balances within the Constitution between the various arms of the Government: the Executive, the Judiciary and Parliament. That is one thing I want to emphasize in that particular matter.

The other issue, which Justice Chesoni and Prof. Okoth-Ogendo have not touched on very much is the place of Parliament in the Constitution. It is true, of course, as Prof. Okoth-Ogendo said, that section 1 of our Constitution may be superfluous in that the concept of statehood is an international law concept. Statehood will always be implied where there are people occupying a defined territory with an executive state, and that state must be sovereign. As to whether the concept of statehood is there or not, we are a sovereign state under international law in the United Nations system. However, we have also the concept of sovereignty. Where does the sovereignty actually lie in a given country? I think the preponderate point of view here is that sovereignty within a state must lie with the people. It is the people with the state who are sovereign, and the people exercise that sovereignty through what has been described as the "power mast". The power mast is the Executive, the Legislature and the Judiciary. They exercise that sovereignty through duly-elected representatives whom they themselves have chosen to make laws.

In that sense, the place of Parliament within our set-up is quite high. It is very central to the whole mechanism and power structure of our Constitution. That is why under our Constitution, it is Parliament which now controls the Executive because you cannot be the President, a Cabinet Minister or an Assistant Minister unless you are a Member of Parliament. Through Parliament, there is that control of the Executive. Parliament, by virtue of the fact that it makes laws, also affects the Judiciary, which is there to interpret laws as passed by Parliament. Justice Chesoni said earlier that where a lacuna and decision has to be made, the judges will say, "Yes, we are interpreting the law but, in effect we are making a new law." The court's function is to interpret the law in a way in which the intention of Parliament in passing that law is fulfilled. This, as it were, gives effect to the intention of Parliament.

Because Parliament occupies such a central place in our constitutional set-up, I would like to touch briefly on what Justice Chesoni said he would leave to me. This is the question of amendments of the Constitution. First of all, it is clear that the legislative power of the Republic Vests in Parliament, which consists of the President and the National Assembly. Section 46 of the Constitution states that the legislative power is exercised through Bills passed by the National Assembly. The power to enact legislation is vested in Parliament. But, more important now, and under section 47 of the Constitution, the power to amend the law, and in particular the Constitution, vests in Parliament and nowhere else.

In talking about the supremacy of Parliament, I would only wish to quote what an eminent constitutional jurist, by the name of Dicey, said:-

"parliamentary supremacy means an absence of any rival or competing law-making authority. But Parliament may not abdicate, delegate, or in any manner, alienate its legislative power nor may it set up an authority with any legislative power other than the power to make subordinate laws or otherwise other than the power specifically authorized by the Constitution".

This means that if there have to be any changes in the Constitution, of whatsoever nature, in particular, only Parliament can do it. It cannot be done outside Parliament or by national conventions outside Parliament at all. The only authority which can amend our Constitution in this land is Parliament. It is only you who can do this, and nobody else. You cannot

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yourselves try to change or amend the Constitution outside the House. You have to come to the House and make your proposals for the amendment of the Constitution. Of course, a constitutional amendment is always legitimate when there is an important enough cause which calls for a review.

There have been three distinct approaches to constitutional change. One of them is that in a revolutionary situation, you have a completely new Constitution passed, like what is happening in South Africa now. Here, there are discussions on a completely new Constitution which will be legitimized by the people. There is also the situation where there is a transfer of powers from a military regime to a civilian and democratic regime, where you have a completely new mechanism for putting into force a new Constitution altogether. The other way is to amend the Constitution in a piece-meal fashion for specific or spontaneous causes, examples of which have already been given by Justice Chesoni. I do not have to go into this. Such a pattern tends to be largely *ad-hoc* and may not give a clear impression of the general pattern of constitutional development. Since Independence, I think we have had more than 30 or 31 constitutional amendments, apart from the recent amendments which legitimized the multi-party system.

On the other hand, constitutional changes can be made part of a systematic scheme of law reform. Measures for reform would, in that case, have to be based on profound studies, practical experience and sober reflection leading to the review of the whole document, up-dating it and conforming to the current statutory trends. This is the position in which we are in Kenya today. His Excellency the President stated, in his State Opening of Parliament, that he hopes that this Seventh Parliament will have, during its lifetime, to consider proposals for constitution review. This must be done in the manner that I have suggested, based on profound studies, practical experience and sober reflection, because we cannot do things in a haphazard manner.

I do not wish at this stage to go into areas which may require constitutional reform because it is not for the Attorney-General really to state that. He can state his opinion, but it is up to each of you to state your views on that. Where a consensus emerges in the nation or in Parliament as a whole, then it would be possible to effect constitutional changes. Obviously, as you are aware, any constitutional change will require, at least, a two-thirds majority to be passed in Parliament. Therefore, it follows that in order to get that two-thirds majority, there has to be some form of consensus among all of us in Parliament. Without that consensus, there will be no constitutional change. It is, therefore, important for all of us to put our heads together when that exercise starts to see whether, as Kenyans, we can reach a consensus on some of the issues which pertain to the Constitution so that we may be able to pass them in Parliament in good spirit. I think all the independence of the Judiciary has now been covered.

As I said earlier, Mr. Chairman, Sir, mine were just off-the-cuff remarks because everything had been said by the previous two distinct contributors, and I support them totally in what they have said. Mine was just to emphasize one or two things in what they said.

Thank you very much.

(Applause)

The Chairman (Mr. ole Kaparo): I would like to thank the learned Attorney-General for his speech.

I think it is now time to open the discussions to the Floor. We will all realize, of course, that one of the most exciting subjects in any legal framework are issues involving the Constitution. The three panellists who have spoken have opened our eyes and ears to wide-ranging matters involving the Constitution. I now open the Floor for comments, interventions and any other matters.

Mr. Anyona: On a point of order, Mr. Chairman, Sir. We only have 15 minutes according to the programme before this morning's session is adjourned at 12.30 p.m. Will I be in order to suggest that we extend this session at least up to one o'clock? I think what we are discussing is more important than food.

Hon Members: No! No! No!

The Chairman (Mr. ole Kaparo): Order! Order! Order! Among the dictatorial powers of Mr. Speaker is to provide what is not provided and to exercise a discretion normally to enhance debate. I will exercise that discretion to enhance debate by extending the time to one o'clock.

Mr. Odinga: Mr. Chairman, Sir, I direct my question to learned Prof. Okoth-Ogendo. He talked of three arms of State. He talked of the Presidency, the Legislature and the Judiciary, and gave a competent explanation on the functions of all these arms. However, he did not specify where the Controller and Auditor-General's functions and protection are because his office also seems to be a department on its own, which can attack the Presidency and the Legislature regarding expenditure and other things, and also check the Judiciary. This is also a special department, and the Attorney-General should also behave like the Controller and Auditor-General.

(Laughter)

The Attorney-General, with his independence and prosecution powers must not be influenced either by the Presidency, the Legislature or even the Judiciary. He must be free to use his discretion to prosecute or not to prosecute. I would like to clearly know where these two institutions fall. Are they under these three arms of State?

(Applause)

The Chairman (Mr. ole. Kaparo): I give the floor to Prof. Okoth-Ogendo to respond to the question.

Prof. Okoth-Ogendo: Thank you, Mr. Chairman, Sir. The other category of institutions which I did not address is the position of the Controller and Auditor-General, the Attorney-General and the Chairman of the Electoral Commission. These offices, particularly those of the Attorney-General and the Controller and Auditor-General, are in the Public Service, but in order to ensure that they function effectively as mediating factors between the three branches of Government, particularly between Parliament and the Executive, they have a special constitutional position. They are protected and guaranteed by the Constitution to ensure that they operate without fear or favour and that they do not necessarily succumb to the pressures coming from the Government.

Although what the Controller and Auditor-General and the Attorney-General are doing

[Prof. Okoth-Ogendo]

is derived, by appointment, from the Presidency, the Constitution makes it clear that they can operate more or less autonomously in the interest of the Executive and the Legislature. That is the position, obviously, but you cannot define the position of the Controller and Auditor-General or the Attorney-General as a different branch of Government. You can, in a very loose sense, describe all of that as part of the executive arm of Government but with responsibilities to the Legislature.

Thank you.

The Attorney-General (Mr. Wako): Thank you very much, Mr. Chairman, Sir. I think I want to agree entirely with what Prof. Okoth-Ogendo has said and also outline some of my functions in relation to my office which enjoys security of tenure similar to that enjoyed by judges, that security of tenure is, of course, meant to enable me to function as the Attorney-General independently and without fear or favour. But let me add that Section 26(2) of the Constitution states that the Attorney-General shall be the legal principal legal adviser to the Government of Kenya. Therefore, one of my duties is to advise the Government of Kenya in all legal matters. So, my major function is to advise the Government of Kenya. Secondly, in criminal matters, whether to institute or discontinue criminal proceedings or require the Commissioner of Police to investigate any matter, I exercise my duties independently because the Constitution, again, states that, in exercising those functions, I shall not be subject to the direction or control of any person or authority. So, principally in civil matters, I am the principal adviser to the Government - I am more or less the Government's advocate - and in criminal matters I am an independent person and I exercise my authority independently. That is why I am given security of tenure in which, fortunately, Parliament has not prescribed the age of retirement for the Attorney-General, which means I will hold this position until I die. Also, as a consequence and strictly speaking, there can be no shadow Attorney-General. This is because the Attorney-General enjoys the security of tenure and irrespective of whichever party comes to power, the Attorney-General will continue first of all to be the Government's legal adviser and, secondly, to continue exercising independently the powers of prosecution. Maybe, at most, you can have a shadow Minister for Law, Justice or Constitutional Affairs. However, with due respect to this Constitution, which all of you must have, you cannot have a shadow Attorney-General.

Mr. Michuki: Mr. Chairman, Sir, I wish to seek clarification so that I can understand some of the areas which have been covered by presentations here. The learned Professor of Public Law did, at some stage in his address refer to the presidency in the National Assembly as not being the same as the presidency in the Cabinet. May be he could clarify that. Secondly, he did suggest, although he did not elaborate the reasons, that there is more threat to the Judiciary from Parliament than from the Executive. Perhaps, he could also elaborate on that.

In so far as Prof. Okoth-Ogendo and Justice Chesoni are concerned, they could perhaps clarify two things for me. One, Section 16 of the Constitution states clearly that the authority to govern is vested in the presidency, who has powers to appoint Ministers. There is also the concept of collective responsibility. Now, I am trying to find the central point in which the trust I would give to a government to govern is vested so that when I have a question I have somebody to address and not a body which is not defined. I see that the authority is very specific here. The whole issue arises from the presidency in the National Assembly and in the Cabinet. Section 16(1) of the Constitution states:-

[Mr. Michuki]

"There shall be such offices of Minister of the Government of Kenya as may be established by Parliament or, subject to any provisions, by the President."

I find this Section in conflict with Section 24 of the same Constitution and this should be clarified to me.

Hon Members: You are too long! That is too long!

The Chairman (Mr. Kaparo): Mr. Michuki, I think you are getting the message from the Floor. I think it is best that Hon Members make precise and brief interventions so that the others can have a chance. Would you like to be responded to now?

Mr. Michuki: Mr. Chairman, Sir, I am just finishing. I find conflict between Sections 16 and 24 of the Constitution because the former vests power of constitution of offices in Parliament while the latter again vests that power in the President.

Prof. Okoth-Ogendo: Mr. Chairman, Sir, we have systems like that of the United States where even members of the cabinet are not members of Parliament. We also have other systems like that of France where the President comes from a party other than which forms the government. If you take all of those systems together you will see that there are certain functions and powers which the President of the Republic Kenya has which are independent of his functions as Head of the Cabinet, and that is the point I want to make. Therefore, it would be simple to say that if you want to talk about the executive you have to explain the functions of the President.

The second point is on the question of Parliament and the judiciary. Looking at what has happened, even in this country, whenever we have complained about stifling our Judiciary, that has been done through Parliament. The Executive alone, in my view, cannot cow the Judiciary. It would have to do by way of parliamentary action. Therefore, if you have a vigilant Parliament, that kind of phase is not easy to overcome. The message I am giving to Members of Parliament is that ultimately it is the laws that they pass that determine the status of the other branches of Government.

Thirdly, Section 16(1) refers to the power to appoint Ministers and it says that Parliament can establish the positions of Ministers. But if Parliament does not do so, the President does it. What has happened is that the President has always beaten Parliament to it. Therefore, you cannot wait and then when the President has set up a Cabinet, you stand up and say that Parliament did not say you should have 24 Ministers. If you wanted, you should have passed legislation on it before the President made the appointments. So, once he has done so, you cannot overrule him unless you do it subsequently. Now, Section 24 talks about the Public Service. Since the executive authority of the state is vested in the President, and he can exercise it either directly or through other officers, he can establish offices through which to exercise that power. That means that in addition to the public offices provided for in the Constitution the President can create and abolish others, but he cannot abolish the ones that are already provided for in the Constitution. For example, he cannot abolish the position of the Controller and Auditor-General or of the Attorney-General. But if creates the position of provincial commissioner, he can abolish it.

Thank you, Sir.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Chairman, Sir, I just want to revisit once again the functions of the Attorney-General. I am, therefore, addressing my question to the Attorney-General and Prof. Okoth-

[The Vice-President and Minister for Planning and National Development]

Ogendo. I think from what you have just told us, the Attorney-General, according to our Constitution, is both the director of prosecutions and the chief Government counsel. I believe that in some other countries these two functions are held by two different people. I just wanted to ask, for the sake of enlightenment, if you could just explore for us the pros and cons in respect of having positions of Attorney-General and director of prosecutions held by one person and the case where these two positions are held by two different people, which, I believe, is the case obtaining in the United Kingdom and other places.

Prof. Okoth-Ogendo: Mr. Chairman, Sir, the typology that we have here is that the Attorney-General is a trinity. He is the chief Government legal adviser, the director of public prosecutions and a Cabinet Minister. As for advising the Government and being a Cabinet Minister, those are political functions. As for directing public prosecutions, that is a purely legal and quasi-legal function. It is only in respect of that function that the Attorney-General needs security of tenure. His position does not have to be guaranteed in the Constitution in order for him to advise the Government or to be a Cabinet Minister. That is why in many constitutions we have a Minister for Justice and Constitutional Affairs or a Minister for Law and Order, and so on, and then the Attorney-General. In these cases you have, below the Minister, both the Attorney-General and a Solicitor-General, and the Attorney-General is on the criminal side, while the Solicitor-General is on the civil side. That is not what we have here, and it may be something Parliament may want to think about.

Mr. Anyona: Mr. Chairman, Sir, I would like to direct my mind to the three issues relating to the presidency and separation of powers, *vis-a-vis* the question of fundamental human rights and liberties. The question of the presidency, as outlined by Prof. Okoth-Ogendo and Justice Chesoni, embraces three aspects: He is the Head of State, Commander-in-Chief of the Armed Forces and Head of the Government. But today we have a situation in our country where the President, in addition to holding these positions, is also the head of a political party. I would like to have some elucidation from Prof. Okoth-Ogendo as to whether those functions can be mutually exercised without prejudice one to the other. That is my first point.

Secondly, in a political context with regard to our country is Prof. Okoth-Ogendo satisfied as a theoretician, who is a Kenyan looking at the practical aspects of the operations of Government, that, in fact, balance does exist? Is it not true, in fact, that this balance is more theoretical than practical and that, in reality and depending on different circumstances, one branch of Government does seem to outweigh the other branches?

My third question is on fundamental rights and liberties. I would like Prof. Okoth-Ogendo, particularly, to throw more light as to the question of delegation. In fact, it is under Chapter Five of the Constitution where almost all the fundamental rights and liberties are delegated from. These powers also stem from International Charter of Human rights where they are not, in fact, delegated from. What is the reason for our delegation and does he view the manner in which we are operating those particular rights in our Constitution? I think it is very important for this nation that we, once and for all, settle the position of the rights of the citizens so that they are not influenced by our political differences and interests. Thank you, Mr. Chairman, Sir.

The Chairman (Mr. Ole Kaparo): Very well. It does appear like a lot of speakers are thrilled by the exposition by Prof. Okoth-Ogendo. I will give the Floor to him again.

Prof. Okoth-Ogendo: Mr. Chairman, let me take the easiest of the three questions, and that is the one on delegation of powers. I am not calling it the easiest because it is the least fundamental; it is the most fundamental. I picked up a newspaper this morning and noticed that the Hon Attorney-General has set up a task force to look at this very question. I would prefer not to discuss it in view of that position. But Hon Anyona might have read my views elsewhere because I have written on this particular matter. On the question of the functions of the President, he is the Commander-in-Chief of the Armed Forces, the Head of Government, the Head of state and the Head of a political party.

The process of coming to that model is the American system, except that President Clinton is not the Head of the Democratic Party since there presidential candidates and chairmen of political parties are separate people. But it is model that is not unknown. What I want to say is that our Constitution goes on to say that the President forms his Government from his particular political party. It does imply quite clearly that you have to be partisan to your own political party. But I think what is important in the exercise of power in Government is to be able to rise above the partisanship that is implied in being the head of a political party and look at the functions of that office as the functions of a head of state; that is really what the political process is all about: It is the ability to rise above your political party to embrace the important functions of the Government as the Head of State. So, I would say that the position of the Head of State does bestow upon the President the obligation to act and function as if he was running a no-party situation, and that is where we must move towards.

On the question of separation of powers, I think the Attorney-General has indicated quite clearly that separation of powers can never be absolute. You can never have a situation where the Executive operates completely independently of Parliament or the Judiciary. There must be what the Americans call "checks and balances", so that Parliament can check what the Executive does. The Executive can also, in some circumstances, check what Parliament does through the veto power and so on. Now, again in order for any system to operate, and let me emphasise this, you need what I have called earlier a particularly clear level of political hygiene. If the political process itself is not clean enough to understand the complexities that are involved in the doctrine of separation of powers and also in the management of power in the interests of the greater good of the State, then you are not going to get a functioning separation of powers. The Constitution may be as good as you have anywhere else, but the Constitution alone does not run the Government; what runs the Government are the people, and the political process which is clean enough to understand that conflicts must be resolved in a manner that is for the good of the country.

Thank you, Sir.

The Chairman (Mr. ole Kaparo): Just before I give the Floor to another interventionist, I would like to make a little announcement. Our sound system is very sensitive. So, when somebody is using a microphone, please do not put yours on because if you do that, the whole thing goes out. So, let us have one person using it at a time. Now, before I give the Floor to another participant, one of the panellists, the Hon Justice Chesoni, would like to intervene.

Mr. Justice Chesoni: Mr. Chairman, Sir, as for the issue of the President being the Head of a political party, the Head of State, and so on, I think we should look at the Constitution as a whole. In other words, we must look at all the provisions which relate to the election of the President and even that Members of Parliament. None of you, for

[Mr. Justice Chesoni]

example, could stand for an election unless you were supported by a political party. Consequently, what happens is that our Constitution requires expressly that each political party shall put up a presidential candidate. So, from the beginning, the President has to be proposed and supported by a political party. We have not resorted to having independent candidates. So, whether the President is a leader or just a member of a political party, by and large, he will have a working relationship with the party that supported him during nomination and election. So, it is really a matter for Hon Members to consider what they want. In doing so, you have also to look at other systems. Prof. Okoth-Ogendo has given the example of the Untied states, but you will find that in the United Kingdom they do not have a President as such but the Prime Minister is a member of a political party.

An. Hon Member: But the Queen is not a head of a political party!

Mr. Justice Chesoni: I agree with you, but I said whether you are a head or a member of a political party, you still will definitely have some working relationship with, or owe allegiance to, the political party that has supported you. So, we are asking ourselves whether the Constitution works and whether ours is the best system. As to the balancing of the of the groups or the institutions that are involved in the separation of powers, indeed, history shows that at times there has been a fight between the various state institutions, with one of them trying to gain supremacy over the others but, by and large, Parliament always wins these fights to a great extent because it uses legislation. Courts try to reverse what Parliament passes and also play down the Executive. All the same, we ought to ask ourselves whether our Constitution is workable in respect of separation of powers. But the Constitution is merely a skeleton, for most of the enabling laws have to come from you, Hon Members.

Mr. Kibaki: Thank you, Mr. Chairman, Sir. On listening to these comments one question comes to my mind. I think we must resolve this question, and that will deal with some of the problems which have been raised. We have to make up our minds whether now is not the right time - I believe it is the right time - to look at the question of separating the role of the Head of State from the Head of Government. He will then have a special role to play. He will be the symbol of the nation, a unifying force, and so on. In this way, the Head of Government will not only be more accessible to the public, but will also be more accessible to Parliament. In particular, I have in mind now his availability for questioning on actual Government actions which have been taken under his chairmanship, so that Parliament, in exercise of its powers as the representative of the people, is able to question a Prime Minister - or whatever title the Head of Government will be given, because the title does not matter - who would sit in Parliament, unlike the case now where he does not and one never feels that adequate replies have been given and that debate can go on. I know this issue has been alive ever since Independence. I also know that many of us, who participated in the preparation of the original Constitution, remember that in 1962/63 this was one of the central questions. I think this is the right time to revisit this issue and I have no doubt in my mind that separation of the two functions of the Head of State and the Head of Government would enhance the development of multi-partyism and greater freedom. I wonder if one of the panellists we have here could comment on this particular issue, Mr. Chairman, Sir.

The Chairman (Mr. ole Kaparo): Well, any volunteer from the panellists? I will call upon Prof. Okoth-Ogendo to deal with that because, after all, he was my teacher.

Prof. Okoth-Ogendo: Mr. Chairman, Sir, I share the sentiments expressed by Hon Kibaki. The version of the Kenyan Constitution, which is the Revised Edition, 1992, has

[Prof. Okoth-Ogendo]

been amended more times in 30 years than the American Constitution was amended in 200 years. That tells us that it is time for a systematic review of, not the Constitution only, but the entire constitutional framework within which we are operating. I believe that if that review was undertaken, some of the issues raised by Hon Kibaki would be some of the most central points. As far as I am concerned, I think it is time for us to go into that review.

The Attorney-General (Mr. Wako): Mr. Chairman, Sir, I think as far as the Government is concerned, and as I said earlier on, the President himself said that he hopes that during the currency of this Parliament, it will have a chance to review the entire Constitution in a more systematic manner. I cannot comment now on what Hon Mwai Kibaki has raised. I will just remind Hon Members - we are all politicians - that I do recall that in March, last year, Constitutional proposals providing for the president and the Prime Minister came up, and everybody appeared to be against those proposals then. In other words, this is a proposal that has been thought about and which I, on behalf of the Government, presented and published, but then they came under attack from all quarters and the Attorney-General was left on his own.

Prof. Anyang-Nyong'o: Mr. Chairman, Sir, while I do agree with the Attorney-General that the proposal was made, that proposal was criticised more for the manner in which it was drafted than for the spirit in which it was done. I think we wanted the Attorney-General to present us with a better proposal and that option is still open to him. The question I want to ask both the Attorney-General and Prof. Okoth-Ogendo is whether it is possible to set up a panel to review the Constitution, what is wrong with having a national convention from which a draft Constitution can be presented to Parliament? In my perception, a national convention would open the process of discussion to a wider array of people in the nation who are interested in the Constitution than just a panel of 14 or so people. Finally, I do not think Prof. Okoth-Ogendo answered Hon Michuki's question. Prof. Okoth-Ogendo stated very categorically that the greatest potential threat to judicial independence in Africa, in his view, remains not the Executive but Parliament. The word "threat" is very exact. In my own view, I would say that the Executive has already demonstrated, at least in Kenya, that it has substantial actual threat to judicial independence compared to the Legislature.

Thank you.

The Chairman (Mr. ole Kaparo): Prof. Okoth-Ogendo, would you like to respond?

Prof. Okoth-Ogendo: Mr. Chairman, Sir, first of all, when the history of a national convention was being discussed in this country throughout last year, to a lawyer like me, that was a very unconstitutional suggestion; it was a recipe for a coup because one was saying, "Leave the legal process of change and establish something called 'a national convention' to come up with a Constitution." What we are saying is that, technically there is nothing wrong with setting up a national convention which then drafts legislation that Parliament then passes. But we are not talking of a national convention that can constitute a Government. Therefore, in terms of technicalities, we are simply looking at what would be the best forum for discussing a new Constitution. That forum could be a task force or whatever group of people. But the responsibility of translating that document into a new Constitution has to follow the existing Constitution, otherwise you technically have what is called "a revolution". We can talk about Parliament and the executive and who threatens the Judiciary and who does not. But the point I am making is that at the end of the day the authority that deprives the judiciary of its independence in our system will be an Act of Parliament. Therefore, I am not

[Prof. Okoth-Ogendo]

particularly worried about where the initial threat comes from, but I am concerned that Parliament should not be the instrument of that threat. That is the point I am making.

The Chairman (Mr. ole Kaparo): I will now invite the Chairman of the Electoral Commission to make a comment on that particular issue.

Mr. Justice Chesoni: Hon Members, there is no threat to the Judiciary in Kenya whatsoever. The threat to the Judiciary in Kenya is the Judiciary itself because of its weakness. Members of the Judiciary are supposed to work independently and firmly, whether there is security of tenure of office or not; you are there to administer justice. You are there as a judge to administer justice or you do not sit there if you find that you cannot administer justice. No Head of State will interfere with the Judiciary if it is firm and makes it clear that any interference would mean that its members would not sit as judges. No Parliament will interfere with the judiciary if it is firm and makes it clear to Parliament that if it passes any law to strip the Judiciary of all the powers, there will be no more Judiciary. So, the weakness of the Judiciary in Africa today, the tendency to try and please people for unknown reasons, is the whole disease. What does this mean? It means that we must appoint to the Bench people with integrity who will not consider their appointment as a favour. They must be people who must see the appointment as an opportunity to serve the country and not individuals or institutions.

Mr. Shikuku: Thank you very much, Mr. Chairman, Sir. I just wanted to point out the practical part of this issue. For the last 30 years, we have had only one private Bill brought to Parliament and passed. This was in respect of the late Josiah Mwangi Kariuki. In other words, what I am trying to say is that it is the Executive which provides Parliament with business, and one part of the business of Parliament is passing Bills to become part of the law of the land. If there is any threat at all, it would not be from Parliament, but from the Executive, through the Attorney-General, who brings Bills to the House. So far, we have not had private Bills going through. But we hope that in future we will get courage and the necessary finances to enable Members of Parliament to bring in Bills in respect of anything they would like enacted. But so far, the threat rests squarely on the Executive, and I am speaking from a practical point of view. Once you are a president in Africa today, you tell the Attorney-General to bring in certain Bills and, using your political muscle, push the whole exercise. So, the threat is actually on the Executive.

The Chairman (Mr. ole Kaparo): Hon Members, as I had told you earlier, constitutional discussions are very exciting. I think we have had some exciting moments this morning, and I must, on your behalf, thank the panellists who have stimulated our thought in this discussion. I do hope, of course, that Hon Members will discuss further the issues raised and those not raised in this morning's discussion. It is, now time to break for lunch. We will resume our discussions at 2.30 p.m.

Mr. Kapten: On a point of order, Mr. Chairman, Sir. This being a very important topic, I would like to suggest that after lunch we be given one more hour---

The Chairman (Mr. ole Kaparo): I am sorry, Mr. Kapten. All topics that have been listed, and I invite you to look at the programme, are absolutely important and we must proceed.

(The Seminar adjourned at 1.00 p.m)

(The Seminar resumed at 2.30 p.m.)

THE PRESIDING OFFICER AS CUSTODIAN OF THE RIGHTS AND
PRIVILEGES OF MEMBERS AND OF HIS HOUSE

- Election and status of Presiding Officer
- The Presiding Officer in the Chair; the scope of his authority and his quasi-judicial function
- The Presiding Officer and his obligations to minorities, opposition groups and individual Members of Parliament
- Control of debate
- Matters *sub judice*
- The voting prerogatives of Presiding Officers and their involvement in debate
- Principals of use of a casting vote
- Control of the precincts of Parliament
- The Presiding Officer and his political party
- The Presiding Officer's relationship with executive authority, Central Government and his House

Panel:

- (i) Hon. Clive Griffiths, MLC, President of the Legislative Council, Perth, and Chairman of the CPA Executive Committee
- (ii) The Hon Mrs. Gwyneth Dunwoody, MP
- (iii) Mr. Arthur R. Donahoe, QC, CPA Secretary-General, United Kingdom
- (iv) Mr. Donald W. Limon, Clerk Assistant, House of Commons, United Kingdom

(The Session Chairman - Hon F.K. ole Kaparo)

The Chairman (Mr. ole Kaparo): Hon Members, you may take your seats so that we start our afternoon session. That will save time for Hon Members to intervene in this afternoon's deliberations.

Our next topic for deliberation is "*The Presiding Officer as Custodian of the Rights and Privileges of Members and his House*". Therefore, this afternoon we have quite a wide Bench of panellists. On my left, is the Chairman of the CPA, who is also the President of

[The Chairman]

Legislative Council, Perth, Australia, Mr. Clive Griffiths. Next to him is Mr. Arthur Donahoe, who is the Secretary General of the CPA and a one-time Speaker of the Nova Scotia House of Assembly in Canada. Next to Mr. Donahoe is the Hon. Mrs. Gwyneth Dunwoody, a Member of Parliament in the House of Commons, United Kingdom. Next to Hon. Mrs. Dunwoody is Mr. Masya, the Clerk of the National Assembly of Kenya, and next to him is the Clerk Assistant of the House of Commons, Mr. Donald Limon. On his right is the Clerk to the House of Barbados, Mr. George Brancker. The one who will join us just now is the Clerk of the House of Zambia, Mr. Chibesakunda.

By the way, by my chairing of this meeting does not in any way interfere with the right of Hon Members to fully express themselves.

An Hon Member: Then do not say "Order, Order".

The Chairman (Mr. ole Kaparo): Wherever there are Hon Members gathered together, there will always remain a certain measure of order.

So, we will begin the discussion and I will request Mr. Griffiths to lead us, followed by Mr. Donahoe and Hon Mrs. Dunwoody. At the end of the presentation by the panellists, the questions will be responded to by any of them.

Mr. Griffiths: Thank you very much, Mr. Chairman, Hon Members, ladies and gentlemen. Firstly, may I say how delighted I was to see the personal invitation from your Speaker to attend this seminar with other colleagues who have joined us on this top table. I am a great believer in the system of Parliament in democracy which we, in the Commonwealth, hold dear.

As the Chairman of the CPA, I believe that one of our functions is to participate in seminars like this with a view to having the opportunity of exchanging views about how the Parliaments that we happen to be members of operate.

Having looked at the agenda, and incidentally I must apologise because I did not get a copy of it before I left Australia and, therefore, you will not get a pre-prepared speech from me. The good news about that is that I will not be very long and, therefore, there will be more time for you, in this seminar, to participate. But looking at the agenda, there are 10 items under the title "*The Presiding Officer as Custodian of the Rights and Privileges of Members and of his House*".

I guess that the first thing is the election and status of the presiding officer. I have been a Presiding Officer for 17 years. In Australia, which is the place I know best, we have a system whereby the presiding officer has to face three elections. The first election he has to face is to get the endorsement of the political party he represents. He has to win that election first to become a candidate. He then has to contest the election. Of course, to get into Parliament, he has to win that election. That is the second election that the presiding officer in the Australian Parliament has to face. The third election is when he is elected as the Speaker by the Members of the House. In our Parliament the Presiding Officer is chosen as a result of an election by all Members of the House. So, the first requirement is that he gets the party endorsement, the second one is that he gets elected into the House and the third one is that he is given the job of the Speaker by more than 50 per cent of his colleagues. That is what happens in Australia.

Mr. Chairman, I think the status of the Presiding Officer is very important. In the Westminster style of Parliament people must recognise the status of Presiding Officer. The Presiding Officer is the senior Parliamentarian in any parliamentary system; more senior than

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any other Member of Parliament. Unless the Speaker is afforded that status, then his role becomes a very impeding one indeed. I have some notes that I prepared, not for this particular seminar but for another meeting, and perhaps I should just read them. I will be very quick in giving you some idea of the basic role of the presiding officer and, indeed, the staff of Parliament because, important as we all think we are as Members of Parliament, the fact of the matter is that the most important ingredient in any Parliament is the staff that is permanently employed to ensure that those elected Members of Parliament are catered for in regard not only to the physical needs but, indeed, in regard to the constitutional needs to carry out their functions in accordance with the constitution of the country and the Standing Orders of that particular Parliament.

We should not try to transfer the position of the Speaker at Westminster to every Commonwealth Parliament. Each Parliament will develop its own traditions. For example, some Speakers are not Members of Parliament. This is healthy and it ensures that there is room for flexibility within the system, particularly in embracing people of different cultures. That is one of the features of the Commonwealth, where we have 56 nations or thereabouts, with people from all corners of this universe. We come from different cultures and backgrounds, and, nevertheless, the system operates because we have this great flexibility.

What is important here is to understand that the Presiding Officer is charged with ensuring that rules are observed, not as an entity itself, but as the means by which all views are given expression, and proper and adequate time is given to the consideration of each question put to the House. That is one of the major functions of a Presiding Officer. He ensures that the minority voice is heard at all times and that sufficient time is given to ensure that each subject is fully discussed and, ultimately, that the Government can govern.

Any interference with the impartiality of the Presiding Officer strikes out the integrity of the parliamentary institution as the primary forum for deciding the destiny of the state. That is not putting it too hard. If the Presiding Officer can be intimidated, the rules will be applied to sweep his power, to the detriment of the political community. In some Parliaments today, political parties of all persuasions seem almost invariably to appraise the speaker if the Presiding Officer names a member of his own party for misconduct and debates against the motion for censure. It passes belief that Presiding Officers in this way should stand up and be considered to be wrong, and thus the power of the disciplinary authority is justified.

Members simply fail to act on the basis that there is an entity - Parliament - which is more important than party interests or loyalties. In disciplinary matters the Presiding Officers represent Parliament as a whole. Finding remedies for this situation is not an easy matter. However, it is absolutely fundamental to achieving the objectives of Parliament, that there must be the development of an ethos among Members that Parliament is superior to any party considerations and that respect for the office of the Presiding Officer is the starting point for respect for Parliament itself.

It has also been a disturbing feature in recent years that within the Executive and the community generally, there does not seem to be any genuine recognition or acceptance of the great historical traditions and continuing significance of the Presiding Officers as the right persons for Parliament and the symbolic custodians of its rights and privileges. Lack of this recognition for the correct procedures contributes to allowing abstinence of conduct and the consequent ailing of the Parliamentarians in the eyes of the community. It is important for the Presiding Officer to consider amending procedures, but it is in the attitude displayed by

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the Members, that the main potential for reform is to be felt. The adoption of the traditional and correct procedures in a modern Parliament places considerable responsibility on the persons occupying the place of Presiding Officers to act impartially without fear or favour, and always in accordance with the dignity and authority of the position.

Parliament is also entitled to have the professional and administrative support of staff of high calibre and integrity, and should decide for itself the level of staffing necessary to meet these themes. The staff must be free of partisan political pressure and able to perform its duties in an environment that reinforces the importance of parliamentary government.

I have given you those few words, and I will quickly run down on some of these other nine items. I think I have covered the topic "*The Presiding Officer and his Scope of Authority for his Quasi-Judicial Authority*". I am not quite sure what that means, but he has the judicial function of interpreting the Standing Orders and he might make rulings in accordance with the traditions and customs of his particular Parliament. The Presiding Officer has an obligation to ensure that every single Member has an opportunity to be heard. As I have often said to the people in my House, where I have presided over for 17 years, you do not have to like what Members say, nor do you have to believe what they say, but you have to listen to it. That is a very difficult job at times, but we live in societies where, when trying to put their point of view across, sometimes in the heat of the moment, Members may use a language that perhaps I normally would not use. But I have always been one of those Members who believe that if an Hon Member has to resort to assassinating somebody's character or passing unjustified comments on one of the Opposition Members in order to enhance his arguments when he really has no argument at all, I believe that the Speaker's or the Presiding Officer's task of controlling debate means to take those matters into account.

With regard to matters of *sub judice*, some Parliaments have a standing order or rule regarding them, but in the House that I preside over, we do not have such a *sub judice* rule, bearing in mind that I incidentally come from a bicameral system. The other House of our Parliament does have a *sub judice* rule. In my 30 years in Parliament, I have always believed that Parliament is supreme, and if a matter is of sufficient public interest and Parliament wants to discuss it, it has the authority to do so. If, in the meantime, somebody's feelings may be hurt, the interests of the state at large come before that of a single individual. However, that has to be applied with good judgment.

Regarding the voting prerogatives of Presiding Officers and their involvement in debate in my House, the Presiding Officer does not involve himself in debate unless there is a dead end. So, the principle is that he will be using a casting vote. I have been the Presiding Officer when my party has been in government and also when my party has been in the opposition, and I have been re-elected as Presiding Officer right through all those years, and I have steadfastly ruled in accordance with the principles of the Westminster system under which we were. I believe that it is the Presiding Officer's responsibility, when the vote is level, to vote to allow debate to proceed to the next stage. In other words, if it is a vote on the second reading and the vote is level, then the Presiding Officer ought to give his vote in favour of advancing the debate to the Committee Stage, giving the House another opportunity to resolve any differences, make any amendments and do those things which may bring a better change so that when the Third Reading stage comes, there is no longer a debate. If at the third reading stage there is a debate and, of course, there is not another stage for debate and the Presiding Officer must give a vote, then I adopt that the *status quo* should

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remain and that if the House itself cannot determine whether that piece of legislation is worth passing or not, it is up to the Presiding Officer to make up their minds for them.

Having said that, let me say that I have been in Parliament for 30 years and I have seen legislation introduced into Parliament and the Government of the day says, "It is absolutely imperative that we get this legislation passed. The world will come to end if we do not pass it", and that legislation is defeated, and three weeks later nobody can remember what it was the first time.

With regard to the control of the precincts of Parliament, in our system that is the responsibility which the Presiding Officer normally has. He has the control over all the precincts of Parliament; you place in your Presiding Officer the responsibility of controlling those precincts.

As for the Presiding Officer and his political party, that is always a problem. You give a decision, and it is against your colleagues directing your loyalty. If you give it in favour of them, I think you are a genius.

With regard to the topic "*The Presiding Officer's Relationship with Executive Authority, Central Government and his House*", I will leave some of those things to these other speakers. However, Hon Members, that is a very quick summary of some of my thoughts on the Presiding Officer. I could talk for a long time, but I realise that this seminar is for you and not for me. We can always ask questions and speak about these things when I have finished.

Thank you very much.

The Chairman (Mr. ole Kaparo): Thank you, Mr. Griffiths, Chairman of CPA Executive Committee. I think you have set our tempo for this afternoon. If any of the panellists has anything that has not been covered by Mr. Griffiths, he should take the Floor.

Mrs. Dunwoody: Mr. Chairman, Sir, and fellow Members - I address you as fellow Members although I notice that there are only one or two ladies here. I expect to come here and see 50 per cent of the participants being women next year.

(Laughter)

I do not know why you are smiling. The first time I ever came to Kenya, many years ago, as I came down the steps of the plane, the policeman who met me said to me, "Jambo mama" and I asked myself, "How does he know this?"

I want to tell you that I had the privilege of moving the present Speaker in the House of Commons for her position just over a year ago. That is the other thing I am trying to remind you of because Speakers can be masculine or feminine. She is doing a very remarkable job because she represents, in a democratic system, all that is really important. She comes from Parliament as an elected Member of Parliament and she has, like me, been there for a long time. She understands the essential task, which is to remain at all times impartial and that it is basically a very lonely job to be a good Speaker.

Our Parliament did not grow out of the ground overnight into a finished Parliament. It evolved over many hundreds of years from something which was not democratic. It was directly related to the fact that the people who were collecting taxes had a right to know how those taxes were spent. Our Parliament has evolved over many hundreds of years - because we had the luxury of talking - something which we are very proud of and which we fight

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very hard to keep. To have a Speaker elected is to say to one Member of Parliament, "You have the support of people on both sides." There is no an agreed pattern in this. The present Speaker was opposed. There was an election, and she was moved by a Member of the Conservative Party and me, from the Labour Party, and she was opposed by a Conservative Member, who was moved by somebody on the other side of the Chamber.

However, when she took that office, she then understood that, because she had the support of the House and the interests of democracy and of Parliament at heart, it was imperative that she remembered that the minorities must be protected as strongly as the majorities, and that in every instance, there must be an understanding of the needs of constituency Members of Parliament and that particular subject be debated in a particular way. It is always very easy for the Government, which has a large majority and a very efficient machine, to push through its legislation, which is an interesting situation in the British Government, where, in fact, only last week, the Speaker was called upon to use her casting vote, something that I must say she was not particularly looking forward to, but which she did very honestly in accordance with precedents. Very important people - I should not tell you this, but I am going to tell you because I am an elected Member just as any other - in any Parliament have tasks. You understand that you might want to do without the elected Members, but you can never do without tasks. I am a Member of Madam Speaker's Panel, which consists of a number of Members, and we are equally divided on both sides of the House. We take the Chair for various major Bills, and take the House through legislation. One of the first tricks I learnt, which filled me with great delight and confidence, was the fact that in the Schedule of every Bill, when interpreting difficult points of procedure, you have a Clerk who has two absolutely fantastic virtues. One is that he can talk out of the side of his mouth without appearing to say anything at all.

(Laughter)

Therefore, when you are in great trouble, he can interpret for you what you ought to be saying in terms of procedure, and not in terms of anything else.

Secondly, I learnt that no matter what they think, Clerks always keep an absolutely straight face. This is, in fact, a demonstration of another very important thing about Parliament. The Clerks are employees of Parliament, and they are jealous of that role. In our Parliament, they want it to be known that although they have, of course, come in through the Civil Service machinery, they are nevertheless the servants and supporters of Parliament. They have to maintain a democratic system and make sure that it is even-handedly administered and that all Member of Parliament have access to impartial and very sensible advice. To me, that seems to be something to be cherished and defended at all times.

The office of the Presiding Officer in his political party is not really difficulty. Once you become a Deputy Speaker - we have two Deputy Speakers and our Panel - it is very clear that you must, in effect, be totally fair with everybody. That will mean, almost inevitably, that pressure will be put on you by the Government and your own party to know them both equally and that you are actually doing the job very well, indeed. I think our present Speaker accomplishes that with care and ability. Our Parliament is, unfortunately, still highly representative in that it has four Black Members, three Asians and the largest people unrepresented are the women. I challenge African Parliaments to know where the power lies

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in Africa. It with the men. So, what I want to tell you this afternoon is to try to show a system of democracy. The open debate of typical political and economic decisions is what makes your state work and your political system stable, and ensures the development of all the peoples of this Commonwealth country. We are proud to say that we are one of your Commonwealth sisters.

(Applause)

The Chairman (Mr. ole Kaparo): We will now hear from the Secretary-General of the CPA, who is a former Speaker himself.

Mr. Donahoe: Thank you, Mr. Chairman, Sir, fellow panellists and Members of the Parliament of Kenya. At the outset, I want to say that the CPA is pleased to be a part of this seminar and to have helped to make it possible. We have held many such seminars over the years. Personally, I have participated in similar seminars in Grenada, the Bahamas and Ghana. So, I was pleased to have the opportunity to work with Mr. Masya in planning the agenda for the next three days.

Some of what I am going to talk about is perhaps more relevant to this morning's discussion, and I want to begin by saying that my fellow panellists and I are here not to tell you how to run your Parliament, as that is for you to decide. We would rather hear it explained how things are done in other Parliaments and then leave it to you to decide which precedents and jurisdiction best suit your circumstances here in Kenya.

Some of you are newly-elected Members of Parliament. I have often told the story - and it has been told by others many times - of the newly-elected Member who first took his seat in the House as business was getting underway, gazing across very intently at the Members on the other side. An old Member who had been in Parliament came in and sat beside him. He watched him for a few minutes and finally asked him, "What are you doing?" The young Member said, "I am studying my enemies."

(Laughter)

The old Member said, "Well, you are looking in the wrong direction. You should be looking at the other side. Those people over there are your opponents. Your enemies are the ones seated beside you."

As I said, I want to begin by talking a little bit about something that was discussed this morning. I want to talk about democracy in the light of the collapse of communist regimes in East and Central Europe, and the former Soviet Union in particular. This development, as we all know, has led to the transition in many countries from military and one-party governments to democratically-elected multi-party governments.

One of the greatest Parliamentarians of all times, the late Winston Churchill, once said, and I quote:

"Democracy is the worst system of government except for every other which has been tried."

There are many variations of democracy, but certain features are common to us, among them are, firstly, the fact that many parties contest regular free and fair elections conducted by secret ballot on the basis of universal adult suffrage. Secondly, there is separation of powers,

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an independent Judiciary and a free Press. There is respect for the rule of law, and human rights so that the rights of minorities are protected. An independent, efficient and accountable Civil Service exercises prudent management of public resources. In democracy, the private sector is free from excessive Government intervention.

It is interesting to note that in 1990, out of 53 African countries, only six had multi-party systems. In 1991, another six African countries either introduced or reverted to pluralist systems. Since then, another 20 African countries, all in the Commonwealth - including your own country - have achieved multi-party systems, and the trend continues. We are all watching developments in Nigeria very carefully. We hope that this trend will continue.

There are some features common to good governments that I think should be borne in mind in all these countries as transition is made. A good government has three basic universal principles. There is the principle of competence, in which an efficient, well-paid public service must carry out sound economic policies, including the operation of a stable currency and creating a legal and regulatory environment to enable the operation of multiple forces. It must rid itself of corruption and make sure that resources are allocated prudently according to sensible priorities. This involves restricting military expenditure to what is necessary and affordable and giving priority to basic primary education and health care.

The second principle is that of accountability, which requires transparency, political pluralism with regular free and fair elections, respect for the rule of law and free expression, including a free Press. A good government respects the people because it is accountable and ensures that they are able to participate fully in the decisions that are taken on their behalf.

The third great principle is that of respect for the individual, human rights and an independent and efficient Judiciary to give redress to all individuals, including the poor and the rich.

I enjoyed the discussion this morning of the Kenyan Constitution. It is for you to decide, in the light of what you heard this morning and your own views, whether the Constitution of Kenya fulfils these requirements and decide what role you play in helping to ensure that the Constitution you uphold, as Members of Parliament, is the right and proper one for your people.

Finally, Mr. Chairman, Sir, I am going to come to the point of our discussion this afternoon and speak briefly about the evolution of the Speakership in the country that I know best, which is Canada. As you mentioned, I served for 10 years as Speaker in the small province of Nova Scotia. Canada has 10 provinces and two territories, as well as a federal Government, and all of these have their own Parliaments or legislators. The only bicameral Parliament in Canada is the Federal Parliament, made up of the Senate and the House of Commons. All the provincial Parliaments are unicameral and are presided over by Speakers.

In the Federal Parliament and the Federal House of Commons, the precedent followed is to elect the Speaker along the principles that are followed at Westminster. Until a few years ago, the Speaker was the nominee of the Prime Minister and was put forward usually by the Government party and voted on. Sometimes, there would be a contest, but often there was no contest. About eight years ago, for the first time, the House elected its own Speaker from among its Members, and this was a Member who was not the nominee of the Prime Minister, and this has given the Speakership much more authority in the Canadian House of Commons. This principle is also followed in three of the 10 provincial Parliaments. In other jurisdictions, the Speaker continues to be the nominee of the Premier or the Leader of the

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Government.

During my years as Speaker, I presided over a House of 52 Members and the garb I wore was that of a Barrister of the Supreme Court, but I also sat in the Chair wearing a top hat. Many Speakers, of course, wear wigs, but in Nova Scotia, the tradition is that the Speaker wears a top hat. The Speaker remains a Member of his political party, but does not attend party caucuses during the time Parliament is sitting. Otherwise, he continues to be a Member serving his or her constituents in the same way as any other Member does in responding to their needs because, come election time, the Speaker has to put his or her name in the ballot and seek re-election. So, the Speaker does not have the luxury of being able to ignore the requests of his constituents.

Often, Members in the House will disagree with the Speaker's ruling. It used to be in Nova Scotia that if Members disagreed with Speaker's ruling, they could appeal to the House immediately. If two Members stood up and asked for it, the Speaker's ruling had to be voted upon by all the Members in the House. Of course, this meant that we had a situation where the Government would usually vote the same as the Speaker, and all that would happen was that valuable parliamentary time would be used in holding these appeals. Some years ago, we abolished that, and now if a Member wants to disagree with Mr. Speaker, he has to put a substantive Motion in the Order Paper and then try to make arrangements to have debating time set aside to put the case in favour of the Motion.

There was an incident in the Canadian Parliament a few years ago where a very effective delaying tactic was used by the Opposition. There was a debate going on, on a very divisive piece of legislation, and at a certain point, one of the Members of the Opposition moved the adjournment of the debate. The Speaker began to put the Motion, whereupon the Whip of the Opposition party left the House. The practice up to that point was that the Speaker would not call the vote until the Whips of the Government party and the official Opposition both signified that their Members were present and ready to go ahead with the vote. What happened was that the Opposition Whip just stayed out of the House and bells rang for some 41 days before the vote was actually taken. Meanwhile, behind the scenes, there were all sorts of negotiations going on and, finally, the Government was forced to agree to certain amendments to the Bill, and the Bill that was eventually passed by Parliament was quite different from the one that had originally been introduced. I must say that most jurisdictions in Canada and Nova Scotia now have a rule that says that voting will take place after a specified time has gone by so that an incident like that is unlikely to happen. It will not happen again in the Canadian system.

Mr. Griffiths and Mrs. Dunwoody have spoken about the Speaker's casting vote and the principles that guide the Speaker in determining how the vote should be cast. So, I will not go into that. However, I want to make the point that while the Speaker can regulate debate, he needs the co-operation of Members in doing so. If the Speaker is fair to all Members, as he must be, then Members should co-operate with the Speaker by affording him the courtesy of not obstructing the business of the House.

Many Parliament now are covered by television, but I presided over a House which, for many years, was not covered by television. Then we had a very interesting constitutional case to determine whether networks were allowed to bring their cameras to cover the House. In the meanwhile, we put a system of our own in place. So, the Nova Scotia legislature, in common with most Canadian provinces, is now covered by television.

[Mr. Donahoe]

As I mentioned, the Speaker has many administrative duties. He is responsible for the operation of the HANSARD office and the Clerks' office. I can only underline what Mrs. Dunwoody said about the importance of Clerks. They are vital for the effective operation of Parliament.

There have been a number of women Speakers in Canada, including Madam Solbey, who had the distinction of being both the Speaker of the House and the first woman Governor-General of Canada. Women are taking a more and more active place in Parliament and the Legislature across Canada. In fact, in the small province of Prince Edward Island, the Premier, the Leader of the Opposition and the Speaker are all women.

I am going to conclude by saying that one of my former colleagues in the Nova Scotia Legislature once made a speech in the House, in which he said that the Legislature is an unusual place. A Member stands up and speaks, nobody appears to be listening to him, but as soon as he sits down, everybody else stands up and they want to say where they disagree with what he said.

(Applause)

With that, Mr. Chairman, Sir, I will be pleased to respond to any question that may be directed my way. I want to conclude by saying again what a great pleasure it is for the CPA to be part of this seminar, my being with you for the next two or three days and taking part in the deliberations that are going on.

Thank you very much.

(Applause)

The Chairman (Mr. Ole Kaparo): I wonder whether any of the panellists would like to make any intervention here.

Mr. Limon: Mr. Chairman, Sir, Hon Members, ladies and gentlemen, I am a human being and I have always looked at Speakers as human beings. I have been serving in the House of Commons for 37 years, for five of them as the Speaker. I recommend that you do not change the Speaker too often. What do I think are the best human qualities in a Speaker? In order of importance, the first one has been mentioned by everybody here, because it is the most important one. Is the Speaker genuinely impartial? You cannot do the job satisfactorily unless you are. The second one, I would say, is whether he is firm enough without being too stern and domineering? There should be a good balance between those two things.

The next thing is whether he knows his institution well enough to appreciate what makes Hon Members tick. It is difficult to believe that somebody coming from outside can do that easily. I am somebody who would support having a Speaker from within the Membership of the House. He certainly must understand what is going on in the Members' minds; otherwise, he is not a proper part of the institution.

The fourth one, which I think is, in many ways, perhaps the most important is whether the Speaker has a sense of humour. Let me say one thing here. Does he know the rules? He just has to know the rules. We tell the Speaker the morning before which ones he can operate that day, and he operates them. It does not matter whether he has forgotten them the next day. We will tell him again the next time.

[Mr. Limon]

There are all sorts of things about the Speakership on which books have been written. Should he be elected through open or secret ballot? Should he have his own parliamentary constituency or not? Should he have the casting vote, which has already been very effectively dealt with? All these things are important, but I want to mention one thing about nearly all Speakers which I think is very important. In your rules, it says that the Speaker is in control of the parliamentary precincts.

Because Speakers are normally in charge of their staff, they are the chief administrators of Parliament, and this is a job which they have to take quite seriously, often just behind the scenes, but the most important ingredient in that is, in my view, that Parliament gets control out of the Speaker of its own budgets. Parliament should not cry out to the Government about how much it can spend on itself. Otherwise, nearly all governments are very mean with Parliament when they are given a chance to be.

(Applause)

The Speaker should be the head of some body or other which determines how much money Parliament is going to spend on itself. I am not saying that Parliament should be extravagant, but it should get the things it needs, such as proper accommodation for Hon Members and the staff. One of the most liveliest issues in Britain at the moment is spending money on getting a decent computer system in the House. We do not have one in the House at the moment, and we are very much lagging behind Canada and other countries in this respect. That is the sort of thing in which you cannot purport to be wasting money. Parliament should spend money on what is needed by the institution, and not what the Government tells it. It is the Speaker's job to look after parliamentary expenditure; give him support, listen to the Government and then go away and make your own decisions. That is a very important thing. Thank you very much.

The Chairman (Mr. ole Kaparo): I do not know whether any of the panellists would like to chip in. Well, I suppose it is time now to deliver the topic to the Floor. Members are free, at this stage, to ask questions.

Mr. Nyagah: Thank you very much, Mr. Chairman, Sir. Whereas we are quite satisfied with what all the speakers have said, my question relates to the relationship between presiding officers and the Executive authority, the Central Government and the House. There has not been any comment on this one. Is there any particular reason for this? Would any of the panellists please make a comment about this?

Mr. Brancker: Mr. Chairman, Sir, before I respond, I would like the Hon Member to ask his question on a specific area.

The Chairman (Mr. ole Kaparo): Yes, Mr. Nyagah.

Mr. Nyagah: Listening to the various speakers who have been speaking, Mr. Chairman, Sir, they have told us about the models of their Parliaments. Here we do also have a Parliament, where we have the Executive. We want to hear how you operate in your own countries and how you expect other Commonwealth countries to operate.

Mr. Brancker: Mr. Chairman, Sir, the general pattern would be that the Speaker in the Chair has a very narrow area of communication with the general Executive as such. His main trading partner is going to be the Leader of the House on one side, the Leader of the Opposition on the other side and the leader of other minority parties. In his dealings with

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those particular persons he is not pursuing any particular course. He is maintaining his course of activities in every respect. One of the things about the Speaker's impartiality is that it is different from that of a judge. A judge can deliver quite a celebrated judgement on a particular construction of the facts which may turn out to be totally wrong. That great fortune is not given to a Speaker. The way a Speaker treats the facts is seen immediately and the interpretation of the House on his action is spontaneous and permanent. He has no recourse from that. The challenge by a Substantive Motion, perhaps, might put things right in the way the Members of the House might sometimes like to do. But he is immediately in a position where he has to make this response. Again, a judge in a court of law has the right to ask counsel before him, on both sides, to assist him not only with the application and interpretation of the law but to know exactly what it is. He needs to do nothing. The Presiding Officer will have the assistance of the Clerks, yes, but in the end he has to give his decision; not usually with excessive deliberation but almost spontaneously in many instances, and total spontaneity and quick reaction in most of the cases. If it is to be thought that the Speaker is to have a general relationship with the Executive or the Central Government, the answer is probably "no." But where the Speaker would be looking to have contact in that area, I would suggest, would relate to the things that my colleague, Mr. Limon, has indicated just now, that he would want to know, for example, he has resources at hand to provide proper accommodation and resources to his Members. He would need to know that he has the appropriate level, quality and grading of staffing and he would need to know that his Parliament is equipped in the right sort of way to suit the requirements of progress and the system that the Members themselves will wish to operate. To that extent, he is in a position whereby he has control and direction over the parliamentary vote. He will no doubt wish to have communication with the Executive on a very regular basis. But after that, his direct concern is exclusively with the rights, duties and responsibilities that he has within the House.

Thank you, Mr. Chairman.

The Chairman (Mr. ole Kaparo): Hon Members, Mr. Griffiths would like to make an observation.

Mr. Griffiths: Thank you, Mr. Chairman, Sir. Just to make a few comments in regard to the question, as Mr. Donahoe has already indicated, that in his Parliament, the Speaker does not go into party meetings, we in Australia divorce ourselves--- We as Members of the Opposition divorce ourselves from participating in party meetings that are dealing with business that might come into the House. But the Presiding Officers' dealings with the Central Government or the Executive authority relate to any dealings with those authorities that relate to the operations of Parliament. For example, the Presiding Officer is the equivalent of a Minister in another department. The Presiding Officer is responsible for the parliamentary budget which should be submitted to the Government. Just before I left Perth, our budget was being submitted to the Government and, in particular, I sent back word to my Clerk that something like \$100,000 was being cut off the budget for the Legislative Council. Just before I left Perth, I wrote to the Premier and said that the matter is non-negotiable because the \$100,000 is required by Parliament. I said that correspondence will be entered into and that is a deal. So, Presiding Officers dealing with the Executive Governments act on behalf of Parliament in any matter that requires the Speaker to negotiate with the Prime Minister or President. That is what happens in Australia.

Thank you.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Thank you very much, Mr. Chairman, Sir. First of all I want to thank the panellists who have shared their experiences with us. There is one issue which is lingering in my mind; the fact that the proper conduct of Members in the Chamber is undeniably the most important factor for the smooth deliberations on issues before Parliament. I am sure that Hon Griffiths and the Secretary-General of the CPA have been in their position for a number of years. I am sure also that there have been occasions when there have been cases of disorderly behaviour by an Hon Member or sometimes many of them and I really just want to know how they have been able to handle this. I think this is very important to us.

The Chairman (Mr. ole Kaparo): I think that is a very good question, and maybe Mr. Griffiths would like to respond to it?

Mr. Griffiths: Mr. Chairman, Sir, in response to that question, I have not yet had time to study your Standing Orders but I have looked briefly through them and these are the sort of Standing Orders that are equal to the sets of Standing Orders operating in any of the 122 Parliaments in the Commonwealth. So, firstly, you have a set of Standing Orders and it is the obligation of every Member to conform with those Standing Orders. If a Member contravenes them and steps out of line the Speaker's attention has to be drawn to him.

I mentioned earlier that I have been the Presiding Officer for 17 years. I was endeavouring to finish my parliamentary career - which will be in four years' time - having never ever named a Member in all that time but, unfortunately, about three weeks ago, one of my Members, who is not one of my friends and who did not want to retire with an unblemished record, behaved in a manner that was unacceptable and quite sadly, I had to name him and he was removed from the Chamber. The Presiding Officer has a very fine line to follow. It is incumbent upon the Members firstly to read their set of Standing Orders. Members must understand that each institution that they have been elected to is a very special institution with very special privileges. But in order to enjoy those privileges it requires a great responsibility on each and every Member to ensure that the point that I made when I was speaking earlier, that everybody is entitled to be heard. You do not have to like what they are saying or even believe it, but everybody is entitled to be heard. If any Member misbehaves while another Member is speaking not only is it rude but shows a complete lack of appreciation for those special positions which they hold themselves as the elected representatives of the people.

The Speaker can only draw your attention to it. It is in the hands of the House to ensure the Speaker's demands are conformed with. I have read this hand-book and I think it is fantastic in that it points out many of the privileges, practices and procedures--- I am saying this because in our Parliament we do not have one like this. This is an idea that I am taking back to my Parliament from your Parliament. All these things are tools that suggest to Members that, ultimately, the responsibility for correct behaviour is theirs. If you behave in an unruly way, then all you are doing is degenerating the institution which you yourself have seen fit to stand as an elected Member of. I am just saying that, that is quite sad if it happens but the Speaker, of course, has the unenviable job of throwing you out.

The Chairman (Mr. ole Kaparo): I think the Secretary-General of the CPA said that he would like to put in a word or two.

Mr. Donahoe: Mr. Chairman, Sir, I think I was luckier than Mr. Griffiths in that I got 15 years without having to name a Member. The rules in the Parliament of Nova Scotia are similar to Rules 82 to 93 in your Standing Orders, which give the Speaker plenty of

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authority to regulate the proceedings of the House, to deal with disorder and to name a Member. One time I came very, very close to having to name a Member; it was the former Leader of the Opposition. He was an Opposition Front-bencher and he knew or should have known the rules very well. I think one day he accused a Government Minister of lying and I think all of you know that there is certain language that is *per se* unparliamentary. Calling another Member a liar is probably the most unparliamentary kind of language you can use. Indeed in some places it is about the only kind of language that is considered to be unparliamentary. Anyway, this Member used that kind of language and I immediately called for order and the House was in a big turmoil with Members saying "Make him withdraw, make him withdraw!". The Hon Member was still on his feet and I said "Will the Hon Member please withdraw those remarks" and he looked and shook his head and he said "No, Mr. Speaker." So, I took a deep breath and said, "The Hon Member is an elected Member and he has been here for a long time and he knows very well that he is transgressing the rules and I am asking him again whether he would withdraw those remarks." He then looked at me again and said, "No, I am not going to withdraw!" And I said, "I have got no option; if the Hon Member will not withdraw the remarks, he knows very well the sanctions that will be imposed on him. This is the final time I am asking the Hon Member to withdraw." He looked at me and I can tell you he was really upset. He was seemingly being mad and, finally, he took a deep breath and said, "Very well, Mr. Speaker, I withdraw the remarks." That of course ended the matter and the House went on about its business. What Mr. Griffiths said is absolutely correct. We have to remember that Parliament is not a governing body but a deliberative Chamber; it is a debating Chamber. Anything that disrupts the orderly process of business has to be dealt with and Mr. Speaker is the person who has to deal with it. He has to do it and be seen to be doing it in a fair and impartial way. Thank you.

Mr. Anyona: Mr. Chairman, Sir, I want to raise two points. The first point is in relation to the role of the Standing Orders. I think, quite frankly, that the whole business of Parliament must hinge on the quality of the Standing Orders of the House. We, in the Seventh Parliament here in Kenya, are operating under Standing Orders that were operated by the same Parliament under a one-party system. I was, once upon a time, also a Member of the other type of Parliament. Does it, in fact, make any difference whether the Standing Orders of a one-party Parliament or those of a multi-party Parliament, like we have now, determine the quality of debate and output of the House?

The second point is to do with the Speaker. We have a situation in this country which is slightly different from what I have heard. In the United Kingdom, I know, the Speaker contests elections and once he or she is elected Speaker relinquishes the seat. But I understood the Hon Gracious Lady to be saying that the Speaker, in fact, does still serve his or her constituency. What are the merits and demerits of having a Speaker who is a Member of Parliament as opposed to a Speaker who becomes an *ex-officio* Member once he or she is elected Speaker?

Mrs. Dunwoody: Mr. Chairman, Sir, the merit of having a Speaker dealing with a constituency is that first of all he or she understands the pressures that are being put on serving Members for they have constant contact with their constituencies because they go back in the normal way; he or she has chambers where people come and talk to him or her about their problems. So, he or she has constant contact with what concerns the electorate. But, above all, I have to say that the advantage is with the constituency because there is no

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Minister in any government of any colour anywhere who has got any sense to upset one of his or her constituents.

Mr. Donahoe: Mr. Chairman, Sir, let me deal with the Hon Member's first question; whether it makes any difference whether you have rules applying in a one-party system or in a multi-party system. I think the answer, in theory, is no. Parliament can conduct itself very well under the same set of rules; whether it is a one-party system or a multi-party system. What is important is the way in which the Speaker has to treat the Members. This is because the Speaker has to take party affiliations into account in determining such things as the order of debate. In my own legislature we have a set arrangement for recognizing Members during Question Period and we had three parties in the House when I was Speaker. One of the parties was very small and the official Opposition was a very large party. So, of course the third party did not get nearly as many opportunities to participate in the Question Period as the Official Opposition did. The Speaker has to be careful to balance those things and make sure that in carrying out his responsibilities he takes those party numbers into account. But in theory, whether you are dealing with a one-party system or a multi-party system, the same set of rules can apply and govern the proceedings in the House.

The Chairman (Mr. ole Kaparo): Thank you. Before I call another Member to contribute, I just like to say that the set of Standing Orders which we have are basically, maybe, 80 per cent or 90 per cent of what we got initially in a multi-party situation. Maybe what was changed last time was the definition of the Official Opposition and also the sitting arrangement in the Chamber when we had a one-party Parliament.

Mr. Mwaura: Thank you very much, Mr. Chairman, Sir. I want to direct two questions to the Hon Gracious Lady there. We know that the Westminster model is the oldest democracy. Could you tell us how you have evolved your parliamentary democracy? Has there been any cases in your history where the Speaker lost the control of the House and if he did, how did he handle the situation? That is the first question. The second question is as follows: You have mentioned about the Members visiting their constituents during weekends. Do you see them for a day or two days? Do you have constituency offices?

Mrs. Dunwoody: We are supposed to be talking about that later and I should get in terrible trouble with the Speaker if I take too long. But the answer is that most Members of Parliament now will maintain an office in their constituency; most of them will go back to their constituencies over the weekends. In my case, like everybody else, I advertise where I will be. I go round all the little villages once a month. I have a surgery in two towns, a market town and a big town, and I visit them twice a month. It is all done on a Saturday and it is done on an alternative basis so that anybody who wants to find me can come and tell me what they think of me in no uncertain terms and which they do with frequency. So, there is no problem as far as I am concerned.

Mr. Chairman, as to the Speaker losing control of the House here have been some very violent incidents in the House of Commons but of course the Speaker has, always, the powers to suspend the Chamber, which has often been done since 1966. They do suspend the sittings. You are the boss and if Members are determined to disrupt the proceedings you simply say "thank you very much, I am taking my bag and going home" but you say in a more parliamentary language.

Mr. Griffiths: Just to add to that answer, in Australia each Member has an elected office with office staff. So, that staff deal with the constituents when Parliament is sitting and

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the constituents' problems are looked after there. I go to my elected office some two or three days a week, in the mornings, and frequently I go on Saturdays. As far as the other question of the Speaker losing control of the House, I do not look at it from the point of view of the Speaker losing control because I think the Members lose control of themselves and what the Speaker does is to simply say "I will leave the Chair until the ringing of the Bell" and he leaves the Chair. The Leader of Government Business and the Leader of the Opposition have the responsibility of bringing Members back to control because the House cannot resume until the Speaker goes back. So, my answer is actually the same as the previous answer.

Mr. Donahoe: Mr. Chairman, I had to adjourn the House once things got out of control. But it was not the Members' fault. We in Nova Scotia rely to a great extent on the fishing industry and there was a real problem in the fishing industry. It was actually the responsibility of the Central Government. The fishermen were very upset and they sent a large delegation to the legislature which was sitting at the time. They came into the galleries and the next thing we learnt was that they were creating a big turmoil up in the galleries and despite pleas from me to them to keep quiet they refused to do that and they became so disruptive that I had to leave the Chair. It was not the fault of the Members that I left the Chair; I just said, "the House is adjourned" and I left the Chair. After 10 minutes the officials of the House removed the unruly fishermen out of the galleries, the bells rang for a few minutes and the House resumed and carried on with business.

Dr. Ombaka: Thank you very much, Mr. Chairman. I have two very short questions. Is there a tradition or a custom or a practice that the Speaker is nominated from the minority party of the Opposition in the Commons or in any other Commonwealth countries? My second question is slightly different from Hon Anyona's. What are the demerits or merits of having the Presiding Officer elected from Members of Parliament as opposed to a non-member of Parliament? I have a request to Mr. Donahoe. I saw you read from some paper. Is it possible to circulate that to Members.

Mrs. Dunwoody: Only if you can read his writing! I do not think a person from outside Parliament--- I do not think in the British system--- Frankly, it is such a complex business to maintain Parliament in a system where individual Members are going to be under all sorts of pressure. I really do not believe that in our system it would work if we had somebody parachuted in from the outside. The fact that they are themselves elected; the fact that they have a constituency makes some difference. This is very important and I think it makes it workable on that basis.

An. Hon Member: Are there any merits or demerits?

Mrs. Dunwoody: I do not think there are any merits to an unelected person taking the job. But anything is possible.

Mr. Griffiths: I was speaking from a few sketchy notes and I do not think they will be of much benefit to you, Hon Members, but I understand from Mr. Speaker that the proceedings will be made available so that you have the benefit of whatever I and other members in the panel have said as well.

With regard to the merits or demerits of having somebody who is not an elected Member of Parliament occupy the position of Speaker, from my experience, the only Parliaments that have been appointing Speakers outside of the elected Members, are very small Parliaments where there are not more than 30, 35 or 36 Members. I guess that the merits of choosing Speaker outside of the Parliament, would be that you are bringing in an

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individual who will not interfere with the running of the House given a situation where you have a multi-party system where the difference is quite. By choosing a Speaker from the elected Members, you might as well take away the Government's majority and I guess there would be merits of having somebody from outside. I am a bit inclined to personally favour that system, but I really do not know whether there are any real merits other than what I have just said. Would an elected Member be disfranchised from writing on the Bills before the House?

The Chairman (Mr. ole Kaparo): Let us hear what the Clerk to the House of Zambia has to say on this.

Mr. Chibesakunda: Mr. Chairman, Sir, I rise to give some examples of what we thought were points in having someone elected from outside or one not representing a constituency. At Independence, the first Zambian Speaker - who died a few weeks ago - Mr. Wesley Nyerende, I think some Hon Members know him, had a constituency in one of the parts of the country. I happened to be the Clerk then and over the weekends, he used to leave and go to address meetings in his constituency. We were in a multi-party system then. Unfortunately, on two occasions, he went and made some very controversial statement in his constituency and we had a lot of problems when he came to the House. He had to try and convince Hon Members, especially from the Opposition, that what he was saying was not his feelings, but departed spirits.

It was later on decided that we should have someone who does not represent a constituency but one who is capable of being elected to Parliament. The present Speaker does not represent a constituency.

We had another example involving the Speaker to the House of Zimbabwe. He was Secretary for Foreign Affairs and a member of the Central Committee of the ruling party. On a number of occasions, he fell into the same trap as my former Speaker. He made very controversial statements and I had the privilege of being asked to go and talk to some Members of Parliament there especially those who belonged to Mr. Ian Smith's party. They felt that this man was only carrying out his party duties and that he was not behaving as an impartial Speaker.

Therefore, it all depends on how it is looked at from both sides. But, my own experience in Africa is that, I think having a Speaker who does not represent a constituency might be of some advantage.

Mr. Biwott: Mr. Chairman, Sir, I would also like to share my thoughts with the Clerk to the House of Zambia. In our experience here, we found that a Speaker who is a non-elected Member of Parliament is, perhaps, the best one who can discharge his duties impartially as required in the House. We had the case of Mr. Humphrey Slade who was distinguished lawyer - an ex-Parliamentarian - who was elected as the Speaker of the Kenya Legislative Assembly. He did a distinguished job in Parliament.

Following that tradition, his successor, Mr. Fred Mati, won the elections but because of the need to have someone who is impartial or one without any political affiliation, was asked to resign in order to contest for the Speaker's seat. He resigned and he was then elected Speaker. He also discharged distinguished service as an impartial Speaker.

Another merit is that if a Speaker has no other duties, especially parliamentary duties, he is able to concentrate fully on the job of the Speaker by administering the House impartially. This is because he has no pressures from his own constituents nor

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has he got any pressures from the political party to which he is affiliated to. He also escapes the accusation of favouring the Opposition as opposed to his own political party because he has none. He is an officer whose duty is to serve the interests of the House as a whole. He, like a Catholic Father, is totally married to the House and not to any political affiliation.

I think there is a merit in having a Speaker who is not an elected Member of Parliament. Such a person will devote all his time to serving the interests of the House impartially without fear and without favour.

Thank you.

Mr. Brancker: I think you are right.

Mr. Mungai: Thank you very much, Mr. Chairman. In actual fact, my question is: Can we forget about getting a Speaker affiliated to any political party participating in Parliament and especially one that forms the Government taking into account multi-party democracy now sweeping across Africa? When such a Speaker makes a decision, sometimes other Members of the Opposition feel that he is doing due to the influence from the party to which he belongs. Taking into account the fact that multi-party democracy is taking root in the world at large, I think Speakers should be independent people who are not affiliated to any political party.

Hon Members: Who are the "independent" people?

Mr. Mungai: Yes, it is possible. Let me elaborate, Mr. Chairman, Sir.

The Chairman (Mr. ole Kaparo): Are you through, Mr. Mungai?

Mr. Mungai: I just want to elaborate what I have just said. In asking for such a person---

The Chairman (Mr. ole Kaparo): I think we have heard what you wanted to say. Do we have somebody ready to respond to that question?

Mr. Brancker: The gentleman is expecting to find independent people of an unusual sort because he, obviously, wants more than impartiality. The gauge is not whether a person belongs to a party or not. The question is how he behaves himself in his position. Further, the question is not whether you think he is impartial or not, but it is whether he is, in fact, impartial or not. Also, it is not whether he will lose in your favour as often as you think he should, but as to whether you are able to get away with it as often as you would like. That is the issue. In the end, it does not matter where the men or ladies come from so long as they recognize the nature of the part that they have undertaken.

Once a Presiding Officer has manifested the slightest scintilla of partiality, everybody in the House takes it up. There is no difficulty whatsoever. From then onwards, that Presiding Officer is finished. There will be no respect and no regard for him and he will notice that. Whenever that happens, people will say whatever they like about him. He or she will just despair into nothingness.

Mr. Magwaga: Mr. Chairman, Sir, I would like to direct my question to Mr. Griffiths with regard to the Official Opposition Party in his Parliament. What privileges does your Government accord the Official Opposition Leader and his Shadow Ministers?

I have a feeling that they may be having many Whips. Here we have one we call the Chief Whip. How does this system of "whips" work in your Parliament?

The Chairman (Mr. ole Kaparo): Mr. Magwaga, I think you are jumping the gun. Tomorrow at 10.30 a.m. to 11.30 a.m., we shall be discussing the parties in Parliament which comprise the Government and the Opposition and various other things that are related to that.

Mr. Magwaga: Mr. Chairman, Sir, my last question is: If Parliament discusses a private Motion and it is passed, but it is not implemented, what system do they follow in their Parliament to have such Motions implemented?

Mr. Griffiths: Mr. Chairman, Sir, if Parliament passes a Motion and it is not acted upon, then it obviously has the capacity to pass another Motion condemning the person who has not put into effect the previous Motion. Parliament is supreme and if it passes a Motion which is later ignored, obviously, that will invoke the wrath of the House and it will have the power to do something about it. This is a hypothetical question, but it is difficult to pursue it any further.

As far as the status of the Leader of the Opposition is concerned, it is recognized in exactly the same way as the Leader of the House in the Parliament that I deal with. His role is identical in exactly the same consideration as the Leader of the House. That particular office is an office of the Mayor in Australia. We have what is loosely termed as "Shadow Ministers". The fact of the matter is that the Parliament does not recognize shadow ministers. There is no reference in any of its rules or Standing Orders to anything called a shadow minister. That is a private arrangement by the Opposition. There is no salary or status attached to it, but the Leader of the Opposition is a recognized office. In Australia, this also applies to the leader of any other recognized party. He is given the same recognition and the same facility to put their point of view as the Leader of the House in our Parliament.

The Minister for Local Government (Mr. ole Ntimama): Thank you, Mr. Chairman. All our eminent speakers have emphasized the fact that a Speaker has to be impartial. My brief comment is with regard to the statement which was made by the Clerk to the Zambian Parliament. He said that to emphasize the partiality of the Speaker, especially in the African context, we should find somebody who is not committed either to his party or his constituency. I am saying this because the gracious lady at the end there, said that the Parliament of Britain has evolved over hundreds - if not thousands - of years and has brought up traditions and cultures that are being followed all over the world today.

But in our African society and in our cultures and traditions, we do not know of anybody in the opposition. In fact, they are normally - as we said the other day - enemies. We are just trying to be together now and greeting one another because, in the first two or three months, hardly anybody greeted someone from the other party.

Hon Members: That is not true! "Indigenous"!

(Laughter)

The Minister for Local Government (Mr. ole Ntimama): This principle of---

The Chairman (Mr. ole Kaparo): Even if you do not like what you hear from another Member, hear it all the same.

The Minister for Local Government (Mr. Ntimama): Probably, they do not want the visitors to hear that. I know that. The principle of an impartial Speaker will probably come from that view of his not representing a constituency or holding a party office as my friend from Zambia has just said.

Thank you, Sir.

Mr. Griffiths: Mr. Chairman, the Hon Member might remember that the first paragraphs of the notes that I prepared, said that we should not try to apply the position of the Speaker at Westminster to every commonwealth Parliament. I said that each Parliament

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will develop its own traditions. For example, some Speakers are not Members of Parliament. This is healthy and shows that there is room for flexibility within the system particularly in inviting people of different cultures. That was the very first thing that I said.

Mr. Omino: Mr. Chairman, I want to raise a small point with regard to the allocation of time during debates in Parliament. If you have a Parliament composed of both the Government and the Opposition, you can make sense by alternating speakers between the Government and the Opposition. But when you have a Parliament where the Opposition is composed of more than one party, it would appear to me that it would be a little bit unfair--

The Chairman (Mr. ole Kaparo): I do not want to interrupt the Hon Omino, but it does appear to me that at Five o'clock, the first issue to be discussed under the topic "The Voice of the Constituency in Parliament", is "Allocation and use of Parliament's Time".

Mr. Omino: Mr. Chairman, I am talking about the Speaker's power to allocate time. My point is that it would appear fair if, in fact, all these Members have been elected on different platforms, policies and programmes, for each party to have a separate docket in which to make its contribution.

Mrs. Dunwoody: What happens in our Parliament is that you have equal time for debate. There is a limit on speeches for two hours in the middle of a debate if there are so many people wanting to speak, but what the Speaker does is to try and allocate the Opposition time fairly between the different Opposition parties. There will be a lot of complaints at times, but that is inevitable. I have been in Parliament long enough to know that when I get what I want, then it is an excellent system, but when somebody else gets what they want, then it is a lousy system.

(Laughter)

Mr. Farah: Mr. Chairman, my questions will be directed to the Hon gentlemen from, first, Australia and then Nova Scotia. I must admit that over the last few months, our Parliament was quite often what you would call "disorderly." This is for two reasons and, perhaps, you have experience on this. Many a time, speakers on the Front Bench do not give adequate answers to questions. When the Speaker immediately progresses to the next Question, there is a feeling that he is protecting the Government. What do you do in your case when a Government Minister does not give an adequate reply?

Mr. Donahoe: Mr. Chairman, I can only respond by saying that the Speaker neither takes the responsibility for the quality of the questions nor the quality of the answers. It is upon the Hon Member who is asking the Question to so frame it that it is designed to bring out the information that he or she wants to obtain. But, even the sharpest Question can be evaded by a Minister who does not care to respond to it or to deal with it in a factual way. That fact is noted and Members can recognize the fact that the Minister is not actually responding to the Questions. There are two reasons here: Either the Ministers are not anxious to release the information or sometimes they do not know what the answer is. A Minister who invariably declines for any reason to respond to Questions is, is soon recognized by the House and his or her authority is thereby diminished.

There is nothing in the rules that compels a Minister to answer a Question. He does not have to answer Questions if he or she does not want to. A good Minister will answer Questions, but those who are unsure of themselves or those who are not capable, are the ones

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who get themselves in trouble and they are the ones who provoke the kind of reaction that the Hon Member is speaking about.

The Chairman (Mr. ole Kaparo): I think we can also hear from the Deputy Clerk from the House of Commons.

Mr. Limon: Mr. Chairman, if the Speaker feels that the Minister is evading Questions, he may give a longer run to supplementary questions. In doing that, he realises, of course, that there may not be enough time for the other Questions on the Order Paper because in some Parliaments Question Time is restricted to an hour or something like that. I think the complaint which our Speaker gets more than any other is not the one made by the Hon Member, but that not enough Questions are being raised by people who take the trouble to put all Questions on the Order Paper are not reached because the Speaker is allowing too long a run. It is one of these many problems that the Speaker cannot really win.

The Assistant Minister for Land Reclamation, Regional and Water Development (Mr. Ligale): Mr. Chairman, I would like to request our distinguished panellists to respond to two issues. The first one is with regard to the Clerk and the staff of the National Assembly. Is it proper that these people be members of the Civil Service or they dependent and be hired by an independent tribunal for them to be impartial. Secondly, does televising debates enhances debate or does it increase anxiety in the public gallery, thereby making it not as good as it may have been in the past?

Mr. Griffiths: Mr. Chairman, I am not sure about this. We do not televise debate in our Parliament. We have set up a committee to draw up some rules for the purpose of allowing television screening to our Parliament. As far as your first question is concerned with regard to the Clerks and staff of Parliament, I am a very strong believer that they should not be members of the Civil Service and that they ought to be independent of it. They ought to be free from any political influence whatsoever. If you have an unbiased staff or one that is not answerable to the Government, then your Speaker is given advice that is in accordance with the proper understanding of your Standing Orders and the customs and traditions of your own Parliament, and he can do that with immunity. I am sure that in most of the Parliaments in Australia the Clerks and all the staff of Parliament are not members of the Civil Service.

Mrs. Dunwoody: Our Clerks are actually appointed under the Civil Service Commission initially, but they are always independent from the word "GO", and they only work for our Parliament. Oh, they are first appointed by the Clerk of the National Assembly and become independent from the word "GO".

Could I say something on television? A lot of Hon Members were worried when television came into the House because they did not know what the camera was going to pick on frankly. But it is very interesting how all sorts of people now are taking an interest in the proceedings of the House, and that can have an effect on people's reputation. For example, both the BBC initially and then Independent Television actually televised the committees of the House. We have Select Committees which look at very specific subjects, and that has direct impact on people. Because in my Constituency I have a lot of people who work either all night or on shifts. I can always know when they have seen something on television. When they go back to their houses at 7.00 o'clock, put the television on and look at something I had said at 9.00 o'clock, they would telephone me and say, "What did you say that for?" So, I know the television is having a direct impact on people though a lot of them complain about its loudness and the terrible noise that it makes. But, in fact, the very people who complain

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are the same people who sit for long enough to know what is wrong with it.

Mr. Donahoe: Mr. Chairman, I have presided over Houses with and without televisions, and I just want to make a couple of observations.

First of all, after television came, the appearance of Hon Members improved. They begun dressing more shapely than ever before! Also, I think, there was a slight improvement in their behaviour because they were not always sure when they would be on camera, and they did not want to appear to be doing something foolish. The other side of the coin is that there was a certain amount of campaign for camera - I think that is inevitable - but, here again the Speaker has to be on his toes and ears, and can keep that to a minimum.

But one point I want to make is that it is important - in my view - for any Parliament or legislature considering whether to televise its proceedings that either it puts in its own system and have its own staff running it, and also have some control over the distribution to ensure that it is broadcast as broadly and to as many people as possible. Some arrangement can be made such that there are very stringent regulations in place governing what a private television camera operator can cover and what he cannot cover. Hon Members are very afraid of the fact that they will be seen doing something bad and that will be shown to their constituents. There have to be procedures guarding against that sort of thing where a cameraman tries to show Members in bad light. So, if the House is thinking of putting in television, it should make sure that the proper controls are in place.

The Chairman (Mr. ole Kaparo): Maybe we can hear from the Clerk of Zambia National Assembly, and then break for tea.

Mr. Chibesakunda: Thank you, Mr. Chairman. I will only speak about members of staff who serve Parliament, and I am speaking from experience.

I am of the strong view that members of staff serving any Parliament should be independent from Civil Service for a number of reasons.

First of all, parliamentary staff requires specialized training. We get help from the developed countries like UK, Canada, Australia and so on for attachments. For three or six months, you get someone attached there only to come back to be transferred to some irrelevant departments, and that training is wasted. For example, in Botswana, there was a Clerk who was there for ten years. He came back from training and after three months, he was sent to go and work in the house of chiefs. To do what there? A few months ago, one of our colleagues who was a Clerk also, has now been appointed Deputy Chairman for Elections after coming from a training course. The same thing happened with the Clerk in Lesotho.

Apart from that, the working hours for parliamentary staff are totally different from the Civil Service. A civil servant works from 8.00 to 5.00 o'clock and knocks off, but for a parliamentary staff, it all depends on how long the House wants to sit. If they want to sit the whole night, you stay there. You cannot complain because you knew the type of institution that you are working for.

If, for any reason, there are difficulties of someone accusing another of favouritism, all we have done in Zambia now is that all interviews for jobs are being conducted by independent people from the University of Zambia and other institutions. People appear before people they do not know. It is either you prove you are good or not.

Therefore, in order to avoid some of those things that I have mentioned, it is better to have an independent staff without any connection with the Civil Service.

The Chairman (Mr. ole Kaparo): Well, I must thank the panellists for this particular Session and the Members as well for a very lively discussion. We will now adjourn for tea exactly for 30 minutes, and we shall resume with the same panel on "*The Voice of Constituency in Parliament*".

*(The Seminar adjourned at 4.30 p.m.
and resumed at 5.00 p.m.)*

The Chairman (Mr. ole Kaparo): Our tea time is over. So, we must get into the next business. Our next business is "*The Voice of the Constituency in Parliament*". To lead us into this discussion is Mr. George Brancker, Clerk of the Parliament of Barbados.

Just before we get into our next business, again, I would like to bring to your attention the fact that we have not paid, as a Parliament, for any telephone services here. So, any Member wishing to make their telephone calls will have to go and pay for the same at the counter, and the usual process of making a telephone call in a hotel will apply. So, in the meantime, all Members who wish to make telephone calls, please, take note of that. Can we now have Mr. Brancker on the Floor?

THE VOICE OF THE CONSTITUENCY IN PARLIAMENT

- Allocation and use of Parliament's time: Government, Opposition and Private Members.
- Petitions to Parliament.
- Questions to Ministers: Question in order, not in order and out of order.
- Private Members' Motions, Resolutions and Bills.
- Debates on Motions for the Adjournment.
- Drafting for the Private Member.

- Panel:*
- (i) Hon Clive Griffiths, MLC, President of the Legislative Council, Perth, and Chairman of the CPA Executive Council.
 - (ii) The Hon Mrs. Gwyneth Dunwoody, MP.
 - (iii) Mr. George E.T. Brancker, LLB, Clerk of the Parliament, Barbados.

Mr. Brancker: Thank you, Mr. Chairman. We are moving on towards cocktail hours; so, I should be brief and to the point.

Every Member, on election, has illusions in his mind and a target to spend all Government money; a demand that it should be sent to his constituency and a requirement that it should be done as soon as possible, and tremendous disgust when he finds that he can

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get nothing done either at short notice or over a long period of time.

Once you are elected, whatever the degree of knowledge, expertise and skills you have, the first thing you need to understand is how to begin to be a Member. None of that expertise, knowledge, or skills should be wasted. It will all have its place, value and compartment in due course. But you must wait for the context in which to play it in learning how to apply that knowledge in using Parliament as an effective media.

We heard early this afternoon that amongst other things, it is absolutely imperative to acquire a mastery over Standing Orders. There is no point in being a cook without being able to use gas, electricity or whatever else. There is no point in being a director of a company unless you have some familiarity with the company legislation. There is no point in being a modern mechanic unless you know something about engines. So, how could you expect to be a Parliamentarian, particularly in a multi-party Parliament, if you know nothing about the basic tools?

As Mrs. Dunwoody will no doubt be able to tell you that amongst the greatest or the most effective Parliamentarians at Westminster for many years have been men and women who have distinguished themselves by having an acute mastery over the procedures of the House of Commons, whereby they are able, not only to secure the greatest advantage in terms of number of speeches they are able to make, but also being able to maximise from their knowledge of Standing Orders the opportunities which will be available to them for interventions on any given area and at any given time. If you do not do that, something has happened to you. Other people who know the Standing Orders well, and who may not have the knowledge that you have on a particular topic, may not have the sincerity of feeling and commitment that you have about particular areas that you wish to speak on, will be able to floor you by applying points of order. Any sort of device will be used to cut you short and put you off your feet. It is easy for the most skilful person to be caught in that particular manner.

So, when you wish to express the voice of your constituency in Parliament, it is important to find out what you are supposed to do and how to do it in Parliament because everybody is against you. As we have heard today, some people are waiting for you and are ready to make you slip.

This morning we had the Professor speak of somebody who would like to have somebody explain to him about an Act of Parliament after it has been passed. It is extraordinary how many Parliamentarians develop an encyclopedic ignorance of legislation that is placed before them in Parliament made extremely knowledgeable speeches totally unrelated to the subject, and then ably astonished by contents of legislation which is voted as a result of their personal endeavour!

What is the cause of that feeling? The answer is that if you do not read your legislation; study your estimates; or study your annual financial statements, then you are not in a position to lay your feet on the ground. The tools of trade are the things that you have to develop and cultivate.

Now, in the Standing Orders of the National Assembly of Kenya, those people who wish to ventilate Opposition or other Private Members' grievances or issues have unrivalled opportunity. They are more blessed than any other country I am aware of. To begin with, you have facilities for Adjournment Motions, not only ordinary Motions, but Motions on

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definite matters of national/public importance, as stipulated under Standing Orders 17-23. That is also a problem that arises in many jurisdictions where in the absence of that word "national" causes a lot of difficulties. Then you have seven days debate on the Financial Statement under Standing Order 137(2), and then you have three days for Ways and Means under Standing Order 138(1) with a possible extension of a further two more days. On Committee of Supply under Standing Order 142(1), you have 20 days, and together with that, out of every four days' sitting during the course of the week, unless the Wednesday happens to be pre-empted for urgent Government business to do with Committees of Supply or Ways and Means, then you have your own way on that particular day. What more could you ask for?

But beyond that, Mr. Chairman, the Committee of Public Accounts has a majority of Opposition Members under Standing Order 147. So, there again is an opportunity for examining not Government policy that is deliberately excluded, but the accounts, including the Appropriation Accounts, which shall be laid in Parliament. Then you have the opportunity also under Standing Order 148 with regard to the public investment policy to have a committee of looking at every aspect of Government investment, excluding policy. That is a facility or an opportunity that is afforded to you which is just as great as that given to the Office of the Controller and Auditor-General in the United Kingdom under the National Audit Act of 1983. But that is not law.

Then you have the General Purpose Committee under Standing Order 151 which police the various Ministries in the way that has been done under select committee systems that has been in existence in the House of Commons since 1979. And to assist in that, you have the privileges legislation which entitles you to summon witnesses and to re-enforce your mandate of summons in ensuring adherence with very strong punitive powers. So, what more could you ask for?

Then in the context of questions, you are guaranteed, according to the Standing Orders on any day when questions are permitted, that 15 questions are going to be answered. If you have more than 15 questions on any particular day, then they are going to be spread out. So, as you can see, in the context of "domestic arrangement" of Parliament of this great country, you have every opportunity for ventilating all the grievances there. But beyond there, if we now look at the scope available to you in terms of Private Members' Motions, resolutions and so on, again, there is quite substantial scope as to what you might be able to do. What might affect you perhaps, if you are drafting for Private Members' Motions, is that you lack some of the resources for adequate drafting legislations. When that happens, Mr. Chairman, one or two problems will have arisen. One is that the Clerk's Department needs more money and more staff, or, perhaps, you have chosen to take your drafting outside and leave it there. In every Parliament that I am aware of, where the opportunity is available through staffing, then the members of staff of Parliament will assist you in doing part or all of your drafting.

So, when you look at the structure of the Parliament of Kenya, you will see that not only is there ample opportunity for ventilating whatever issue you might wish, but also the means whereby the rules are guaranteed. I have often said not in Barbados, but in Caribbean, that we do not use sufficiently, and to our advantage, the opportunities that are afforded to Parliamentarians to analyze bad statements. That means you have to do some research work and going to some background to know what was said by the Minister for Finance for the last two years. Though we do not analyze the annual estimates of expenditure, that we look and

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see what is being voted for this particular year, but we do not see the context in which the whole environment of financial expenditure has been fit in. So, you look at what is in it and what is missing. But in the analysis of the book that you have every year which spells out the annual estimates, it is important for every Member to use it. It is, indeed, the "Bible" of Government policy in a way that you find it nowhere else in one single compendium of literature geared to financial expenditure. You can chart the whole of Government policy there. That policy is ultimately expressed not only in the fact of expenditure, but also in the results that come from expenditure that affect each one of us, either as Ministers, Back-benchers and even those in the Opposition side. It is all there.

That is my contribution for this moment, Mr. Chairman. Thank you very much.

(Applause)

The Chairman (Mr. ole Kaparo): Thank you very much, Mr. Brancker. I do not know whether there is any Member from the panellist side who would like to add on something to what Mr. Brancker has just said?

Mrs. Dunwoody: Mr. Chairman, I am not adding anything to what Mr. Brancker has said because, I think, he has spoken in a most elegant way showing ways in which Parliament can be used by its Members. But I would like to illustrate that by a story.

When I first appeared in Parliament and I was a very new Member, we had a very, very controversial and difficult Bill. We also had an elderly Member who had been in the House for over 40 years. He knew thoroughly well not only the Standing Orders, but also Erskine May which is about House procedure. He also knew every other rule at the back of his hand. All the way through this controversial Bill, he simply sat behind me. He did not appear anywhere in Hansard. He did not make a single speech, or say a single thing. He simply sat behind a group of women and said to me, "Get up now and say this--". I would get up and simply say, "Mr. Speaker, --" and then sit down. Then I would say to myself, "Why did I say that?"

(Laughter)

The Bill went through, and to me it was a marvellous lesson. He knew how the place worked. He took the trouble to do his homework and he was well informed. The Speaker was also very funny because he knew that the man knew all the rules, and that was very helpful. I will give another example.

The House of Commons, in order to deal with a vast amount of paper work that flows from the European community, has set up a select committee procedure. We have two extra select committees and they sit mostly on Wednesday mornings. Of course, the Government has the majority, not a large majority, in those committees. But, the House of Commons decided that the Minister answering for the Government should be subjected to an hour of questioning. So, the first hour, that Minister has to answer questions on that particular piece of legislation. I can tell you that is a weapon that is tremendously useful. It can be exercised and cannot be ignored. It can make life very difficult for Ministers who do not know all the answers. So, it is extremely important not only to the present Government, but the Opposition Members are also using it the way they should. Unfortunately, not many of them

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turn up to do their work. But, nevertheless, the procedure is there and can be used.

Select committees are extremely powerful. They will take one subject and examine it in considerable detail. I am on the select committee on transport, and we have the Minister for Transport in front of us, at least, once or twice a year. We question him on spending in his department, what his priorities are, why he took certain decisions, why he did not do what the committee had asked him to do before and so on. All this is not only "seen" by the television camera, but also picked up by newspapers. So, it is actually in the machinery that we could have the best impact within the Parliament. I do hope that we will actually remember that because to me, frankly, that particular aspect we have been talking about can change the way this machinery works.

We were also asked to talk about the allocation in the use of parliamentary time between the Opposition and Private Members. In our Parliament, the Opposition has 20 days when they can introduce the subject for debate, although the timing of those debates is agreed on by the two sets of chief whips who are already in business. Nevertheless, the actual number of days for debate that the Opposition can use is 20, and that is quite a lot. There are also Private Members days on which Private Members can debate subjects which they ballot for. That is very important to the Back-benchers because it gives them an opportunity to put forward things that concern their constituencies. We also have adjournments, and we could ballot for that so as to get a chance to have a half-hour debate at the end of a parliamentary sitting.

I have come to that particular subject which you raised and all of these methods can be used to highlight specific things, and gain overall control over what the Government is doing because if you do not question legislation then it will go through. There is not doubt about it. There are some Members, even in my own party, who would like to have time to table Bills and get government machinery moving faster. I have to say to you that it is not my view but we do not want to get on to that because that is a personal view. But, it is very important to use the machinery that is there.

The Chairman (Mr. ole Kaparo): Thank you very much. Is there anybody else who wants to comment.

Mr. Griffiths: Mr. Chairman, Sir, in Parliament that I am a Member of, the allocation and use of Parliament's time, the Government is in charge of the business of the House. We have an agenda and a sequence of business that does not differentiate between the Government, the Opposition or Private Members. Our Standing Orders provide that Motions can be moved and dealt with each day at the beginning of the sitting. Notice of Motion has to be given and it is generally the Opposition or Private Members who give the Notices of Motion. Once a Notice of a Motion is given, then it has got to appear on the Notice Paper in the order in which the Clerk receives it.

Our Standing Orders provide that one hour after the time set down for the House to sit, leave of the House is required if the debate on Motions is to continue past that one hour. "Leave of the House" means "no dissenting voices", in other words, the Presiding Officer puts the question, "Is leave granted?" If one voice says, "No!", then leave is not granted, and the time allocated for dealing with those Motions can be limited precisely to the hour. What happens is that many Motions just never get around to being dealt with because they are putting them on the Notice Paper faster than what can be dealt with during the one hour period. The Government of course, frequently does not want to proceed with Motions and

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leave is granted at the end of the hour. That is the way that is dealt with.

With regard to Petitions in Parliament, I would like to say that in our Parliament, we have a Standing Committee and all petitions that are presented to Parliament are placed in the hands of this Committee which examines them and then directs them to the Minister in the Government who is dealing with the subject matter of the petition. The Minister has to report back to Parliament in due course as to what action he has taken, if any, on the petition.

The next matter is Questions to Ministers, Questions in order, Questions not in order and those that are out of order. Well, our Standing Orders are very similar to yours, however, you have got a far more comprehensive list of requirements for Questions than what we have, but your Standing Orders Nos. 37 (3), (4), (7), (10), (14) and (15) are the sought of limitation of Questions which is pretty all the same, except you have a lot more restrictions on it than what we have. Ministers, of course, as was previously said, do not have to answer Questions if they do not want to do. The penalty of Ministers who do not answer Questions is that their reputation is saline to the extent that the media can report that they persistently do not answer Questions and that information gets back to their electors and possibly the electors will take some action in the next election. But, it is a very difficult situation to determine. All that our Standing Orders require is that Ministers answer Questions. It does not say that the answer has to have anything to do with the question.

(Laughter)

You have got to have a pretty good imagination to sometimes relate answers to Questions. It is frustrating but there is not a lot you can do about it.

With regard to private Members' Motions and resolutions, I have already mentioned those and explained when Members can give notices of them. Private Members in our Parliament can introduce Bills. Generally, what happens is that I could introduce a Bill, and that is the end of it because they only get introduced and only stay on the Notice Paper.

As for debate on Motions for the Adjournment, as I told you, we have a bicameral system, in our Lower House, and there is no provision for debating Adjournment Motions. In the House that I preside over, however, there is provision for debating Adjournment Motions, but there are strict time limits of 14 minutes in total, and no Member can speak for more than ten minutes. That means that four Members can speak for 10 minutes or eight for five minutes on a Motion for the Adjournment of the House. Members can speak on anything. They usually say, "Mr. President, while supporting the Motion to Adjourn the House, I do not think we should adjourn until I reside the charge of the library guide---" and then proceeds to other matters.

In our Standing Orders, we also have an Order that provides for a special adjournment and it is an Adjournment Motion which provides for a Member to bring forward a matter of urgency. The Member must write to the President, two hours before the House sits, pointing out that he is going to move that the House at its rising, adjourn until some date and time other than the normal date and time - we usually call it "Christmas Day". A Motion to adjourn the House to a date other than the normal adjournment time may be moved for the purpose of discussing the failure of the Government to do anything about the rising unemployment. In an adjournment Motion in order to get to approval to move it, at least four Members must rise in their place when the Mover reads the letter to the House asking for

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approval to adjourn the House. That gives the Opposition an opportunity to bring forward what could be referred to as a "Grievance Motion". At the end of the Motion, leave is sought to withdraw the Motion because the Motion is that the House at its rising adjourns until Christmas Day and, obviously, one has to seek leave to withdraw that Motion which facilitates discussing this particular matter of urgency and participate in the letter.

With regard to Drafting for private Members, I would like to say that in our Parliament there are special Private Members drafts people who do the drafting for them. In other words, if you want to draft an amendment to a Bill or a Bill itself there are drafts people there who do that work for the Private Members in the Opposition.

That is all I want to say at this stage, Mr. Chairman, Sir.

The Chairman (Mr. ole Kaparo): Thank you, Mr. Griffiths.

Do we have anybody from this side to speak? Well, if there is no-one, we will go to the floor.

The Assistant Minister for Finance (Mr. Keah): Thank you, Mr. Chairman, Sir. I would like the panellists to share with us their experiences with regard to a matter of frequent criticism particularly by the Back-bench against the Front-bench especially on Motions for implementation which have an expenditure connotation. Time and again, Hon Members bring Motions to Parliament, which are passed and do require certain fund spending for their implementation. Yet, as you know, the budget has already been well-debated and passed when that happens. I would like the Hon panellists from Australia, Britain, Barbados, as well as Nova Scotia to share with us their experiences with this particular difficulty, as it is realistic. A Budget the Motion has been passed in Parliament, and by virtue of the fact that it has been passed in Parliament, it should strictly be executed, but then it is outside the budget and it has either to wait for the next budget or a supplementary one. Usually those bringing the Motions do not really give this expenditure any consideration at all. Perhaps, we could share the panellists' experiences in that matter?

Mr. Limon: Mr. Chairman, Sir, I can understand the frustration felt by the Hon Member on this point. The fact of the matter is that a Motion of that kind, calling on the Government to spend some more money on something is merely an expression of the House's opinion. The Government will then take that on board and it is up to it to decide whether or not it sees it fit to eventually present an estimate indicating a change of policy in which it says, "We will spend money on that particular project or whatever it is". However, the mere passing of the Motion by the House does not compel the Government in anyway to implement it. The Government will take the Motion on board and decide whether or not it wishes to implement it, and there is no compulsion on Motions of that kind because they are made on expression of opinion of the House, and before any money can be spent, the Government has to come forward with an Estimate for the following financial year, and until the House has passed that Estimate and the Consolidated Fund relates to it, that money cannot be sent because it does not exist. That is all found in your Standing Orders.

It is, of course, a political risk for the Government to take on board resolutions of that kind from the House, and if it went on doing this, the House would lose confidence in the Government because the Government would be taking no notice at all of Motions that are passed. The fact of life is that a Motion expressing an opinion, even though passed, cannot compel a Government to do something. The only way to get over a problem of that kind the proper way is to put down a Motion of no confidence in the Government, which is, I think,

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what we are going to discuss tomorrow. Even that Motion would not automatically, if passed, make the Government present the Estimate because it might result in the fall of the Government. Therefore, there is nothing in a standing Motion in any system which I have heard of which will compel the Government to spend money on something which it does not want to spend money on.

The Chairman (Mr. ole Kaparo): I will give the Floor to the Secretary General of CPA - United Kingdom.

Mr. Donahoe: Mr. Chairman, Sir, this is just a brief follow up to Mr. Limon's response. Let me simply say that the Hon. Member's frustration is understandable but he is hung on the provisions of Rule 132 which prohibits the House from proceeding on any Motion, the effect of which, in the opinion of Mr. Speaker, will be to make provision for any of these purposes, in the position of taxation or payment out of the Consolidated Fund. So, the rule clearly prohibits proceeding on such a Motion. I must say that in my experience, there is a similar prohibition in the Standing Orders of virtually every Parliament which follows the Westminster model. This is not uncommon. The only way Hon. Members can get around it is to be careful when drafting such Motions, but as Mr. Limon said, that will simply express the opinion of the House in favour of the certain course of action being taken and it is then up to the Government to decide whether it wants to take the political risk of failing to implement that Motion.

Dr. B.A. Godana: Thank you, Mr. Chairman, Sir. I have a question relating to the subject of Questions to Ministers which may, somewhat, appear to be on the subject we discussed earlier this afternoon. Question Time in many Parliaments, and particularly in this Parliament is one of the most important moments for the individual constituent Hon. Member. In this country, there is a tradition that every day the House sits the national radio announces in synoptic form what proceeded in the House in the course of the day. A good proportion of that broadcast actually covers questions which were asked on the Floor of the House. Naturally, therefore, every Hon. Member who can ask a question will want to get as much time as possible either through his original question or in supplementary questions. Due to the constraints of time, and I think you heard a question asked earlier this afternoon in this regard, the Speaker, as the person in control of the debate, has to ensure that the time schedule is complied with and curtail the amount of time that individuals may spend on specific Questions. The Chair, of course, has the discretion to determine what Question perhaps demands a little more time, such as sensitive national issues in which you can actually gauge the mood of the House. However, there are other Questions which may be of very narrow interest in terms of the number of Hon. Members who may be interested in them, and so on. But, you are running a risk of making a judgement which sometimes may not be understood from your own stand-point as the Chair by the other Hon. Members. This happens from time to time because Hon. Members will want to be heard, and yet the supplementary questions they pose may appear, in good faith, to the person in the Chair to be redundant or even irrelevant. What is the experience of the panellists' Parliaments? Do you think in that kind of situation, the Chair should take initiative to actually say, "Sorry, but we should not allow you to curtail the valuable time that other Hon. Members may have on this Question?" Or, should we leave it to the Minister concerned to either grapple with it or dismiss it as irrelevant? The risk I find is that you are trying to guard against two evils: on the one hand, being accused of muzzling the rights of the individual Hon. Member who has

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asked the supplementary question, and on the other one, being accused of assuming that there is a luxury of time and allowing irrelevant debate on questions.

It sometimes happens that an individual Hon. Member who tries to ask a question is entitled to give certain background information, but there comes a moment when you, from the Chair, think the individual Hon. Member is actually using the opportunity to ask a supplementary question, to contribute to a debate or to make his opinions known on a matter which should be brought in, in the form of a debate, and not during Question Time. What would be the panellists' opinions on this?

Mr. Brancker: Mr. Chairman, Sir, it sounds to me as if the Hon. Member needs - if I may, with regret, say so - to brush up on his technic of answering his first question. Supplementary questions take up somebody's else time. It may well be that your Question, when asked, requires a supplementary question in which case you ought to phrase your Question in such a way that you are pretty certain to get that supplementary question shortly. If your Question is drafted for example, "Does Justice Edmond Buck---?" Then clearly, the Speaker, is hardly going to allow you a supplementary question because the original Question already has been long winded. You have put the Speaker into difficulty because there are 15 Questions down for replying to, and that is why I was attempting to say earlier on that asking Questions which are really effective is a great art. There is also no point in asking a Question unless you know the answer. If you do not know the answer then you are wasting both your time and the Minister's, and the Minister can soon assume that you do not know the answer and, therefore, say exactly what he likes. I meant to mention something which I think Mr. Limon has confirmed. The only country I know of that certainly requires Ministers to answers Questions is India, in the Lok Sabha and the Rasha Sabha, but that is one of the great arts of Parliamentary work.

Mr. Gethenji: Thank you, Mr. Chairman, Sir. I must say that I am asking some of these questions out of ignorance because I am very new in Parliament, and I would like to have the benefit of the experienced panellists on the Bench. I would like to have a clarification on the role the Speaker plays in clearing the Questions put or Motions moved by Hon. Members in Parliament. Firstly, what role should he perform to make sure that Motions go through Parliament? The other question I would like to ask is in relation to parliamentary language. We know that the panellists have evolved their parliamentary systems over many, many years and that their societies have gone through a lot of evolution over time, to the extent that they have developed certain ethics and norms which are respectable and acceptable to social circles. In some of our countries in Africa, we have problems because some of our leaders, people in authority and Ministers are thieves and liars and they do all sorts of things. They have had records which are questionable and when we talk about these things in Parliament we can actually say, "Well, this fellow has stolen and it is on record." We have had statements in the Press and we know the facts involved. Ministers stand up to answer Questions and literally lie on facts which are very well known and then you find you are tempted to use an unparliamentary word. Then we even have murderers and others. We want to know how they have evolved parliamentary language in their own countries?

(Laughter)

Mrs. Dunwoody: Thank you, Mr. Chairman, Sir. The language is so funny because it actually changes from century to century. In previous centuries some Members of Parliament have used most wonderful colourful language. They called to question, not only Ministers' morals, but also those of their mistresses and children, the legal status of their children and one or two other really interesting things which we are not allowed to do now. You may not accuse a Minister of lying, but you would be a very poor politician if you could not think there are hundred ways of saying that without calling him a liar.

(Laughter)

You have to make it clear what you mean and just avoid difficult words. That is how we got someone actually getting up in the House of Commons and being told he could not call the Minister a liar and he said, "Well, then the Minister is guilty of terminological inexactitude."

(Laughter)

So, what you have to do, is to work at it and, as they say, "Revenge is a dish that is best eaten cold." If you are in a temper, that is when the words that leap to your mind are quite often the simple Anglo-Saxon one. I do not know their equivalent in Kiswahili. I think that it is very important, if you want to be really rotten to someone, be very much in control and know what you are going to say, never ever waste an insult. If you are going to be really rotten to somebody, pick someone in your own way and grind their face straight into the dust.

(Laughter)

In terms of the Speaker, in Motions and Questions, it is not the role of the Speaker either to read them or comment on their contents. The Speaker belongs to Parliament. The only people who would decide whether or not your Questions are in order are those in the Clerk's Department. You take a Question to them and they say, "No" and there are always set-down rules that you have in your own Standing Orders, and you have no excuse for not knowing them. It does not mean to say that 200 times a day Hon. Members of Parliament do not go into the Clerk's office and try it on. Of course, they do. In fact, Mr. Speaker does not ever comment on content because that is not her/his role. She comments on whether a particular piece of machinery is in order in relation to the way in which the House is being handled. She does not argue about the content of Questions and you find that most people will work very hard at finding Questions to which they do know the answers and which they also know the Government wants publicised. That is a trick that requires a certain amount of research and that is not impossible to do. And if you want a list of names of, for example, the Chicaco people, we will give you a false start; we will make you smile, if nothing else.

Mr. Griffiths: Mr. Chairman, Sir, George Brancker and I went to the same political school and I think the first thing I was taught when I went to Parliament was that you never ask a Question whose answer you do not know. But in regard to the content you do have a Standing Order, No. 40, which is on page 18 of your Standing Orders, which clearly states Mr. Speaker's responsibility with regard to what is contained in any proposed measure. I guess he uses his own experience and knowledge of the customs and traditions of their place in determining what he will approve and what he will not approve of. Those are the sort of

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things that are covered by your Standing Orders that give Mr. Speaker, or somebody else, some prerogative to make a determination. If Hon. Members are not happy with the way in which that determination comes out then it is always possible for Hon. Members to change the Standing Orders. If the Standing Orders are obstructing the actions which Hon. Members wish to take in Parliament then there is a relatively simple procedure to change them. If you can get a majority of the Hon. Members to support you can change the Standing Orders. However, frequently you will find that when you look around for somebody to help you know that there will not be many who will share your view, but there are occasions while you are in the House when you want to say something nasty about somebody you say "Mr. Speaker, everybody knows that the Hon. Member goes home and belches his words", and when Mr. Speaker asks you to withdraw you say "I do withdraw that everybody does not know he goes on every now and then belching his words".

Dr. Otieno-Kopiyo: Mr. Chairman, Sir, the exercise of catching your eye, even here, is quite a task. I have two questions and one is this whole thing which is set out in Standing Order No. 40(5), which Hon. Keah has already referred to. The other issue is the question of the Speaker's opinion as to whether what I want to deal with should be admitted onto the Order Paper or not. It does seem to me that this contradicts the whole doctrine about the supremacy of Parliament. This is because if an Hon. Member has a burning issue and he has to go to the Speaker who must import his opinion into the issue then that contradicts that so called right. So, I just wanted some ventilation on that.

Mr. Brancker: Mr. Chairman, Sir, the Hon. gentleman takes a tide and then drops it into water like that. The supremacy of Parliament means that you must do things that make Parliament supreme. If you have a Motion that you want to put up you take it to the Clerks Department and it is probably possible that the Clerk may see something that needs to be done with it before it is in some sort of shape, and the Clerk's Department will do their best to put it into shape. There may be occasions, as I have had an experience, where an Hon. Member brings in a draft resolution and you cannot figure out what the resolutions are; you find that it is not in order in its terms because you just cannot see what the Hon. Member is getting at. So, you call the Hon. Member and tell him, "look, what can we do about this? What are you really trying to get out of this?". Sometimes even he himself does not care about the material. But there may be occasions, for example, when may be he does not even know a half of what he really means. He gives you a draft of what he is looking for and you do some research on it and then discover that you can produce something---

Dr. Otieno-Kopiyo: Your are answering something completely different from what I raised!

Mr. Brancker: No, I am not. Then you can find something that makes the basic Motion even stronger than he intended, but then the Motion needs to be redrafted. So, the supremacy of Parliament means that you should bring before Parliament that which it can consider. If you bring a Motion that is in conflict with the Standing Orders, the Clerk's first duty is to get it in order. If it is impossible to get it in order it is then that you are told that it is out of order. But the supremacy of Parliament does not mean that you can put any and everything before Parliament, otherwise you would need a Constitution.

Mr. Griffiths: Mr. Chairman, I was just going to simply say that supremacy of Parliament means the decisions made by it in accordance with its standing rules are supreme. If you contravene your rules in coming to a decision then, obviously, the decision is null and

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void. You must conform with the rules and one of your rules says that Mr. Speaker shall do this and make this determination. Your Parliament has said this and that is why Parliament is supreme. Your Parliament has given Mr. Speaker that authority and equally your Parliament can take away that authority but until it does so the authority is supreme.

The Chairman (Mr. ole Kaparo): Thank you very much. Now, we have to adjourn until tomorrow because basically some of the Hon. Panellists arrived this morning at 3.30 am. They have been travelling for long distances and have not left this table since they came. So, we will now adjourn until tomorrow morning at 8.15 am., and let us all come in good time.

(The Seminar adjourned at 6.00 pm)

(The Seminar commenced at 8.55 am on Second Day)

PRIVILEGES, IMMUNITIES AND POWERS OF PARLIAMENT

- The inheritance from Westminster.
- How free should speech be in Parliament?
- The media and Parliament: The right (or privileges) of fair comment.
- Parliament and the citizen: Should the public have a right of comment or reply (through Parliament) to the contents of debates in Parliament?
- The importance of an interpretation to the legislative work of all Parliamentarians
- Relations with the media.

Panel: (i) Mr. George E.T. Brancker, LLB, Clerk of Parliament, Barbados
(ii) Mr. Hilary Ng'weno, Editor, *The Weekly Review*
(iii) Mr. N.M. Chibesakunda, Clerk of the National Assembly, Zambia

(The Session Chairman - Hon. F.K. ole Kaparo)

The Chairman (Mr. ole Kaparo): Order! Can we now take our seats?

Good morning Hon. Members and welcome again this morning. I think we should now begin our morning session. This morning we are going to discuss Privileges, Immunities and Powers of Parliament, which I believe is something that is very close to the hearts of Hon. Members. We do have this morning the following panellists: Mr. G. Brancker, Mr. H. Ng'weno and Mr. N. Chibesakunda, the Clerk of the National Assembly, Zambia. We will now begin and I will ask Mr. Brancker to start the discussion and as we have done in the past, after the panellists have introduced the subject we will throw the ball to the Floor and Hon. Members will be free to intervene by way of either suggestions or questions. So, Mr. Brancker, please.

Mr. Brancker: Good morning and thank you, Mr. Chairman. Ladies and gentlemen, although I have looked around for ladies and found that they are very scarce indeed! The election process puts people in Parliament, each one of them, according to his own mandate. He or she has own responsibilities. Each has his or her commitment to the development and integrity of the country whose developing is a sense of oneness and unity in society. Whatever the fraction, the tensions, fractiousness and bitterness of an election campaign Parliament is for the Government of the Country. The National Assembly can amend the Constitution, dismiss the Government and change the methodology, direction and the control of all the systems which are part of the foundations of your political society. That degree of ultimate strength, indeed, of pre-eminence, among the national institutions suggests the need for orderly management and an institution which respects itself and hence respect and

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consideration. Privileges entails responsibility. The word "privileges" has a wider and a different contextual meaning for Parliament. To many people, it is a body of rules which places Parliament, coupled with its immunities, a part as a class of people. Under Section 57 of your Constitution - and this is the simplest and, perhaps, the best statement I have come across for a long time - your privileges and immunities are, and I quote:-

"For the purpose of the orderly and effective discharge of the business of the National Assembly Parliament provides for the powers, privileges and immunities of the Assembly and its Committees and Members".

In Westminster, from which most of us have inherited all our best traditions in this regard, there is not a lot of legislation on the subject of privileges. In places like Trinidad and Tobago in the Caribbean, where I come from, the Constitution provides that the inheritance of privileges, immunities and powers is those existing at Westminster at the date of their Constitution, the alleged Constitution being the 1976 Constitution. In Barbados, which is my home, we have an Act which relates to Immunities alone and which identifies the standard range of privileges of Parliament for the purpose of facilitating its work. In Australia they have a combination of both. They have the inheritance of the Westminster set out in the Constitution, but more recently, in 1987, they legislated the Parliamentary Privileges Act expressing, for the first time, in statutory form a substantial amount of their privileges and providing, also for the first time, a pretty comprehensive definition of the expression "*Proceedings in Parliament*". The object, I should say, of parliamentary privilege is to express in the first place the freedom, secondly the authority and thirdly the dignity of Parliament. In relation to individual Hon. Members, and to the House collectively, the parliamentary privilege does not exempt Hon. Members from obligations under the law, unless this is justified in the interests of Parliament itself, in which case that will be specifically stated in legislation. You infringe the privileges of Parliament when you show a disregard for the institution or its Members, or when you attack its Members individually or the House collectively.

Offences against the House such as libel of the House itself and Members or officers by disobedience of lawful orders are contempt. Basically, contempt is any act or omission which obstructs or impedes either House of Parliament to perform its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency directly or indirectly to produce such results. So that reflections on the House, its Committees and Members, accusations of partiality by the presiding officer, that is perhaps the worst thing anybody can accuse the presiding officer of. Publication of false and distorted reports, publication of expanded proceedings, molestation of Members because of their parliamentary conduct, obstructing Members in the prompt of their duties, or in coming to and from the House or its Committees, intimidation of Members and offering bribes to Members. These are the sort of things that are absolutely prohibited. In the legislation that you have in Kenya, the National Assembly Powers and Privileges Act, takes care of all those roles. The principal areas of protection of Parliament as an institution are set down in the National Assembly Powers and Privileges Act, Chapter 6 of the Laws of Kenya and the method for raising questions of privilege in the House is mentioned in your Standing Order No. 45.

Now, an Hon. Member can raise virtually any issue that he wishes to raise at any time subject to the Standing Orders and Orders of the day, the question is: how free should speech

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be? The freedom that you have in Parliament and protection from action at law for what you say on the Floor of the House and the protection for publication of its proceedings - HANSARD, as we call it - means that you should have a correct balance. In the Standing Orders you have a number of checks and balances laid down. Yesterday somebody queried the detail relating to Standing Orders, which is expressed in the Constitution, in relation to Questions. Standing Order No. 37 states the kind of things which you need to avoid in drafting a Question. This is because a Question is to be used for the purposes of Parliament and not for the purposes of Parliament waging attack on people outside Parliament or trying to get to war with somebody, so to speak, whether that person is inside or outside the House. Consequently, the details of Standing Order No. 37 are included as a restraint, so to speak, while at the same time allowing full freedom to prepare or ask any Question that satisfies the true sense of Parliament.

[The Chairman (Mr. Kaparo) left the Chair]

[The Acting Chairman (Dr. B.A. Godana) took the Chair]

Now, Standing Orders 71 to 76 deal with the sort of references Hon. Members may wish to make in debate. So, you are not allowed to say anything you may wish at anybody about anybody. Relevance, dignity and decorum must be observed because Parliament is not a street market; it is an institution which is yours to protect and ours to reveal. When one fails to respect the institution, of which he is a part, or its members or servants, the society of which you are members is at an end and there can be future for such a country, and history reveals that in all generations, whether in BC or AD.

Section 14 of the Standing Orders contains a wider number of stand off Orders. This part provides for order in the House and in Committee and order of behaviour in speech. In particular, Standing Order No. 88(2) makes this provision. I wish to turn to this Standing Order because I am sure you will pay close attention to the contents to it in all your speeches. It provides thus, and I quote:-

"Conduct is grossly disorder not only if the Member concerned creates actual disorder but also if he knowingly raises a false point of order or commits any breach of these Standing Orders or persists in making serious allegation without, in Mr. Speaker's opinion, adequate substantiation or otherwise abuses his privileges or deliberately gives false information to the House, or refuses to answer a legitimate Question, or acts in any other way to the serious detriment of the dignity or orderly procedure of the House".

Can you want a clearer and more positive injunction than that? I am fully satisfied that all Members of this forum observe that Standing Order at all times. But never forget that the guardian of that Standing Order and all the others, or the protector, of your privileges as well as the guardian of the House, according to Standing Order No. 1 is given thus, and I quote:-

"All matters not hereinafter expressly provided for shall be decided by Mr. Speaker".

So, within that range where matters are not covered in relation to orderly conduct of proceedings, Mr. Speaker's rulings balanced, objective and analytical are there for the guidance, governance and development of the House. A free speech can only be justified

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if only it is responsible; if it is irresponsible it deserves no scope or range. We look, for example, at the *sub judice* convention which, I think, was rightly mentioned here yesterday. By this convention the House is expected to show respect for legal proceedings in progress elsewhere. But the importance of Parliament is such that there can on occasion be a conflict between the *sub judice* rule and the overriding importance of public interest. But it is not public interest in so far as the individual Member is concerned; it is not public interest in pursuing or prosecuting a cause which you wish to ventilate; it is rather something stronger than that. Therefore, in public interest whatever is being litigated before the courts is important as an issue, and not litigation, to be raised in the courts. The balance of public interest in the Speaker's determination, as indicative from the Floor, is to allow debate subject to, obviously quite close and strict controls on the matter which may be the subject of litigation. That is the extent to which freedom of speech is important to Parliamentarians. That is also an indication of the degree of which responsibility which we need to attach to it. There is correlative principle attached to the media. Fair comment by the media does not require fairness to Parliamentarians. Parliamentarians often content to pick their friends in the media according to whether they show favour or disfavour. A fair and accurate report will never appear to be balanced in the mind of everybody who is not reading, particularly a Parliamentarian. It may be accurate but it may not be balanced and bias is reflected in many forms. But bluntly, what we are looking at is distortion, which is different. So, what you can legitimately object to is the form of literature that is published and is clearly a distortion of what transpired in Parliamentary proceedings. But if you are going to ask the media to do that as parliamentarians you also have to observe the same principle in your speeches on the Floor of the House because if you destroy, how can you blame them for that which is destroyed? There is no justification for you to be hypersensitive! You need a thick skin, though you need average amount of blood! But you must at all times be aware that the media is there to criticise, analyze and comment, and where there is political partisanship on the part of the media there is nothing wrong with that. What is important is whether what is published, represents a view supportive of one side or another; is reflective of what fully transpired in Parliament, or the cut and thrust of debate.

Mr. Acting Chairman, getting towards the end of what I want to say here, yesterday Prof. Okoth-Ogendo, in his first speech in the morning, commented on the threat to the Judiciary coming, not from the Executive, but from Parliament. I certainly would not say that, but he probably missed what Parliament is for. His statement extremely widened the mark and I am sorry he is not here. Parliament is the source of any new work for the courts. Parliament is the origin of the law, but the courts would wish to encroach some parts and narrow determinations that parliament would relish. They would wish to give their own interpretation of legislation which parliament may never had the intention of having a different meaning from that which the courts have given to it. There is massive legal literature called "statutory interpretation" which exists especially in courts but not in parliament. That is their action, scope and right. The courts translate what is intended to be or what appeared to be a very closely reasoned piece of legislation into one which is open to something with gaps, holes, lashes and so on, then what does parliament do? Does parliament allow those interpretations to stand? Does parliament allow the nebulous existence created by judicial construction to bind the people? No. If parliament's proper system is to be served, it will then legislate to deal with that.

[Mr. Brancker]

It may be that the professor had a different scene, how different it could be, I am not clear. Let us go back to what I said at the outset, of what I hope you will regard as a few remarks. Parliament is truly supreme in the end because, apart from dismissing the government and all the other things it could do, it is the ultimate determinant of everything that happens in society. I am a little puzzled as to why parliament should require a 75 per cent vote to get the Speaker or the Deputy Speaker out of the chair and only an absolute majority to deal with questions. I do not know why that is but, nevertheless, that is the fact. These challenges by courts will come in many guises and in many forms, but we must not abjure the legitimacy of the policing by courts of the systems which parliament has set up.

In the very recent case of paper - which is favouritism in white or black - against HART, the House of Lords has at long last acknowledged that statutory interpretation may be aided in some very limited respects by the use of HANSARD, something which I think has been recognised in Australia and in New South Wales.

Mr. Acting Chairman, in the case which Mr. Donahoe mentioned yesterday, the Supreme Court of Canada has only early this year ruled by a majority of 71 in favour that the Parliament of Nova Scotia has a right, except for members and staff, to determine who can enter that Chamber as visitors or strangers. This arose over a matter of the media use of parliamentary proceedings - the presence of the media for the purposes of broadcasting parliamentary proceedings and the ultimate indecision. God bless the Supreme Court of Canada because the Supreme Court of Nova Scotia had ruled otherwise. The Speaker had every right to exclude those whom he might wish on any occasion in that regard. Then, over the last couple of years, there have been cases of this nature. There has been a Maltese case involving a man named Demicoli where a committee of privileges was constituted of members who included one person who was making the actual complaint. Ultimately, I think it was the European Court of Human Rights which held that he should not have participated in the deliberations on a matter which involved him as a person who claimed to have been wronged. Over in Canada there was the Manitoba language case where, according to the Canadian system, since statutes are required to be published in English and French, and a particular statute was not published in that particular form, the statute was held to be void and of no effect whatsoever. We also had the position in Australia several years ago where - this precipitated the 1987 Act of Australia that I have just mentioned - the Supreme Court in New South Wales admitted in evidence in an open court hearing matters which had been given in a committee hearing in camera. Those are the types of challenges that you have to reflect on, and the types of approaches which you need to pay very close attention to.

Mr. Acting Chairman, you may have a suspicion that I could go on and conclude that I should not. Suffice to say, in conclusion, that in relation with the media, we talked of fundamental rights yesterday. Fundamental rights are meant to be set down in a form that is easy to read. But the main constitution usually creates nothing; they are simply articulating in succinct form what we know already exist so that you have freedom of speech and freedom in respect of your own property. Everybody knows that a simple statement of bold facts, a simple recitation of elementary and elemental criteria, is not all because when you have to interpret an apply those things, you have to look at the legal environment and firmament in which they operate so that you have freedom of speech. In parliament you are subjected to the rules and Standing Orders; you have freedom of speech outside also. It is a different freedom of speech outside from that of freedom of speech inside parliament. But outside, you

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have to be far more careful about what you say because there is no point quoting the fundamental rights provisions of the constitution as a defence to a bad case of libel. It is in that way that we have to look at the relationship of the media and parliament. The same law binds the media as it does individual citizens.

The media is not expected to respect parliament and I do not want to put it in that emotional form. The way I want to put it is that the media business is to recognise that they are a medium of fair and balanced communication with a right to report. There are challenges available for unfairness and unreasonableness but, at the same time, they have a central role in society. The issue of television and the responsibility of the cameras to parliament, and as a media form, was raised yesterday. That is a very complex subject which probably Mr. Limon is capable of dealing with better than I am, and I should leave it.

Otherwise, Mr. Acting Chairman, I should just like to thank you for your tolerance and patience, and you, ladies and gentlemen. Thank you very much.

The Acting Chairman (Dr. B.A. Godaha): Thank you very much, Mr. Brancker, for that very illuminating address. I am sure that Hon. Members here are very excited and eager to ask questions. However, before I call on the next panellist, Mr. Hilary Ng'weno of the *Weekly Review*, I have the apologies of the Cabinet to deliver for the Leader of Government Business. I understand members of the Cabinet are attending an urgent Cabinet meeting and they are eager to be here as soon as it is over; most probably even before the lunch hour.

Mr. Ng'weno, the floor is now yours.

Mr. Ng'weno: Mr. Acting Chairman, Hon. Members, distinguished ladies and gentlemen.

The previous speaker has made my work much easier by describing the relations between the media and parliament, particularly the duties and rights of both parties with respect to freedom of expression. In the programme before you, there is a mention to the Westminster model or tradition that governs the proceedings of parliament and also the relations between parliament and the media. Unfortunately, my experience throughout my working life has been closer to the American way of dealing with the Press, and I thought I might wish, first of all, to say that the paper before you was prepared the day before yesterday when it became obvious to me that I could not possibly go through the points it contains within the short time that I have. Therefore, I would like to merely repeat that it will be useful for those of us who have been brought up in the British and Westminster traditions of parliament to keep an eye on what the Americans think and do. Today the United States is the most powerful nation in the world and American values will, willy-nilly, influence what happens in most of the world, particularly in young and weak nations, such as Kenya.

With respect to the issue of Press freedom, it is interesting for most of us who work in the Press that the Constitution of Kenya makes no reference whatsoever to Press freedom as such. Press freedom is supposed to be subsumed under the general rights of freedom of expression. In fact, the freedom of expression in the Constitution of Kenya is mentioned ninth after many other freedoms that the Constitution considers fundamental to the individual. In the United States, in the Bill of Rights, freedom of expression and freedom of the Press are mentioned in the first amendment. Clearly, the way the Americans framed their constitution seems to have had a greater concern for the freedom of the Press than the founding fathers of our country. There may be historical reasons for this. When we became independent there were no indigenous newspapers in the country. Most of you who

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remember, in the early history of our country's independence, the Press was considered hostile to the nationalist movement and, therefore, it may be understandable and forgivable that Press freedom was not taken as seriously as it might have been if we had an indigenous Press at that particular time.

I would like to spend the rest of my time mainly looking at the kind of things which you, as the Seventh Parliament, may wish to consider when you come to reviewing the Constitution of Kenya as it is suggested that you might do. When you do, you will wish to review relations between the Press and parliament. Parliament makes laws and those laws govern relations between government and the governed and between branches of government as well as between the individuals in society. But these laws would not be as effective as we wish them to be unless they were widely publicised. In a complex country such as Kenya, one medium that has the wherewithal to make laws meaningful and easily understood by those whom they affect is the Press. Therefore, the Press, in a way, is a partner with parliament in the process of legislation. Legislation would not be as effective as it is normally intended to be, or as it is, if there was no Press or a process through the medium in which the laws that are made by parliament to govern society can be explained.

You have already heard from previous speakers and from yesterday's discussions that there are certain weaknesses in a parliamentary system. There is an unfinished agenda which has made it possible for us to meet here, which means that there is a lot to be done to improve the process of governance within the country. Though the Press and parliament have a symbiotic relationship in terms of explaining to the public what the laws of the land are and what the obligations and the rights of the public and government are, there are certain things that still need to be done to make that symbiotic relationship useful and effective. One of them, and it was pointed out in the discussions yesterday and by previous speakers this morning, is enabling parliament to deliberate and operate in such a manner that it is taken seriously by the public, and it does that by taking itself very seriously. It is only the Press which is able to convey that seriousness, sense of dignity and purpose to the public. Therefore, it is important for parliament to portray to the Press the kind of image or status it wishes to have within society.

I am sad to say that this has not always been the case, maybe, because we are a young nation. We in the Press have often found that many members of parliament are not as conversant with the rules of debate in parliament and that, much more saddening, they are not familiar with the issues that are being discussed. This weakness, on the part of many members of parliament, is translated through the media to the public because the media also have their own weaknesses. We are a young country and most of our media organisations are competing for talent with more powerful and better equipped employers, and we tend to have people within the media who are not as conversant with both the profession or the media as well as the national issues which they have to discuss, report upon and comment upon. Journalists, like parliamentarians, need to improve their knowledge of the major issues which come up before parliament for discussion. And I would hope that parliamentarians would help journalists to acquire the skills and tools which will make it possible for them to be more effective in presenting to the public what transpires in parliament and interpreting the same without distortion or bias. But the key tool which we, journalists, wish to be assured of by parliament is the freedom of expression, which the Constitution guarantees us, not as a special group of people but merely as individuals within society.

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The Constitution also guarantees journalists, as a subset of the whole citizenry, the right to receive information. But the Constitution is silent about something which is extremely important, and that is the right to seek information. We have the right to publish and every individual has the right to receive information, and it is only by implication that it is stated that every Kenyan has the right to seek that information which must be imparted and received. I believe that as you look at the laws, or the Constitution of this country, with a view to reviewing some of the provisions that touch on the Press, parliament might wish to consider constitutional legal measures such as a freedom of information law, which should give specific rights to the Press and, indeed, to all citizens, unlimited access to non-security related information, especially that which is in the possession of government.

Parliament might also consider passing specific legislation or making specific provisions within the existing legislation for the so-called whistle-blower laws. These are laws which are meant to protect employees from reprisals for disclosing illegal activities of their employers, be they private or government. Parliament might, indeed, wish to be more pro-active about expanding the area of freedom of expression in so far as it relates to the Press.

The Press in many countries is supposed to be a watchdog for society or for the public. But the public is not always one easily identifiable entity. In plural societies such as Kenya, there exists the danger that the Press might be tempted to fall into a pattern of promoting the interests of one or a few communities over those of others, and all in the name of the public. This is particularly the case where, for historical reasons, one or a few communities within society have gained a dominant position within the Press. In several democracies, legislators have taken pains to ensure that there is no monopoly or undue concentration of media power in the hands of a few people.

In the United States, for instance, anti-trust laws exist which prevent patterns of media ownership and operations from emerging, which abridge the freedom of expression. In these days of group interests and competition, not to mention the kinds of ethnic tearing up of nations such as Yugoslavia and Somalia, it would, in my opinion, be unwise, if not irresponsible, of law makers of Kenya not to seek to minimise monopolistic tendencies in the media by protecting the right to freedom of expression of communities and groups, as much as they do that of individuals. Then there is the issue of the right of anyone who is injured by inaccurate or offensive statements or representations to reply. In a number of countries, such as France, Spain and Germany, such an injured party has a right to reply in the same communications where the same statements in question were made. This is not the case in Britain or Kenya, and generally, is not the case where you have the Westminster system of government. There, the Press is expected to utilise non-legal mechanisms, such as self-regulation, to minimise the impact of damaging statements or presentations. In most countries the aggrieved party, of course, has the right to take out libel or defamation action in a court of law.

But what if the supposed damage arises out of statements made in parliament? With all due respect to your ability to stand by Standing Orders, you have enough instances in the past where members of the public, rightly or wrongly, have felt aggrieved by statements made in parliament. What recourse does an aggrieved party have for redress in such a situation? Certainly not the courts because you have made sure, through the National Assembly (Powers and Privileges) Act, that that option is closed to the aggrieved party. But natural justice calls

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for some kind of redress. The difficulty lies in finding some avenue for redress which does not circumscribe the freedom of Members of Parliament to speak of any matter which they consider important. Perhaps, the Press could be of assistance to parliament in this respect. Any statement in parliament that may be deemed to have injured anyone would most probably first come to the attention of that person through the Press. Where a genuine case of injury can be established, the Press ought to take it upon itself to offer redress to the injured party by providing him or her with an avenue for replying. But if parliament is to saddle the Press with this burden of making such redress on its behalf, then it is then the more important for parliamentarians to weigh carefully what they say, especially about those members of the public who have no way of defending themselves. It should always be remembered that by the very nature of the Press, a response is never as effective as the original allegation.

Finally, let me draw the attention of Hon. Members to the technological revolution taking place in the area of communications that poses far-reaching implications for the fundamental rights and freedoms of individuals. The framers of our constitution had no idea of the potential dangers that would be posed by the explosion in modern technology, which can gather, store and process vast amounts of information about individuals, which information can then be made readily available to others who can use it to the detriment of the individuals. They did not, nor could they have been expected to cater for the ability of modern communication technology to invade the privacy of citizens. It may be asked what that has to do with the media and parliament. I believe that it has a lot to do with the symbiotic relations between the two.

The Press today increasingly uses modern technology. In that sense, technology makes the Press a better watchdog. But it also gives it a greater ability to invade the privacy of citizens. Here is a case which raises the old question: who will watch the watchdog? I leave it to your consideration, Hon. Members, and thank you for your attention.

The Acting Chairman (Dr. B.A. Godana): Thank you, Mr. Hilary Ng'weno, for that equally illuminating address.

I now give the chance to our last panellist to address us this morning, and that is Mr. Chibesakunda.

Mr. Chibesakunda: Mr. Acting Chairman, and Hon. Members, I do not intend to take long because I want to give other Hon. Members a chance to raise whatever question they would like to raise. But I would like to stress one very important point which speakers yesterday mentioned, that we are not here to deliver lectures to you. What I believe in is that you, Hon. Members, when you were elected, you had the mandate, that is, the power of the people who voted you into parliament.

Having said that, I would like to say that parliament, in every democratic society, is one of the most important institutions in the land in that power to make laws, to impose taxes, to allow government to spend money for whatever purpose and to question its activities lies with parliament. As such, there is need to give some privileges and immunities to people responsible for carrying out those functions that I have just referred to.

In my view, parliamentary privileges and immunities can be divided into two categories: those that apply to Hon. Members as individuals and those that apply to the House as a whole. Those that apply to Hon. Members include freedom of speech in the House, freedom from arrests for civil actions during the sittings of the House, exemption from jury duties and exemption from attendance as witnesses in courts of law or commissions of

[Mr. Chibesakunda]

inquiry when the House is sitting. All that applies to the House includes regulation of its own internal affairs. If you allow outsiders to begin telling Members of Parliament how they must run the House, then you end up nowhere. Two, the authority to maintain the attendance and service of the Members of the House. There must be regulations by the House for the attendance of Members to their duties in the House and in committees.

It also has the power to expel Members if they offend the House itself. They are the ones who make those rules and they must be the first people to obey them. With regard to the right to institute inquiries and to even call witnesses, there must be regulations issued by the House itself for witnesses to appear before those committees. If there are no regulations, everybody will say, "I am not attending" or "I will not produce this or that paper". There must be exclusive rights given to the House itself to have the powers of summoning anybody and asking anybody to produce papers before such committees. The last one is the power to punish strangers. I am afraid my friends from the Press are just treated like me because we are both strangers and so we can be punished by the House if we offend it.

Having said that, I would like to emphasise one point, that there is always a misunderstanding amongst Members of Parliament in most Parliaments. When they talk of these privileges, whether applicable to individual Members of Parliament or to the House as a whole, there is a misunderstanding in thinking that members of parliament are treated as a special case, that they enjoy those privileges which people in the streets do not enjoy and that, therefore, it is not right to provide those privileges or immunities. My contention, and a number of speakers have said this, is that these privileges and immunities belong to the people who elected you into office. Once you grasp that fact, even the problem which my friend from the Press raised, of one Hon. Member standing up in the House and beginning to insult somebody who is outside the House will be minimised because you would ask yourself: "Did my voters send me to come and denounce this person in this House?" If they did not, then who are you representing? Once you know that it is the views of the people you represent that you should dwell on, you are going to speak about responsibly in the House. You will not pick up somebody, under the cover of privileges, and begin denouncing him.

The second point is that before the economy was liberalised in Zambia, we had the problem of having many queues for various commodities in shops. I know of some Hon. Members who went to shops and when they found some people already lined up, they would say, "Can you tell the manager that I am the Hon. Member for this and that?" That is an abuse of those privileges we are talking about. Those privileges are to enable you to carry out those functions I have mentioned effectively without any interference from outsiders.

Mr. Acting Chairman, the question which my friend from Barbados raised, about the courts trying to usurp the powers of parliament, happened a few weeks ago in Zambia. Some Members of the Opposition parties and others were arrested for treasonable offences and were detained, but then they applied to the court to show cause why they had been detained. During the proceedings in the High Court, one of the judges from nowhere decided that the Speaker must take parliamentary debates or the HANSARD to the court and testify whether or not the state of emergency was ratified by parliament. The Solicitor-General was acting on behalf of the State and Parliament. As such, he refused to allow that because there is a clear provision in the National Assembly (Powers and Privileges) Act of Zambia that whatever the Speaker, a Member or an officer of Parliament does in the course of his duties,

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as provided under that Act, cannot be subject to the jurisdiction of any court or institution outside parliament. But the court said that we have in the constitution an unlimited jurisdiction for criminal and civil matters as provided for in the Kenyan Constitution which was quoted yesterday. But it did not take long before the Supreme Court of Zambia ruled that in spite of those unlimited powers which the courts have, but if there is an Act of parliament limiting those powers, the court has no right to go beyond that.

As if that was not enough, a few days after that another high court judge ruled that a writ of *mandamus* should be issued to order the Speaker to appear in court. After thorough consultations by the Speaker and the Standing Orders Committee, it was decided that the Speaker would not go there. A lot of arguments went round, and in the end, I am glad to say that parliament triumphed and the Speaker did not go to court.

All that I am trying to illustrate is the question of courts themselves trying to impose their authority over parliament. If they could keep to the interpretation of the laws as made by parliament, and the word "foolish" was used in the law, they must interpret it as it is and there would be no question of conflict.

Mr. Acting Chairman, as for privileges and immunities, the responsibility of safeguarding those immunities, privileges and rights remains with Hon. Members. Outsiders will not help you to defend them. If you abuse them or neglect them, you lose them because voters will at one time resent that and ask for amendments of the laws that protect the privileges and rights of Hon. Members.

I thank you very much, Mr. Acting Chairman.

The Acting Chairman (Dr. B.A. Godana): Thank you very much, Mr. Chibesakunda. Hon. Members, before we open the discussion to the floor, you will note on the programme of the seminar that we are supposed to break for tea at 10 am. I take it that Hon. Members are all very eager to give comments and ask questions on that illuminating address and I propose that we put off the tea break to 10.30 am.

Prof. Ouma: Thank you, Mr. Acting Chairman. I have a question, especially to Mr. Hilary Ng'weno, but the other members of the panel may help. I find the question of the relationship between the Press, the government and parliament extremely important because it is the medium which actually informs the public and keeps government and parliament informed of what is going on. I would especially like Mr. Hilary Ng'weno and the other panellists to tell us what they know of how other countries have succeeded in bringing about that healthy relationship between the media, government and parliament, because we do need that relationship not only for co-existence but also for mutual progress. What do we do to have a healthy relationship? I am sure fellow Hon. Members here know what kind of relationship we have in this country between the media, government and parliament. So, what have other countries done, which we may copy or adapt, to make sure that we have a healthy relationship between the media and the rest of society?

The Acting Chairman (Dr. B.A. Godana): Before Mr. Hilary Ng'weno replies, may I inform our good panellists at the far end that they are still free, even from that point, to put up their hands and give their own views contributing to the answers.

Mr. Ng'weno: Hon. Members, I do not know what would be a legitimate answer to that particular question. I am always impressed by the fact that many societies which are considered to have found a solution to the problems relating to relations between different institutions and societies have done so over many years. I would particularise the United

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States which I know fairly well, and say that it has fairly amicable relations between the Press, the Congress and government. But these relations have been built over many years and during those years there have been turbulence and problems between the Press, government and Congress. The last analysis is really the people of the country, who provide a solution to the relations between the Press and other sectors in society. It is the people who will shepherd the Press into the kinds of activities which would be acceptable and conducive to good governance. I believe that they have nothing to do with malicious intentions on the part of the Press or whoever it is; some of them have to do with very simple things like lack of resources to do a good job. More so, the Press in this country could do with a lot more resources. I believe that on the part of the Press, if we had more resources to do a better job so that we are seen as more professional and as being in control or, at least, in command of the facts and able to convey those facts to the public more effectively, we could then be in a position to use the public as the constituency which will support the Press in warding off any threats to its freedom from government, parliament or any other sectors in society.

I would say that the answer is not simple. It is a learning experience and I think we ought to encourage the public of the country to stand behind the Press when the Press is threatened by any sector of society. But that will take time because the public have other things to worry about besides the freedom of the Press. Thank you.

Mr. Brancker: Mr. Acting Chairman, I fully agree with what my friend has just said on the subject. One of the big difficulties is that the Press is inclined to neglect their responsibilities in respect of knowledge, and Members must take responsibility for the end results. I have always believed that whatever is laid in parliament, whatever material is provided to parliamentarians, should be provided simultaneously for members of the Press Gallery so long as it is not confidential or private material that requires to be debated before it is formally published. That is something that certainly we have done in Barbados over many years now. But we have some unusual thing which is that there are a number of mature, experienced and properly trained journalists; really very knowledgeable people and if they are knowledgeable, then it is not easy to match what they write because, writing from a background of knowledge, you may not agree with what they say, but they write sense. These are different from the category of people who have a perception that their business is to be critical of parliament in whatever form they write because they think that makes news as it does in many countries. There is an absence of maturity in the approach of those people to the publication of base comments.

However, I will go further and say that we should move in the direction of freedom of information - I know that freedom of information legislation is a long way away, not only here but in many other countries. This does not mean taking the media into your confidence, and I am not suggesting that, that is necessary or even appropriate to this point, but rather just providing feeders or opening the mechanisms involved. In a parliamentary example, this means providing the media with appropriate amenities and facilities and, so to speak, absorbing them into the plan. You are not carrying favour but you are doing what a responsible society is expected to do nowadays to accommodate what is, after all, a very fundamental organ in an orderly a society. I am sure that some of my colleagues will wish to have something on that and know that from the experience in the United Kingdom, Australia and Canada, this is very strong in these countries.

Mr. Falana: Thank you, Mr. Acting Chairman. My question is directed to Mr. Hilary Ng'weno, for whom I have a lot of respect in his reporting and profession. I would like him to tell us, when it comes to reporting, if the Press always reports or informs correctly or if they report and inform what in their opinion they think should be reported. If I may elaborate, the Press, to my conviction, is a very fatal instrument if badly or wrongly used. I hope it is not the intention of their profession to wrongly inform people. We have this problem in our country; I want to zero it to our local Press. We have always had this war between the Press and politicians, where you find that the Press reports a politician on some issue and the next day the leader comes out and says that he was misquoted. I believe that the Press is also human and that there are people they like and others they hate. When the professionals, at times do not like somebody, it is human and I think they just go out of their way and perhaps report what that particular leader should have said but not what he actually said in the true sense.

Hon. Members: Ask your question!

Mr. Falana: Mr. Acting Chairman, I say this because I am a politician and, fortunately, I have not had any problems with the Press so far. But I know of leaders who, when they hit the headlines, say that the Press is good and wonderful but, the moment they are dogged from the front page, they come out and say, "Oh, hell, this is no Press. I have been misquoted, they are killing me..." It is true that from experience we know that the Press has spearheaded the downfall--

Hon. Members: What is the question?

Mr. Falana: Mr. Acting Chairman, I can see that Hon. Members are getting impatient and, therefore, let me put my question. With all due respect, do the Press always report correctly or do they add their own fashion?

Mr. Ng'weno: I think that is a rhetorical question. Obviously, the Press does not always report correctly and it is not just the Press in Kenya but elsewhere in the world. But, to come back to the simple example that has been given of misquotation and complaints by politicians, over more than 30 years of my experience in this business, I have come to conclude that the public assume that whenever any politicians complains that he has been misquoted, the Press has quoted him correctly.

Mr. Ndicho: Thank you, Mr. Acting Chairman. Mine is directed to Mr. Chibesakunda, and is about parliamentarians denouncing some members of the community who are not members of parliament and cannot defend themselves in Parliament. I do not know what the position is in his country. In Kenya we are forced by circumstances to do some things and I was wondering whether it is our people who send us to parliament to denounce some of these people. In Kenya, as I have said, we are forced by circumstances to do this because you find that there are some people who do wrongs to the community by grabbing public land and giving government a very bad image. Under the circumstances, our people expect us to speak against those incidents in parliament. The Acting Chairman here is our Deputy Speaker and he is very strict on laying documents on the Table and proving allegations. So, to avoid being thrown out of parliament, I would, for instance, say that the Kiambu District Commissioner has grabbed certain plots or committed other wrongs, and I have all the necessary papers with me. When that is reported in the Press or over the radio the following day, back at home my people applaud me for exposing the officer although he cannot defend himself in parliament. I do not know what the position is in other parliaments. Do you have such incidents where civil servants do things which are

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incompatible with their jobs and you find that as politicians you are the only people who can speak about those things? You see, if a councillor or a fellow civil servant out there says something like that, there is no effect, but when I say it in parliament it carries some impact.

Mr. Chibesakunda: Mr. Acting Chairman, I will answer that question in two parts. First, there is nothing wrong with an Hon. Member talking about certain misdeeds happening in some parts of the country or in his constituency if he can substantiate this. What is bad is making wild allegations which cannot be substantiated because ordinary citizens will say that Hon. Members are using their privileges to denounce them without producing facts. On the other hand, if any Hon. Member would like to have some action taken on some misdeeds by some public officers, I assume that there is an appropriate committee within the Kenyan Parliament where those matters can be dealt with and a report submitted after thorough investigations by Hon. Members. If it is a question of just making wild allegations, it is not right for an Hon. Member to follow that line.

Mr. G.G. Kariuki: Mr. Acting Chairman, my question will be directed to my friend, Mr. Hilary Ng'weno. I have known him for a long time and I have been reading his writings and I am highly impressed by his views over the future of democracy in Africa. How does he see the potential for the development of modern democracy in contemporary Africa in relation to Press reporting?

Mr. Ng'weno: Mr. Acting Chairman, the potential is great if all the things we have been discussing can be achieved, that is, if the Press can be given the tools and greater freedom to seek for information, impart that information to the public and to make comments on those issues which are important for national development and for the development of democracy in this continent. The Press, however, it must be remembered, is only one of the actors and the freedom that democracy entails must be seen as a totality. It is impossible for the Press, or even for the public, to defend Press freedom if all the other freedoms are not being defended.

My view, in terms of prognosis, is that Press freedom will contribute to the development of democracy in Africa to the extent and at the same rate as other freedoms. To contribute to democracy you cannot leave out academic freedom and the other freedoms that you have been talking about: the supremacy and the privileges of parliament. To the extent that these freedoms and rights do not develop, it is impossible for the Press to have a meaningful contribution to the evolution of democracy in Africa. So, I would hope that as we worry - and those of us in the profession obviously worry - about Press freedom, we also worry about expanding all these other freedoms that form the fabric of democracy. We should not have a fixation on only one aspect. I believe that one of the problems that are making the process of democracy hard is that the freedom of the Press has taken greater importance in the minds of many people than any other freedoms.

Mr. Acting Chairman, Sir, we should also worry about expanding all these other freedoms that form the fabric of democracy and we should not have a fixation on only one aspect and I believe that the problems that are making the process of democracy as hard is that the freedom of the Press has taken greater importance in the minds of very many people, to the extent that you will find that almost 30 per cent of Americans are deficient in so many freedoms because those other freedoms, particularly freedom from hunger and freedom from all kinds of things have not been taken seriously. I would hope that as we look at democracy we do not have a fixation of Press freedom as the central point of democracy and, that we

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spend as much time worrying about the development of these other freedoms and rights in society.

Mr. Mathenge: Mr. Acting Chairman, Sir, I believe that the Press should be allowed to enjoy freedom; to gather news and information and to publish what they have gathered. But in this country where you now have multi-party---

The Acting Chairman (Dr. B.A. Godana): Mr. Mathenge, please, ask your question!

Mr. Mathenge: How impartial and truthful is the Press in this country? I have directed that question to my friend, Mr. Ng'weno.

Mr. Ng'weno: Mr. Acting Chairman, Sir, we have already answered the second part of that question when it was asked in the form of how correct are the reports that come out of the Press. The first part of that question as to how impartial or partial the Press--- I believe that the Press is impartial to the extent that it has been with us. I also believe that the Press is partial in the sense that every member of the Press is an individual with opinions of his or her own; not just with opinions but with the rights guaranteed by the Constitution to have those opinions and to impart those opinions. Therefore there is nothing wrong in having a partial Press, provided that, that Press is not the only Press that exists and that in society there are enough avenues for others with their own partial opinions to express them and put them in the marketplace of ideas so that they can compete with others. The Press should not be required to be objective to the point where it has no opinion of its own; to the extent that it has an opinion, it is partial. I believe that, that partiality in itself is not a danger to freedom.

Mr. Mak'Onyango: Thank you, Mr. Acting Chairman, Sir. I will direct my question to Mr. Hilary Ng'weno. You did point out that there is a problem regarding the freedom to seek information. You will agree with me that part of the problem here has to do with the kind of tradition we have in this country which means that we have a Government---

The Acting Chairman (Dr. B.A. Godana): Could you, please, ask your question?

Mr. Mak'Onyango: I am coming to the question. There is a problem in that we have a situation in this country where there is belief in what in Kiswahili is called "Siri Kali." We have a belief in this country that Government is what you call "Sirikali" which means that a lot of information which should be brought to the fore hardly comes to the fore. The problem is not just for the journalists but even we Parliamentarians. Can you volunteer any means or a way you think we could use to overcome that particular problem? The Press is itself accused of self-censorship which means that it is not going to be possible to have a truly free Press unless the Press itself is going to be bold enough to be able to publish or to publish and be damned as the saying goes.

Mr. Ng'weno: In response to the first question, I would say that it is my suggestion that Members of Parliament consider the possibilities of moving towards legislations which would give citizens, not just the Press, the right to seek information. I am talking about freedom of information laws. If we could get to that kind of stage in due course we ought then to be able to reduce what you are calling "Sirikali"; meaning reducing the secrecy of Government business. It is up to you as a Parliament to do the necessary work; bring up the legislation and make it possible for me to ask, from any Member of Parliament or any chief executive of a corporation, for information which is important to the public.

The second question is about self-censorship. Self-censorship is something which is practised in many countries to some degree or other. I think last week, I, for the first time,

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saw the picture of the Head of Intelligence in Britain. This has been something that is not secret to the British Press. It just happens to be a tradition that they agree with the Government that in the interest of British security they do not publish the picture of the Head of Intelligence. There may be some people who would not take that as something sensible; many countries would not consider that as something sensible. The British Press does not consider that to be self-censorship, but looking at them, I consider it as self-censorship. My hope is that the Press should have - especially if they have the right information and if they have the backing of the public, if they have a constituency and are responsible - the courage to publish and there will be less and less need for self-censorship. There are many examples of self-censorship. Until very recently in the United States, for instance, you would not read stories about Senators' womanizing or being drunkards and so on. You had in the United States, under President Woodrow Wilson, a whole a year in which the President was almost incapacitated because of mental illness but nobody heard anything about it because the Press censored itself and would not publish the information they had. They just happened at that time to think that self-censorship was in the interest of the nation; they may have been wrong, they may have been right. History says that maybe it was not worth it but nevertheless each nation has its own ways of dealing with these things and probably the Kenyan Press should do more to publish what it has than it does at the moment. But the idea of what is publishable, in the eyes of the Press, is something which the Press ought to be prodded to explore more and questions of this kind ought to be directed at the Press so that they do not constraint the information they have too much.

Mr. Ruhii: Mr. Acting Chairman, Sir, my question is directed to Mr. Hilary Ng'weno. This is on paragraph 8 of his Paper entitled "The Media and Parliament." On page 3 - paragraph 8 - he says:-

"Weak nations such as Kenya, which are in no position to resist the enormous pressure of American influence would be well advised to understand that special historical, socio-economic and political background in which the freedom of the American Press has developed. It is a background which is unlikely to be replicated with any success elsewhere in the world. Each nation must evolve its own values. But that evolution will be a historical process in which contending values will work out an equilibrium that will, in retrospect, be accepted as a national set of values."

My question here is: Can he tell us whether there are no values which are universal? In other words values which are fundamental or universal among the civilized countries of the world. I am talking about values which are acceptable and which have stood the test of time and can be applied in our system in this country.

Mr. Ng'weno: Of, course, Mr. Acting Chairman, Sir, there are sets of values which are universal. But they are universal only because society is saying so and to the extent that society believes they are universal; to the extent that society believes they are universal and society will take whatever means available to apply those values to itself. But I do not believe that there is a theoretical position that certain values by themselves are universal without the people that make up the universal community; the global community looking at those values and saying "these values are universal but those ones are not and those values which are universal are applicable today and others which are also universal will be applicable tomorrow." These are the sort of issues that influence society but at the end of the

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day politics which is the business in which you are and the business in which I am has to do with contending views. One of the contentions that must be dealt with is precisely what you raised; what values are universal. They cannot be determined in advance of discussion and in advance of dialogue between different people.

Prof. Anyang-Nyong'o: Mr. Acting Chairman, Sir, I would like to ask my question to Mr. Hilary Ng'weno too. Given the fact that the electronic media is perhaps the most powerful form of expressing Press freedom in any country today, is it really correct to say that we have Press freedom in Kenya when the electronic media is dominated by the State? What has been Mr. Ng'weno's experience in trying to establish his own radio and television stations as a way of expanding the arena of Press freedom in this country?

Mr. Ng'weno: Mr. Acting Chairman, Sir, the second question is an unfortunate question. Maybe I am still looking at means of establishing, not a radio station but a television station and it will be unfortunate for me to give you a long story of how difficult it is to do that. Basically the problems are really resources. I have a licence from the Government to set up a television station. I have had it for the last three years and if any of you want to lose money in a venture such as a television station and you have plenty of it, please I would welcome a discussion outside as to what--- But I have been looking for investment but it is very difficult mainly because most investors who want to go into television are not communicators; they are businessmen and they want to make money. They have a feeling that money can be made quickly. Those of us who are in the business of communication have other agenda. I have not come to any agreement with anybody with respect to their agenda in terms of what they want out of the business and my agenda in terms of what I want out of the profession. The electronic media, particularly radio in Kenya, is the most potent medium of communication. It is interesting, for instance, that I applied for a radio station licence and I was not given a radio station licence and there is nobody in this country, to my knowledge, who has been given a licence to start a radio station. But I was given a licence for a television station because it is much more expensive to set up a television station than a radio station. For KShs.1 million I could set up a radio station to broadcast, maybe, to the whole of Nairobi area. I could not do that with less than at least 500 times that amount to set up a television station. So, radio is a lot more powerful and Government seems to feel more threatened in letting go its hold on radio. But ultimately, you are right, we are not talking of Press freedom if we do not address the new technologies of communication and it could not be just television in the way that you know it; which is brought us from a tower and using one frequency. We would be talking about television from satellites and television from other countries. The amount of information that can come through the electronic media is such that we, as a nation, must position ourselves to take advantage of that particular development. We shall not have complete Press freedom until the public of this country have access to the electronic media and can use it the way we use the print media. In fact one might go to the extent that the Americans have gone, which is to pass legislation which says the Government will, under no circumstances, broadcast to the public. The Voice of America can broadcast to anybody outside the United States but by law it is not allowed to broadcast to American citizens because to Americans, the Government has no business saying anything to the public which might be used by the media.

The Acting Chairman (Dr. B.A. Godana): We are free to continue with the discussions outside, over tea, but just before we break for tea, may I suggest that given that

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the remainder of the morning session after tea break has two topics on the programmes, the Party in Parliament, which will run for one hour and Critical Aspects of Debate in the House and Committee which will proceed, as yesterday, up to 1.00 pm will again run for--- We will be left with only 30 minutes and I propose that we combine the two. Some of the panellists could not be here and those who want to talk on the same subject will give their addresses and then we can go into the issues. If that is acceptable, we will now break for tea.

*(The Seminar adjourned at 9.30 am
and resumed at 11.05 am)*

THE PARTY IN PARLIAMENT

- In Government and in Opposition.
- The Cabinet Minister and the execution of Government policies: Responsibility to Parliament.
- The role of the Public Service in the scheme of Government.
- The thrust of alternative policies.
- The function of opposition parties in Government.
- The status of the Official Opposition.

- Panel:*
- (i) Hon. Clive Griffiths, MLC, President of the Legislative Council, Perth, and Chairman of the CPA Executive Council.
 - (ii) Mr. Arthur R. Donahoe, QC, CPA, Secretary-General.
 - (iii) The Hon. Mrs. Gwyneth Dunwoody, MP.

CRITICAL ASPECTS OF DEBATE IN THE HOUSE AND IN COMMITTEE

- Form and contents of speeches.
- Relevance in debates.
- Laying of documents and admissibility of documents.
- Parliament's right to know.
- The application of time limit on speeches.
- Interruption of Members speaking: The meaning, use and abuse of

points of order and elucidation.

- The scope of no-confidence Motions.
- Order in the House and in Committee, conduct and ethics.
- Declarations of interest by Members: Conflicts of interest.
- Suspension of Standing Orders to facilitate debate.

Panel: Mr. Donald Limon, Clerk Assistant, House of Commons, United Kingdom.

(The Session Chairman - Hon. F.K. ole Kaparo)

The Chairman (Mr. ole Kaparo): Let us start again. We have two topics before us. I understand that just before we went for tea break, it was agreed that the two topics we have left for this morning will be combined so that we have a discussion of the same in the next two hours or so. The two subjects "The Party in Parliament and Critical Aspects of Debate in the House and in Committee" are, like every other subject we have covered, very, very important to Members of Parliament. We will organise it this way: The first subject, "The Party in Parliament" will be introduced by Mr. Griffiths together with Mr. Donahoe and then the other subject "Critical Aspects of Debate in the House and in Committee" will be introduced by Mr. Donald Limon.

After that we shall open discussion on the Floor and all panellists here will respond to your questions. You may specifically direct your questions to any of them but at the same time every panellist will be at liberty to answer a question which that panellist thinks he or she can competently handle. So, without taking much time, I will call upon Mr. Griffiths to lead us in this discussion. Thank you.

Mr. Griffiths: Thank you very much, Mr. Chairman, Sir. Hon. Members, ladies and gentlemen, before I get to speaking specifically about the items under the two headings, there are a couple of things that I think perhaps you would allow me to share with you; they are articles that have sort of helped me in my parliamentary career. I think that I should perhaps begin with a quote from a lady by the name of Jean Kirkpatrick who wrote a book called "*Dictatorships, Double Standards.*" Jean Kirkpatrick said this, and I quote:-

"Political regimes exist through values, beliefs and habits of the citizens. Regimes persist only as long as appropriate values, habits and beliefs ensure. Constitutions, Plato emphasised, are not made of sticks and stones but depend on the character of citizens."

The task of developing and maintaining an effective Parliamentary system relies on the will of the Members committed to it. I think I should say that an effective and workable Parliament requires the will of the Members to make it work. You can have all the rules, you can have all the most idealistic Standing Orders but if the Members do not have the will to ensure that they are conformed with and that they are complied with then the system fails. So, I thought I should share that with you.

Another quote that sort of inspired me was a quote by a former Australian Prime Minister - he is not of my political persuasion - who said this:-

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"Honourable Members should not forget that in the life of a democracy it is important that the public should respect not necessarily a party but the Parliament. Everything we do to destroy that respect will destroy the democracy itself."

So, I think that here are a couple of fundamental things that we need to think about as we go through our lives as representatives of the people in a parliamentary democracy such as you and I belong to. I have got a few more things that I should tell you. In a democracy, I believe, you effectively have the Government at one end and the people at the other end. It is such essential ingredients that make up parliament, combined with the will of the Members to put the powers entrusted to them into effect with integrity that create an effective and long-lasting system. The effectiveness of a democracy is the control in between Government and the people, to prevent the abuse of power and to control the exercise of power by Government. I think that is something that you will have gained from my comments out of the last day and a half.

The role of the Opposition is a very, very important part of the operations of any democratic Parliament and I would suggest that in the Parliaments that I have anything to do with--- Mine is a two-party Parliament and others have several parties. But the general presence of the multi-party system has removed uncertainty as to which party has the right to be called the Official Opposition. The Official Opposition is the largest minority party which is prepared to assume office in the event of the resignation of the Government. The Opposition is simply those Members of Parliament who do not support the majority or the Government in the House. The existence of political parties gives a ready identification of who supports and who does not support the Government. Recognition of an Official Opposition has gone hand in hand with the growth in parties and their influence over the way in which Parliament operates. It is not the role of an Opposition to oppose everything supported by the Government. The basic function of an effective Opposition is to scrutinize majority proposals, point out their strengths and their weaknesses and take before the people the fact that they have a choice of policy and philosophy. The Opposition should always try to appear to be an alternate government, always capable of taking over from the current government and doing a better job of running the country. Therefore, since the strength of modern party discipline makes a Ministry largely invulnerable to direct attack on the House, the criticism of the Opposition is primarily directed towards the electorate with a view to the next election or with the aim of influencing government policy through the pressure of public opinion. The Floor of the House provides the Opposition with the main instrument for this purpose.

I would remind you that as with any individual Member of Parliament, the Government may not like what the Opposition has to say or the way in which it is said but the trade test of a free Opposition and true democracy is whether the government allows free debate and listens nevertheless. There is a balance which needs to exist and the role of the Opposition in Parliament fulfils this requirement. Having an effective Parliament does not mean that you do not have a strong and effective government. If an Opposition is going to more than just a name applied to a collection of Members of Parliament, reasonable facilities and services must be provided from public funds to enable it to do its job. It is easy for the government of the day to question or scrutinize the actions of the Opposition or make what is intended to be a good forum which Parliament is. If the Opposition does not have

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sufficient funds and the means at their disposal to achieve this they obviously cannot perform their duties in this regard. This is their basic right and the right of those that they serve and therefore they must not be impeded in any way from carrying out these responsibilities. Therefore they must be suitably housed and resourced. In my case the Opposition is also given appropriate facilities within the walls of Parliament along with the representatives of the government of the day. This is not only sensible and expedient but shows respect for democracy and recognition of the important role the Opposition plays within it. So, I think that sort of briefly sums up my views on the Opposition's role in Parliament.

The purpose of Parliament in any democratic State is to provide the people with effective means of self-government. Members of Parliament are elected by their constituents to represent individual and community views and opinions on matters placed before them. Members are not the delegates of their constituents in the sense that they are duty bound to vote in accordance with the express dictates of their electors, rather they are supposed to use their own deliberate judgement in deciding which way they decide on those issues.

Therefore, the success of a system of parliamentary Government in providing, at least, order and good government for the people, depends to a significant degree on the respect and affection in which the institution is regarded, and the amount of accurate and timely information provided to the community about various institutions and so on. So, Hon. Members, having started the matter up with those few broad comments, I intend now to hand over to one of the other speakers who will speak in a bit more details on the specific items, bearing in mind that these three subjects - the party and parliament, and the critical aspect of the committees - are the type of subjects that would be best, in my view, dealt with in running more time for questions from the Floor with regard to each of these items. So, I will contend myself with handing over to the next speaker. Thank you.

The Chairman (Mr. ole Kaparo): Well, thank you, Mr. Chairman of the CPA. I think we will now hear from the Secretary-General of the CPA.

Mr. Donahoe: Thank you, Mr. Chairman, fellow panellists and Members of Parliament. Mr. Griffiths just gave you a very good outline of the role of the Opposition so much so that when he was speaking, I was going through my notes and rapidly checking out the things I had planned to say. So, I going to give a story that Mr. Griffiths uses. I feel like the man who married a widow who had 12 children, and said, "I do not know why I am doing this, but there is really nothing left for me to do".

(Laughter)

However, there are a few other things that Mr. Griffiths has said that I did not hear, but due to my background, I have some familiarity with. I just want to say that it is recognised that the predominant share of controlling and arranging the time of business of the House belongs to the Government. This is recognised by Standing Orders in Parliament which follow the Westminster model.

Similarly, in most Parliaments, the fact that the Government is supported by a party or parties and is opposed by another party or parties, is partly disregarded by the rules. There are, however, numerous examples of exceptions to this general proposition; the most important being, of course, the recognition of the Official Opposition and, in most Parliament, the recognition of other recognised political parties. So, in most Parliaments, the rules or

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Standing Orders, if the Opposition arrive on certain occasions to determine the order of business in the House, Standing Orders often allow the Opposition a certain number of days in each Session to decide what business the House shall consider. In the Parliament that I am most familiar with - that is Nova Scotia - our rules provide that every Wednesday is Opposition Day. So, on Wednesdays, it is the Opposition parties and due to their large numbers, it is usually the Official Opposition, but occasionally they recognise third parties which decide the order of business. So, on Wednesday afternoons, immediately after Question Time is over, instead of recognising Government House Leader to announce or to call the business of the day, I would recognise the Official Opposition House Leader. He would then advise the House, having given notice to what he was going to call on before, as to what business the House would debate. This could be a Bill that had been introduced by an Opposition Member, or it could be a resolution that the Opposition wanted debated and publicity given to some particular matter of public policy or public importance that they wanted to draw attention to. So, for the balance of that Sitting Day, the business of the House would be that which the Opposition decided on for the House to consider.

This kind of reverses the roles of the Members because it then becomes the function of the Government, if they wanted to keep the debate going so that the vote would not be taken. Then it became the function of the Government to put up enough Members to use the time of the House for that particular day to make sure that the adjournment hour arrived before the House was required to come to a conclusion on the item the Opposition had called for debate. We had limits on the length of time a Member could speak. On Opposition Days, Members are restricted to speak to a 15 minute time limit for their speeches in the debate. So, the Government had to find enough Members to keep the debate going. If the Opposition, as they often did, would introduce the Motion and have one of their Members speak for 15 minutes or so and then sit down, then it would be up to the Government unless they wanted to have a vote - which they usually did not - to fill up the rest of the time allotted for debate on that particular item.

Another practice that was in place in Nova Scotia was the fact that during Question Period, it was the Official Leader of the Opposition who was recognised and got the first question. Another fact of political life in Nova Scotia is that the Official Leader of the Opposition was paid the same salary as the Cabinet Minister, and had most of the privileges that a Cabinet Minister was entitled to. The leader of the recognised political party in the House was also paid one-half of the salary of a Cabinet Minister.

We also recognise the existence of political parties in the Legislature through our board of internal economy, making payments to the pockets of Official Opposition Leader and the other recognised parties. These payments allowed the Opposition parties to engage secretarial and research personnel. All the Members of the House, regardless of their political affiliations except Cabinet Ministers, receive what we call "Constituency Allowance". This helps them to maintain offices and hire secretarial personnel in their own constituencies. There were strict rules on accounting for those payments, and the Members had to submit receipts substantiating the fact that payments were made for the purpose they were designed for.

Also, in an election campaign, candidates, regardless of whether they won or lost, who attained at least 10 per cent of the total votes cast, were paid some of the cost of conducting their own campaigns. They were not reimbursed fully, but they were reimbursed from

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Treasury for some of their election campaigns. But in order to qualify, they had to obtain at least 10 per cent of the votes cast.

Now, in Nova Scotia and, I think, in many small nations, it is true that the Whip is not in the Parliamentary procedure, or does not play a big role in the proceedings of Parliament as he does at Westminster and in many of the larger Parliaments. In Nova Scotia, it was the House Leader and the Opposition House Leader who play the leading roles in determining Government business and the time to be allocated to it.

Now, as Mr. Griffiths said, the role of the Opposition is to "engage in constructive opposition", and at the appropriate time to propose what kind of policies. The timing of the proposition of these policies can be important, as witnessed in Australia recently, where the Opposition parties chose to unveil a major platform a year and a half before the election was called, and paid the price for having done so. By the time the election was around, public opinion had turned against their policy and it was used effectively by the Government against the Opposition. In the result, the Government party was elected.

Cabinet Ministers are, of course, responsible to Parliament for the conduct of business of their departments. This responsibility is carried out through Question Period, particularly in many Parliaments, through the estimates debate when expenditures of various departments come under very close scrutiny. But as we all know, in the final analysis, it is the people who decide which party shall govern. So, it is important that battles between parties be partly in Parliament and also in an election campaign, but not in the streets.

I think it is possible for many personal friends to develop across party lines. I can illustrate this by a story of an experience I had when I was a much younger man. I worked for a time in Ottawa, in Parliament of Canada, doing research in writing for a number of the then Opposition Members. Very soon after I arrived there within a couple of days, I was seated in the Gallery of the House watching the debate on the Floor. Two of the greatest Parliamentarians in the Canadian history were going at each other. One was Mr. Bison Baker who had been Prime Minister of Canada for many years, and at that time he was the Leader of the Opposition. He was recognised, I think, as one of the greatest Parliamentarians in the Commonwealth, but certainly one of the greatest politician that Canada has ever produced. He was on one side and on the other side was Mr. Paul Martin who at that time was the Minister for External Affairs, and also recognised as a great Parliamentarian. I watched Mr. Bison Baker and Mr. Martin argue across the Floor of the House very, very vigorously. They were adding each other "strokes" in debate quite intelligently. So, I left the Gallery and walked down the corridor. I was waiting for an elevator. I looked over to my left and saw Mr. Bison Baker walking towards the elevator. So, I looked to my right and Mr. Martin was walking, obviously headed for the elevator. Then I thought to myself, "Oh, my God! Here, I am, these two men have just been fighting vigorously, and I am gonna be in the middle of a continuation of that battle!" So, I was wishing that the floor would just open up and I could disappear. But, anyway, Mr. Bison Baker arrived, and seconds later Mr. Martin arrived. Mr. Baker said to Mr. Martin, "Hello, Paul? How are things with you? Are you going down the winter this weekend?" Mr. Martin said, "No, I cannot go this weekend. I will have to go down to see and talk to my constituents. There are some duties and I have to be around". These are some of the things we have to put up with in public life. They were on and off. They had a very pleasant conversation. The elevator came and three of us got on. I got out on my floor and they got out where they were going. That is when it was dawned on me that

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two men who, about 15 minutes beforehand, had been battling on the Floor of the House were able to engage in friendly conversation, and obviously had a mutual high regard for each other. So, that sort of thing can develop and often does develop in politics.

I am gonna conclude, Mr. Chairman, by saying that we have had numerous references yesterday and today about the supremacy of Parliament. It is true that Parliament is supreme. As somebody once said, "Parliament has the power to do almost anything, except, perhaps, change a man into a woman". But it is important to remember that it is Parliament which is supreme. That is not the same thing as saying that "each individual Member of Parliament is supreme". Individual Members of Parliament must be subject to the laws of the land, the same as other civil servant, save in those areas where the law recognises certain privileges which Members of Parliament (MPs) have to enable them carry out their duties which Mr. Brancker and Mr. Chibesakunda spoke so well about this morning.

But MPs must operate in the context of Standing Orders which regulate their conduct and the way they conduct their business. If the rules are not appropriate, they should be changed by the proper processes. In my Parliament in Nova Scotia for ten years we had a committee on rules and procedures. During the course of those years, we changed the rules and procedures a number of times, but it was always done after long consultations. The committee was composed of MPs from all political parties represented in the House, and on a number of occasions, the committee came to agreement on changes in the rules, and over the years the process has worked. But it was done by agreement and in the proper manner.

Finally, I gonna say a word about the second topic, "Conflict of Interest". In Nova Scotia, MPs are required to file annually a statement with the Commissioner under the Conflict of Interest Act. That Commissioner is a retired Judge. In that statement, MPs are required to disclose all their assets and/or liabilities. That document is a public document, open to inspection by the Press, and the Press has from time to time referred to it. But more than that, each MP is also required to file a similar statement with respect to his/her spouse. The spouse's declaration is not a public document. It is not open to inspection, but it is there for the Judge to look at in the event that there is some allegation that a MP has a conflict due to the spouse's assets. It was a difficult process to get Members to agree to pass that legislation, because they were putting in limitations and making things public that many of them did not want to have in the public domain. But it was done, and the simple experience was that the first day on which the statements were to be opened to the public, practically every journalist in the Province of Nova Scotia was at the Judge's office anxious to look at those statements. It became a one-day wonder! All that it revealed was that some Members have more assets than others. It also revealed in the main that Members of the Legislature were broadly representative of the population. A few of them were wealthy, and most of them were just average citizens who owned their own homes and nothing else. After a while the interest in Members' statements "died" away. Now, Members are required to file these statements each year, as a matter of course. In fact, the Press does not pay any attention to them any more. This is one way in which Parliament has dealt with matters relating to conflict of interest. So, I have gone on too long, Mr. Chairman, but I am looking forward to responding to questions which Members may have later on.

Thank you very much.

(Applause)

The Chairman (Mr. ole Kaparo): Thank you, Mr. Donahoe. We will now move to the practical aspects of debate in the House, and we will hear that from the Deputy Clerk of the House of Commons in the U.K., Mr. Limon.

Mr. Limon: Mr. Chairman, I think, this is a subject where we want questions rather than listen to us talking from the Floor. So, I am going to speak very briefly indeed on the subject.

One of the things that struck me about the subject is its title. As I spoke to Members during the tea break, it occurred to me that there are considerable fluctuations about work in the plenary. People do not think they have been called often enough to chair meetings. That is the great problem and a lot of people know it, but for a new Member it is very frustrating to have to wait a long time to make your maiden speech. Then, having made it, maybe it is many months before you are called again.

One of the solutions to that lies in the second half of the title which is critical aspects of debate in the House and in Committee. I do urge all Members to consider what sort of contribution you can make to assist your Committees. During the time I have been at Westminster, undoubtedly, the most important and successful development has been the improvement in our Committee system. The most important ingredient in that improvement, of course, has been the contribution of Members. Good Committee work is very fulfilling and important.

Just to take one example of that. During Question Time in the Plenary, you will never get more than one supplementary question to a Minister. As we heard, Ministers have to be intelligent when debating those questions. In a Select Committee under our system, if you are allowed to ask questions - everybody is allowed to ask questions - there is no limit to the number of questions you can ask. You can go on following up your question until the Minister gives you a satisfactory answer. To get an answer within that half an hour is impossible. These things are very difficult to achieve in the Plenary. Good Committee work is not only good for the Member, but also for the institution and the country as a whole.

Now, the next few points I am going to make are very obvious. When you are making a speech in the House, you are speaking through the Chair. You are not speaking directly to the Government. You are speaking indirectly to the Motion or anybody else. The word "you", if you use the word "you" in a speech, the only person who is "you" is the Speaker. You seem to look at the Government Bench and shout "you". You are then shouting at the Speaker. You need to remember that piece of etiquette is very important.

When talking about "other Members", in our system, you are asked to talk about them by mentioning their constituencies, and not their names. I do not think that matters tremendously, but you should refer to other Members in a courteous manner.

Of course, as it says in the heading that we are now discussing "relevance in the debate" is extremely important. It is the job of the Chair to check you, if you start to stray away from the subject under discussion. That should never arise because if you thought carefully about what you were going to say and what the debate is all about, your speech should be concentrated on the subject of debate. It should not have any irrelevant matters in it. But do not get upset if the Chair calls you to "relevance". Every officer in the Chair is very reluctant to interrupt a Member's speech for relevance. But we do get examples of where a Member starts talking about something that is quite different from the subject of debate. It is the Chair's job to check him. You should make the Chair's job easy by not being irrelevant.

[Mr. Limon]

Another thing that I have noticed from the Clerk's chair very often is that Members try to make far too many points in one speech, and people lose interest. I would recommend two points in a speech, at the most. I am not saying that a speech need necessarily be all that short. But if your speech is all over the place with many different points, people lose interest in it. The House loses interest in it, but even more important, when it comes to winding it up, it is easy for the Minister to ignore what you said because he cannot remember everything. So, it is a waste of time. So, try and decide what are really the important points that you want to make and stick to them.

Another problem that we are experiencing in Britain at the moment is whether or not Members should allow others to intervene in their speeches. Sometimes this can be very helpful, both for the Member making the speech and the House. The intervention might joggle his memory and enable him to make a political point that he had not thought of before. This happens where all Members are regarded as whips, if they do not take interruptions. But many interruptions in speeches are again irrelevant to the speeches. We know who the Members are who make that kind of interruption, and my advice is not to give way to them. Give way to somebody who makes a sensible interruption, but not somebody who makes silly ones. These are all, as I said, extremely elementary points, but I am making them to help you with questions later.

On the question of points of order, I am very glad to see this actually mentioned in your Standing Orders as something that the Speaker can check. They are not actually mentioned in the Standing Order at Westminster. Make sure that you got a point of order and not a point of argument. It is a point that the Chair must be able to answer. A point of order must be a real point of order, and if the Chair rules against it do not pursue it because that wastes the time of the House. All these things make for an orderly debate, and incidentally allow more Members to speak because points of order waste time.

With regard to most of the other headings here, we dealt with them indirectly during the other debate. The application of the time limit is just about the only one that we have not dealt with. I feel that your Standing Orders allow flexibility of time limits. There is no actual time limit laid down, but for certain debates you can have time limits.

In Westminster, we do have a rule about time limit which has been introduced very recently, but it is not very popular. If Members are restricted to short time limits, it prevents them from developing their arguments properly and interferes with debates. It makes debates rather stereo-type. So, do not be too keen to support a Motion for limitation of speeches. It can ruin debates.

I am going to talk about "declaration of interest", and Mr. Donahoe dealt with that. But I am going to make one additional point here. If you are going to make a speech in a debate in which your interest is relevant, do declare that interest at the beginning of the speech; it is far better to do that than for some Member who is opposed to you to get up and say, "Should you be saying this? Have you not got an interest?" Always be forthcoming in the House and make your intervention at the beginning to say that you actually have an interest in the subject. If you can say, as you can in our country, that by inspecting the Members' register any Member can see what that interest is, then that is better. Mr. Donahoe recommended that we have some kind of register, but if you do not have one, do not worry. I would agree with the whole procedure but a lot of people in Great Britain were opposed to the idea of a Members' register when it was first mooted about 20 years ago, but

[Mr. Limon]

I do not think there is a single Member left who believes in that now. It has been a very useful parliamentary tool. Already I have gone on long enough and I think we should sit down and listen to your questions.

The Chairman (Mr. ole Kaparo): Thank you, Mr. Limon. Just before we open the Floor, Mr. Griffiths would like to say something about the role of the Civil Service.

Mr. Griffiths: Thank you, Mr. Chairman. Hon. Members, I apologise that in this very important memorandum headed "the Role of the Public Service" I had some nice things to say in three paragraphs. I think it is important that I share with you my view on this subject.

An independent and professional Public Service is essential to protect the interests of democracy. They have the responsibility of carrying out the administration of government and putting into practice the policies of the elected government in a fair and just manner. Ideally, the public servant advises the Minister what can be done, what actions are viable to achieve and what can be done, what policy the government is committed to in relation to these options and the positives and negatives are in relation to that particular policy. Sometimes the advice could be very much against what the public servant knows the government wants to do. Ideally, the Minister would examine the material and options and make his recommendations to the Cabinet. If the Cabinet strongly disagrees with the advice of the public servants, the public servants, on the other hand, should be committed to implement that decision impartially. Individuals within the public service should never be given disproportionate and improper pier of government administration.

The other thing that I quickly wanted to say is that I was part of a committee in Australia that was charged with the responsibility of drawing up a code of conduct for Members of Parliament and how best to achieve the integration of all Members of Parliament in a way that would reflect the fact that they are all equal in Parliament. One of the ways we suggested - I am not quite sure of what you do here but you can give the suggestion some consideration - was that in addition to the Speaker and Deputy Speaker we have a chairman of committees and several deputy chairmen of committees. Our strong recommendation, which has been adopted by every Parliament in Australia, is that amongst those deputy chairmen of committees are members of opposition parties, so that there are occasions when members of the opposition are actually in the Chair controlling the business of the Chamber and you will find that goes a long way in reminding members of the Opposition that there are very good reasons why the rules and Standing Orders need to be adhered to in the House. Thank you.

The Chairman (Mr. ole Kaparo): I think it is now time for Hon. Members to make their interventions. Yes, Mr. Mucemi.

Mr. Mucemi: Mr. Chairman, I have two questions. The first is that we can turn Parliament into a sort of a toothless bull-dog. We pass Motions and we are told the Government has no money to implement them; we ask Questions on, say, a road needs to be done but we are told that such a road would be done when money is available. We have also have the Public Accounts Committee and Public Investments Committee which discuss various failures of state corporations, or Government institutions and we condemn those officers who have done wrong things, but they are not prosecuted. Now, how do the panellists tackle this issue in their countries? I think it is a very serious problem to us in this Parliament.

The Chairman (Mr. ole Kaparo): Just before, the panellists respond I would like Hon. Members to put questions to them, but try as much as possible to be precise and brief in your interventions, so that we can spread it across the Floor of meeting.

Mr. Mucemi: Mr. Chairman, in our Parliament it appears very difficult, procedure-wise, to effect a private Member's Bill. May be in other Parliaments it is easier to do this. How do they do it?

The Chairman (Mr. ole Kaparo): Well, any panellist may respond to that.

Mr. Griffiths: Mr. Chairman, well If I may respond to your question, what action Parliament can take depends upon the goodwill of the Government and the Hon. Members putting forward the proposition. When you say that Questions and Motions should be acted upon, that does not mean that they will be acted upon. In regard to whether Ministers answer questions or not, just because we say that Ministers have to give the answer to the Question you have on the Order Paper, that does not necessarily follow that you have to be given the answer in the way you want it. With regard to standing committees, such as the Public Accounts Committee, this committee, of course, or any standing committee, is entitled to have its findings considered in all seriousness. In my Parliament, and even in the world, the Public Accounts Committee is a very powerful committee. I have not been able to look at your Standing Orders in relation to the powers of the your Public Accounts Committee, but in our Parliament the Public Accounts Committee has the power to examine each Government department and then the findings of that Committee are voiced in the Chamber. If the findings justify the taking of some action, this is where the role of the media comes in. The media is a partner in this thing we call "democracy". Parliament cannot really work without the media and the media really makes Parliament work. If the media is impartial and it is doing its job correctly it reports to the people what is actually is happening in Parliament. If a Question is being answered what is being done is mentioned. If the Public Accounts Committee recommendations are ignored then it is the role of the media to let the society know that so that the society may ultimately take some action by voting against those people who refuse to take the action. That is the sort of thing that happens in the country I come from. As I said yesterday my party has been in and out the government repeatedly; so, it has been changed like socks. So, the government takes steps or else the people reject it at the next election. Now, you have a multi-party Parliament but things take time to evolve. But they cannot evolve unless there a partnership between the media and Parliament.

Mr. Donahoe: Mr. Chairman, if I can follow up the Hon. Member's other question about private Bills, I can make a distinction between two different types of private Bills. We are talking about Bills introduced by a private Member, a non-cabinet Minister. He could be either a member of the opposition or a government Back-bencher. There are two types of private Bills that I am familiar with. One is what we truly call a "private Bill". An example, is that an Hon. Member might be asked by a municipality in his constituency to introduce a Bill to have certain areas designated as a common area where anybody can go so that they can be used for recreational purposes by the general public and so on.

Generally, these Bills are non-controversial and if the Hon. Member has done his job properly and convinced the government that they will go through the House very quickly and time is made available for them to be called generally, that kind of a Bill will be passed. The other type of a private Member's Bill is what we might call "a Private Member's Public Bill". This will arise in a situation where an Hon. Member wants to change the law relating to some

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matter of general application. For instance, we had one Hon. Member in the Nova Scotia Legislature who in every session would introduce a Bill to give the Auditor-General more powers than he was given under the Auditor-General's Act. The Hon. Member thought this was a wonderful idea. Actually, he was about only Member of the House, even in his party, who thought that this was a wonderful idea. So, he kept introducing this Bill year after year and it would still be on the Order Paper. But for one reason or another the House could never find time to deal with it and so it remained on the Order Paper year after year. So, I think in almost every Parliament a certain Member, or even a small group of Hon. Members, who think that the law should be changed in a particular way. But he may be the only person, or the group may be the only group, who think that, that is a proper and appropriate change to be made. So, in all situations you get a private Members' Bill that gets introduced but never sees the light of the day afterwards.

The Chairman (Mr. ole Kaparo): Before we go back to the Floor I will again ask Mr. Limon to respond to those two questions.

Mr. Limon: Mr. Chairman, it is on the second type of the private Member's Bill that I, perhaps, want to add something to. The situation in Great Britain is very similar to what Mr. Donahoe has described it to be like in Canada. A private Member's Bill is very difficult to get through the House. All the cards are staked in favour of the Bill's opponents, however few they may be. There are no vigorous restrictions on time where private Member's can be guillotined like a Government Bill. So, if there is determined opposition to private Member's Bill, the answer is simply that it will not get through. So, the lesson to be learned from that is that either you introduce one which you know will not get through just for propaganda purposes, just to demonstrate that it will not get through, or you introduce one which is on a subject which is not likely to arouse very fierce opposition. Few very useful Bills of that kind are introduced under our system. The sort of example I am thinking of is the law which says that seat belts must be used in the rear of motor vehicles. That law was not introduced by the Government in our country; it was introduced by a private Member. There are bills on subjects like whether motor cyclists should be required to wear crash helmets when they are riding. Those are the sort of things which are possible to get through the House, but not popular Bills. An example of a very popular Bill is one to abolish fox hunting or something like that. Such Bills will not get through, but you can try it and demonstrate that it is a controversial subject on which it is impossible for a private Member to raise a Bill. So, if you want to get a Bill through the House, choose a subject which is not too controversial because the opponents of the bill will always frustrate you.

Mr. Boy: Thank you very much, Mr. Chairman, Sir. I would like to be enlightened on how the Whips in the Westminster Parliament from the opposition and the Government are placed? How do they work and who facilitates them? Are they facilitated by parties or by Parliament? Here, whips from all the parties, are just there "hanging in the air".

Mrs. Dunwoody: Mr. Chairman, well, I think you find that will soon change because whips are very powerful people. They are the business managers of any party and in the Westminster system they are the people who really arrange the work. We have what is called the "usual channels", which is really the two chief whips getting together on a regular basis and arguing about the basis of next the week's work. That means they have to brief the Government how it wants its business arranged in a particular way and the Opposition will say "No; we are not going to facilitate that; probably, we will facilitate this". And there is

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a certain amount of give and take. But in our Parliament, they actually do have a very important role. They not only organise Members' time but they make sure that they know where everybody is, they have to know what Hon. Members are going to do is sensible. We in the Opposition Party have now decided that we will elect not only a chief whip and a deputy chief whip and the paring whip. These are the paid posts for the Opposition. They are paid by the Government and they are the only three people, apart from the Leader of the Opposition, who are paid in the Opposition. So, in addition to their Member of Parliament salaries, they receive, from the State, extra monies for, in fact, doing an extra job in effect. We decided in my own party how we would elect these three people. Speaking personally, I think I have to say that is a bit daft because, by definition, if you are any good at whipping your Members into line so that they are there when you want them then you are not going to be very popular; and if you are very popular then you are, probably, you are not a very good Whip.

Mr. Griffiths: Mr. Chairman, in our parliament, which is a big one but not as big as yours, the Whips role is simply to make sure that they know where Hon. Members are and that Hon. Members are available in the House when a vote is going to take place. I do not know whether you have a system of pairs which we in Australia have. If a Member of the Government is going to be away from Parliament on some Parliamentary business then he seeks a pair with one of the Members of Opposition. So that comes along the relativity between the numerical strengths of the two parties maintain; but the Whips do that. In our Parliament you can only be paired by the agreement between the two whips. Also the Whips in our Parliament get some idea of the order in which people will, in fact, think. Although, as the presiding officer in my House, I do not personally take care of Whips' lists but I give this work to the personnel I believe can handle that. So, it depends on the role Whips play in a Parliament. The final thing about the whips in Australian Parliaments is that both the Government and Opposition Whips are paid.

Mrs. Mwendwa: Mr. Chairman, my question is directed to the CPA Secretary-General. When he was talking he touched on something regarding the spouses of the Members of the Parliament of Nova Scotia. He said that there is a write-up they do regarding their spouses. Can he expand on that a little bit?

Mr. Donahoe: Mr. Chairman, well when we are talking about conflict of interests Mr. Limon's point becomes very valid. If Hon. Members participating in debate have any interest in the subject matter of the debate they should disclose it, otherwise they can get themselves in difficulties. Our rules require that any Hon. Member who has an interest in a subject of debate should disclose it. But the public disclosure of assets was seen as a way of helping to overcome the mistrust, which had developed, not only in Nova Scotia but also in Canada in general and, indeed, in many Western countries. This is mistrust of Parliamentarians and a feeling that instead of voting in the public interest they were voting for their own private interests. So, as a means of dealing with this criticism, the idea developed that there should be public disclosure of Members' assets so that if he came down to the crunch it would be possible to ascertain whether an Hon. Member had an interest in a matter in which he was voting. Now, the issue becomes clearer when you are dealing with assets that an Hon. Member owns personally. But somebody raised the point that if an Hon. Member wants to evade this law all he or she has to do is transfer his or her assets to his or her spouse and in effect he achieves the purpose without having to disclose the

[Mr. Donahoe]

assets. So, in order to prevent an Hon. Member from simply transferring assets to a spouse it was decided that the spouse's assets would also have to be included in a statement which had to be filed with a judge under the Members' Disclosure Act. However, somebody said that it was not fair to spouses to make their assets public because many spouses own assets in their own rights and it is not the business of the public as to what those assets are. So, the decision was taken that while a spouse would have to file a disclosure statement that statement would not be made public in the same way the Hon. Member's disclosure statement is made public. That is the compromise arrangement that was finally agreed to and which was put into law, I think, about four years ago and it has operated in Nova Scotia since that time. As I said earlier, once the initial flurry of interest in disclosure statements was over it has now become a matter of course and it is scarcely, if ever, that reference is made to those statements.

Prof. Ouma: Mr. Chairman, I am concerned with enabling environment in which Members of Parliament (MPs) have to work. I am conscious of the situation in which new MPs come in every five years and the effectiveness of MPs depends partly, but significantly, on the environment which enables them to learn quickly the procedures and other things. In Canada, Australia and United States, where there are many legislatures, they may learn from the environment. What are some of the suggestions you can make to us which will enable MPs to learn quickly how to be effective so that they can do a good job instead of taking five years of slow evolution?

The Chairman (Mr. Ole Kaparo): I think the best panellist to tackle that one will be Hon. Dunwoody.

Mrs. Dunwoody: Mr. Chairman, we had exactly this problem. Initially when I entered Parliament we had what is called in British industry "sitting next to knowledge". There were no obvious ways of helping. So, what we have done now is that we have a very good handbook on Parliament. I think all major political parties undertake in effect an orientation scheme so that when new Members arrive in their first year they are given a series of lectures. They have not only procedures explained to them but they learn how they can be effective, how to put Questions, they learn about the work of the select committees and what the decisions of the Select Committees will be. That has been very useful because before it was really a case of either--- Women did well because they always ask; men are always terrified of appearing not to know. But women know they do not know and so they ask. Therefore, when women are in problems they ask: "How do I do this? How do I put this Question and do I go? Tell me what happens"? But now we do this on a structured basis. So new Members coming in are taken by their parties, usually by the Whips, but also by people with specialist knowledge, and given a series of lectures which tell them how the place operates, what they can get by way of support; where they have to look for information and that is backed up by the House of Commons offices, which provides them with factual information along lines that are very important for new Members.

Mr. Griffiths: Mr. Chairman, I just want to add that in Australian Parliaments what we do is that immediately an election is over, the Clerk's Department in each of our Parliament arranges a seminar, exactly like the one we are having here now, for all the new Members. So, we have a seminar that allows all the new Members a chance to learn. One of the important things that I have learnt here and I said this yesterday, is that I think you have got the most magnificent Members' Handbook and any Member that reads and

[Mr. Griffiths]

understands it, would have to be a brilliant Member of Parliament. Every conceivable situation is explained in it, but the practical application is actually carried out in any parliament by way of a seminar similar to this one.

Mr. Michuki: Mr. Chairman, my question is addressed to the panel as a whole and it relates to, first, the supremacy of Parliament in relation to the manifestation of that supremacy through the Standing Orders both within the House and in its relationship with the other agencies. In particular, have you had instances in your countries where the actual application of Standing Orders have been pre-empted by actions of the executive authority?

For instance, if you look at our Standing Order No. 142, the Committee of Supply is supposed to take 20 days. We are now on recess and according to Standing Order No. 142(7), page 47, the allotted days must be before the 31st of October. Now, if you count 20 days before 31st of October from the 5th October when we shall resume Parliament, you are short by five Sitting Days. This means that the executive authority has already guillotined Votes outside the Parliamentary decision to suspend that Standing Order. Have you ever had this kind of experience?

The Chairman (Mr. ole Kaparo): Mr. Michuki, I think you would be very unfair to our guests if you put them into a situation where they cannot answer for the Parliament of Kenya. You are quite aware that there is, in our Parliament, what is called the Sessional Committee that sets agenda for the House and it decides when the House will adjourn and when it will resume. All Parliamentary parties, including your own, are represented in that Sessional Committee. The decision to adjourn the House is taken by the Sessional Committee together with the House itself because the House can refuse to adjourn.

I think you would be very unfair to our guests to ask that question.

Mr. Michuki: Mr. Chairman, Sir, I am just asking whether they have had this experience.

The Chairman (Mr. ole Kaparo): How can they answer what they do not know?

Mr. Brancker: Excuse me, Mr. Chairman, may I answer that question. If there is a Committee which is concerned with organising Parliament's business and it comes to a decision as to organise that business and that includes a pro-rata suspension of a Standing Order reducing that number of days from 20 to 15, that is perfectly valid. In your Standing Orders there is provision whereby one day does not necessarily mean a day which starts at mid-night and ends at mid-night. According to your Standing Orders, you can have two Sitting Days on the same day.

Thirdly, if the Sessional Committee has done that, amongst other reasons, because you have spent an extended period on the Finance Bill, is that not legitimate? The point is: Is what is done fair to the business of the House? Standing Orders are there to regulate the House; they are not there to strangle it. Unless efficiency is impaired or unless the quality of debate is affected or unless the House cannot get through its work, then there can be no legitimate reasons for querying that particular matter. The Sessional Committee has all parties represented on it as far as I am aware.

Thank you, Mr. Chairman.

Mr. Muite: Thank you, Mr. Chairman. My appeal to you, Sir is that you permit us to make comments or interventions on the contributions from the panellists --

The Chairman (Mr. ole Kaparo): I am sorry, Mr. Muite. You have just come in and as the Chairman of this assembly, I have given it a lot of latitude; in fact I do not comment.

[The Chairman]

Before you appeal to me, you should have waited a little bit.

Mr. Muite: Mr. Chairman, I am asking that we should not be put in a stray jacket of asking questions. The panellists would like to hear of our experiences so that they comment. Please permit us to make comments or interventions without insisting that all we can do is to ask questions.

Thank you.

The Chairman (Mr. ole Kaparo): Hon. Members, I think the whole idea of having the Seminar is not for Members to come and pick unnecessary bones where there are none. Those Hon. Members who have valid intervention and questions can go ahead and raise them.

Mr. Ayah: Mr. Chairman, I just wanted one of the panellists to comment on the administration of parliament itself. We have been talking about debates, rules, the position of the Government and the Opposition and so on. What about the administration of parliament itself? This influences not only the supremacy of parliament but how it conducts business. We would like to know your experiences with regard to the Clerk's Department, the Speaker's Office and so on. In our country at the moment, the administration of Parliament is still part of the Civil Service directly. I had the privilege of attending one of the CPA Seminars in Britain and I noticed that the Clerk's Department is a function of parliament directly rather than part of the Civil Service. Would you like to comment on that?

The Chairman (Mr. ole Kaparo): I will pass that to Mr. Donahoe.

Mr. Donahoe: Mr. Chairman, in Nova Scotia the administration of the legislature is conducted by a body that is known as The Legislature Internal Economy Board which is chaired by the Speaker and it is composed of representatives of all the political parties in the House. The Government has the majority of Members on the Board. When I first became Speaker, the Board consisted only of Government Members, but during the time I was Speaker, that was changed and Opposition parties were given representation on the Board.

That Board determines the benefits that are given to the Members. For example, Members are paid an allowance to maintain offices in their constituencies provided that they account for it by producing proper receipts. The amount of that allowance is set by The Legislature Internal Economy Board. It is an all-party decision and thereby, it takes away any element of politics so that parties do not disagree on the amount of the allocation. Virtually, all decisions relating to Members and the administration of their offices and so on, are regulated by The Internal Economy Board.

The Clerk's Department is a separate department which is responsible to the Office of the Speaker. The Clerk, of course, is responsible to the Speaker. In Nova Scotia Legislature, there is also a Speaker's Office which is an administrative office which deals with all the expense claims that Members put in and a series of other matters. It is the accounting office, if you like, for the legislature and the functions of the legislature that have the responsibility of the legislature.

The idea of all this, is to take away from administration of the House and any element of politics to make it as impartial as possible to recognize the fact that the House and its administration belong to all the Members. The Speaker is appointed the Chairman of the Board of the Custodian of the Members' Rights and Privileges and there is all-party representation. I think you will find that, that sort of arrangement, with some modifications, is in place in virtually every parliament in Canada.

The Chairman (Mr. ole Kaparo): Perhaps, we can hear again from Mr. Limon.

Mr. Limon: Mr. Chairman, in Westminster---

An Hon. Member: I have not had a chance to ask a question.

The Chairman (Mr. ole Kaparo): You are not the only one! There are 200 Members here. Can we hear from Mr. Limon?

Mr. Limon: Mr. Chairman, very briefly, in Westminster, the same sort of thing applies as in Nova Scotia. However, there is a difference: The regulatory body which is a Members' body called the House of Commons Commission, does not have a majority of Government Members on it. However, large the majority of the Government in the House, the House of Commons Commission has no Government majority on it. The Speaker is the Chairman and there are only two Government Members on it and three non-Government Members. That applies in every Parliament. It is not a great issue because I have never known the House of Commons Commission - I was its Secretary for some years - having any divisions at all along party lines. That reflects the fact that the independence of Parliament over the Civil Service has been established for very many years now.

As far as Members' pay and allowances are concerned, the system is entirely different. The House of Commons Commission has no role in that at all. Advice about Members' pay and allowances is tendered by an outside body called The Top Service Review Board. When they have made recommendations, the Government puts its own proposals before the House of Commons for approval. This is debated and voted upon. It is one of the very few issues on which the Government line is completely defeated. Several times in the last 10 or 20 years, the Government has tried to restrict Members' salaries and allowances but it is the only point which the House is prepared to accept even if an amendment to the Government Motion has been passed.

In our system, the Members have done well by using outside advice in the case of their own salaries.

Mr. Donahoe: Mr. Chairman, just to follow up on what Mr. Limon has said, in Nova Scotia, there is an independent Commission that sets the Members' salaries only under the terms of the legislation which establishes that Commission whose recommendations are binding. This was done some years ago and it was thought that it is not appropriate for Members of the House to set their own salaries. When the Commission makes its report, it automatically becomes law. Although the Members used to set their own salaries, they no longer have the power to do so.

Mr. Griffiths: Mr. Chairman, in Australia, we have a Salaries and Allowances Tribunal that is independent. It sets the salaries and allowances of the Members and Parliament does not deal with that at all. As far as the administration is concerned, we have what is known as a House Committee which is Chaired by the Speaker and there is an equal number of Members from the Government and from the Opposition on it.

Mr. Kombo: Mr. Chairman, my question is directed to Mrs. Dunwoody. I would request her to comment on the question of responsible Opposition in a young democracy. Each time you try to dig holes in the policies of the Government, you immediately get a shot back and told that you want the Government to fall so that you can take over. Of course, as an Opposition man, you want it to fall so that you can take over. If you could comment on that.

Thank you.

Mrs. Dunwoody: Mr. Chairman, frankly, if you did not want the Government to

[Mrs. Dunwoody]

change, you would not be in the Opposition. The word "responsible" can be defined in two different ways. A responsible Opposition to a Government is an Opposition that lets them do whatever they like and a responsible Opposition to the Opposition, is one that is making sure that everything that the Government does is widely known and widely questioned. I think it is very important in a new democracy in a multi-party system to develop the confidence to debate with vigour and with energy in a way that the people can understand.

You have a real problem here because of the means of communication. People must know what their parliament and their government are doing. They must understand what the political arguments are and they must support decisions which are taken from the point of view of information. Information is power. Information with people knowing at every level what the arguments are, will lead to a country which can live with itself. However you look at it, a country will only live with itself if the majority of its people accept what is being done in the name of government.

That means that the Opposition must remember always that their views must be debated with vigour but on the basis of informing people, just as a government must control people. The Opposition must inform people of what the arguments are and what the difficulties are. They must also make sure that, that information is widely disseminated. However, I must say one thing to you: In certain democracies, there will always be those who seek to use the powers of being in Government to protect the things that they are doing and which are not in the interest of the general public. There will always be - I am sorry to say this - people raising matters in parliament which are not necessarily from the best motives whichever side of the House they sit on.

The danger will be if, for any reason, an argument is suppressed. An argument, whatever it is, must never be suppressed, but it must be based on facts and the information of the people. Once the people no longer support democratic government, then the State is in grave danger.

Mr. Mwiraria: Thank you, Mr. Chairman. I have three questions. The first one is directed to Mr Limon. When he was talking about effectiveness of Members when contributing to debates, he particularly mentioned the use of Committees in the United Kingdom Parliament where Members can question Ministers for as long as they wish. I would like to get more information on what type of Committees these are, on what subjects and how they operate.

My second question is still directed to Mr. Limon with regard to the statement he made this afternoon. He mentioned the fact that during tea break, he could hear many Members grumbling that they do not get enough opportunity to contribute. We all know that in a group as big as 200 Members, catching the Speaker's eye is a fairly difficult thing at times. The question I would like to ask could be answered by the representative of all the groups sitting with you, Sir, is this: Has any parliament evolved a system which ensures that the chances of catching the Speaker's eye is fairly good? It is a fairly serious question and we would like it answered.

My last question may appear to be, perhaps, local but unfortunately, I did not get the opportunity to ask it yesterday. I was very concerned when we were told by one of the lawyers that in Kenya, when we have a Bill to amend the Constitution, it must be passed *in toto*. It cannot be amended on the Floor of the House. I am just wondering whether this is a purely Kenyan problem or whether it happens elsewhere because quite honestly, I do not

[Mr. Mwiraria]

understand why we have to pass it *in toto*. If we are not going to debate it, then what is the purpose of having a Parliament? We might as well tell the Attorney-General to amend it and go ahead with it.

Thank you, Mr. Chairman.

The Chairman (Mr. ole Kaparo): I will give Mr. Limon the Floor or any other Member of the panel.

Mr. Limon: Mr. Chairman, I have been looking at your Standing Orders as far as the Committees are concerned and they provide for very similar Committee Systems that we have at Westminster. We have a system of departmentally related Select Committee one for each Government Department. There are now 16 sub-committees. Yours are slightly fewer, but they obviously amalgamate different Government Departments whose terms of reference are quite similar.

The Hon. Member also asked about the activities administration of these ministries. They are similar and the word "policy" comes into their operations. We also have a Public Accounts Committee and these are the type of Committees that I was referring to. The only way those Committees can be made to work well and to really contribute significantly to the output of parliament, is for the Members to go into those Committees and work very hard indeed to improve their procedures and to read all the papers and do the work. There is no other way to do it. Our own Committee System has improved because the Members have improved on them; there is no other way out. The real destiny of a good parliamentary committee, lies in the hands of the Members. As I read your Standing Orders, I see that you have got the bare bones of a good committee system here and if you work hard, it will become a good committee system.

Mr. Shikuku: They are not operational. Standing Order No. 151 does not work!

Mr. Limon: Then you must try and get them operational; that is the answer. You have got the bare bones of it here on your Standing Orders.

As far as catching the Speaker's eye is concerned, I do not know of any parliament where this is--

An. Hon. Member: They do not work!

The Chairman (Mr. ole Kaparo): Order! Can we hear that very important answer? How do you catch the Speaker's eye? Is there a system that will ensure a fair catching of the Speaker's eye? I am dying to hear that.

(Laughter)

Mr. Limon: Mr. Chairman, the answer is: There is not. I think I can disclose this here that - it is not a secret - successive Speakers in the United Kingdom have kept quite close records of the number of times each Member of the House has spoken so as to try and ensure that they are fair to every single Member. If somebody has spoken too many times, he will be called last. If somebody is not being called at all, he will be very high on the list of priority for the Speaker to call. There is no Standing Order or system about that. It is just an aid which Speakers have used to help to be fair and I do not know exactly how they do it.

On the last question about not amending a Constitutional Bill, I must say in all honesty that I find that very surprising because I have never known of a government in the

[Mr. Limon]

United Kingdom which has introduced a perfect Bill. We have always managed to improve on them somehow but very often, the Government has to improve them because they also find wrong things with their own Bills. The idea that a Government Bill sails through all the stages without being amended is rather alien to me and I would like to believe that the House can always amend a Government Bill be it a Constitutional Bill or otherwise. Obviously, that is a very deep matter in Kenya because you need the Constitution to prepare that.

The Chairman (Mr. ole Kaparo): I am not through with that question. Mr. Donahoe has been Speaker for 10 years. How were Members catching your eye?

Mr. Donahoe: Mr. Chairman, that is a difficult problem, but it is not a difficult a problem in a small legislature. As I mentioned yesterday, there are 52 Members in the Nova Scotia House. What would happen generally is that the parties themselves would work out an order of speaking. What I tried to do was to get a balance between the Government, the official opposition party and the third party. All I was concerned about is the individual Members and depending on the subject matter, I knew that a particular Member on the Government side or a Cabinet Minister might have a special interest in the subject matter being debated and if that Member wanted to get into the debate, I would try to ensure that at some point she or he has an opportunity to participate. I knew who the spokesman was for the official opposition on the subject matter being debated and I always ensured that, that Member had an opportunity to participate. The same applies to the third party.

During question time when it became important to recognize Members, again, the allocation was by political party. Very often, there would be only one Member on the Floor at the particular time seeking to catch my eye because the party would have agreed that a particular Member who is going to ask the important Question of the day, is given the opportunity to do so since he will be the only one rising to catch the Speaker's eye. It made one of their other Member's to be the leader questioner and then it was a case of balance between the official Opposition and the Third Party. In Canadian Parliaments, very rarely does a Government Back-bencher ask a Question to a Minister. In the United Kingdom Parliament - I have been there and got enough opportunity to observe and I knew this beforehand - Government Back-benchers are anxious to catch the Speaker's eye as are Members of the Opposition, and the Speaker has to keep a balance between the Government and the Opposition. That is not a problem I had to contend with. Basically, Mr. Chairman, Sir, it is much easier for a Speaker in a small Parliament or in a situation where the parties have designated one of their Hon. Members to be their spokesperson on a particular issue.

Mr. Griffiths: Mr. Chairman, Sir, I also preside over a pretty tiny Parliament and, therefore, I do not have the same problems as you do with 200 Hon. Members. If you recall the earlier question about the role of Whips, in the Larger Parliament in Australia, one of task of the Government Whip and the Opposition Whip is to indicate amongst their own Members the order in which they will speak on Bills that are before the House and indeed the order in which they will ask Questions. That is the way we do it. It is a conflict within the party itself as to who should speak next and that is the responsibility of the whip.

The Chairman (Mr. ole Kaparo): Well, I would like to say that the best we can say out of that is that this is the dilemma of catching either the Speaker's or the Whip's eye.

The Assistant Minister for Public Works and Housing (Mr. Mwamzandi): Thank you, Mr. Chairman, Sir. My worry is with regard to the laying of documents on the Table and their and admissibility. Unfortunately, this topic had not been commented on at all.

[The Assistant Minister for Public Works and Housing]

Since these documents are not included in the HANSARD, can we be told where they are kept in other Parliaments and how they can be inspected? Secondly, how do they become admissible?

Mr. Griffiths: In our Parliament, documents that are laid on the Table are those that are required by statute such as Reports from Government departments and documents that Members seek leave of the House to have them tabled. When an Hon. Member is quoting during the course of his speech from a document the way I am doing now, an Hon. Member can rise and say, "I wish the Hon. Member to table that document" and in our Parliament the Hon. Member has to table it, and it becomes public property. The documents that are tabled everyday are kept by the Clerk who locks them at night and they are available for any member of the public or any Hon. Member to inspect having made arrangements with the Clerk to do so when Parliament is not sitting.

Mr. Donahoe: The procedure in Nova Scotia is precisely the same as Mr. Griffiths has outlined, except that at a certain point the documents are sent by the Clerk to the public archives for storage and being permanently kept on record.

Mrs. Dunwoody: Mr. Chairman, Sir, when a Minister refers to a particular document in Westminster we have the right to demand that it is tabled so that we can see what he is referring to.

Mr. Brancker: Mr. Chairman, Sir, I am not sure what the gentleman who asked the question was getting at, but the broad principle among Commonwealth Parliaments are that documents are laid: one, because they are required by statute to be laid, and, two, because otherwise the Government may wish to lay them. Normally, documents are laid in Parliament by Ministers. If a private Hon. Member or a Member who is not a Minister makes reference to a document, then he is required to make that document available to other Hon. Members as well as to members of staff. Admissibility goes to the question of the sort of document that Hon. Member may have in his hands. Hon. Members may wish to put any sort of document into the records of the House and, in order to be able to regulate that, you need to have a system whereby that is prevented. That is why I said that ordinarily, Hon. Members and staff should have access to the document for debating and record purposes. The Clerk, of course, will be responsible in the normal way for keeping the records and all documentation that is laid on the Table of the House. Also, when documents are laid in the House, they may already have been printed. If, they are not printed, then they will ordinarily be printed as soon as they have been adopted by the House, in cases where they are required to be adopted. In other cases, they might just lie on the Table and have nothing done about them, sometimes for generations, in which case, they might meet the attention of the relevant Committee and perhaps a very limited section of the media who can be trusted to receive the documents and not give circulation to them in the way that they should not be. Thank you, Mr. Chairman.

Mrs. Ngilu: Thank you, Mr. Chairman, Sir. My question is directed to all Members of the panel. Taking into account that democracy is the rule of the majority, with the participation of the minority, what are their views on the question of changing party loyalty? In this country, it is called "defection" whereas I have heard that in Zambia, it is called "realigning yourself with the party of your choice". I ask this question because it is causing a great threat to democracy in this country, especially to the emerging Opposition parties, noting the fact that we have been a one-party State all these years. Secondly, I would like

[Mrs. Ngilu]

to know what happens in their countries, in cases where you have an Hon. Member elected from a constituency, and at the same time, a candidate who was defeated in the general elections nominated from the same constituency as an Hon. Member? In that case, you have another Member of Parliament in the same constituency. He may even be the candidate you defeated in the elections.

(Laughter)

Yesterday, a certain Member talked about the dignity of the House in a country such as ours. I have heard that in Britain when a Member of Parliament or a member of the Government is mentioned in some kind of a scandal, for example, sex or corruption to honour his constituents, he resigns immediately. Here, this is usually not the case.

(Laughter)

The Chairman (Mr. ole Kaparo): Order, Mrs. Ngilu. Could you put the question?

Mrs. Ngilu: Thank you very much. I will just finish. Therefore, you find that the dignity of the House has been eroded so much so that when in a case you call an Hon. Member a liar you do not have to withdraw nor do you even have to substantiate it because it is obvious. What are your views about this?

(Applause)

Mrs. Dunwoody: Mr. Chairman, Sir, as for the Hon. Member's first question there is an enormous difference between a country like my own, which has had political parties for hundreds of years, and a country like yours, which has been a one party state and is now turning into a multi-party state. I do not really think it matters how you describe people who change parties because you should not be in politics if you do not have a tough skin to put up with what people say about you. We say to children: "Sticks and stones can break my bones but words can never hurt me". So, you must be prepared to take that kind of criticism.

On the second question, I must say it does not arise in our system if I defeat somebody, I defeat him or her. Therefore, it is not the same for an elected Member of the British if Parliament I--

An. Hon. Member: From the same party?

Mrs. Dunwoody: From the same party! The difficulty here is that in our system, even if I win by only two votes, I win. I am particularly sensitive to this because I have fought 11 general elections and they keep trying to get rid of me, but so far, they have not succeeded. In our Parliament, if people are caught up in a scandal, there are some of them who will try to hold on because they do not have tough skins but there are others who will not hold on simply because they have tough skins like rhinoceros. This is the time when the media and when the free discussions of what is happening in Parliament and among elected Members come into play. The Press in Britain does not exactly mince its words. If it wants to make public the whole views of Members of Parliament, it makes public the Members of Parliament with vengeance, and they resign. If there is one bit of advice I would give to elected Members, it is that if you are found out, say you are sorry and go away quietly.

Mr. Donahoe: Thank you, Mr. Chairman, Sir. The question of changing political parties is one that is familiar to anybody who is familiar with the Westminster Parliamentary System.

In some countries, it is a bigger problem than others. India, for instance has a law which prohibits Members once elected on a particular party ticket from changing parties during the life of the Parliament. Once they are elected, they have to stick with the political party under whose banner they became Members. In a lot of jurisdictions, it is very much a matter of the Members' personal decision. Sometimes, you get a situation where there is a change of party leaders during the course of the Parliament, and a Member may have been particularly attracted to the policies of the leader under whose leadership he or she was elected, but does not like the new leader and that is usually the situation in which a change will take place.

In the Canadian political context, every Member has to be re-nominated to be a candidate for his or her party in the next election so that at a certain point during the life of Parliament the constituency party association will call a nominating convention. There was an election back home in Nova Scotia about six weeks ago which I considered to be a very unfortunate situation where a young man who had been elected in the 1988 general elections was opposed for the nomination by a man who had been a Member of that particular party for years before he had gone into political retirement and had decided to make a political come back in the same political party. Both the younger man, who was the sitting Member and the older man, both appearing for the same contested the nomination and Political Party, the older man got the nomination beating the younger man by a very narrow margin. The younger man did not like this decision very much and he decided to run again as an independent candidate. The result was that, that political party lost the seat. Together, the votes of both candidates would have been sufficient to win the seat, but they were split and a candidate of another political party won the seat.

A party will pay a political price if its Members are not able to keep their act together and get an agreement before hand that the candidate should be a particular individual. Members' conduct can be censured by the House. We had a situation in Nova Scotia a few years ago where a Member was caught filing fraudulent receipts. He was charged with a criminal offence, and convicted but he refused to resign his seat. The Legislature passed a Bill banning him from Membership in the House and it contained a provision which prevented anybody convicted of an offence of that type from sitting as a Member for the next five years.

That former Member challenged the provisions of the Legislation and the court indicated that under the Canadian Charter of Rights and Freedoms, first of all the Legislature had the perfect right to expel the Member, so he was out, but, the Legislature did not have the right to preclude him from running again. There was a by-election called, he contested the by-election as an independent candidate and won and came back into the Legislature.

(Laughter)

So, we had a very unusual situation where a Member, who was convicted of a criminal offence arising out of his own conduct, was re-elected by his constituents. I should add that there was a general election about a year later, and he was defeated in the general election. So he is no longer a Member of the House.

Mr. Chibesakunda: Thank you, Mr. Chairman, Sir. I will answer only two questions raised by the Hon. Lady. The first one is with regard to Hon. Members who get elected on party tickets and later on change to another party. The situation in Zambia is the same as in India. Once you get elected on a party ticket, if you change your party, you must go back and seek re-election.

Hon. Members: Hear! Hear!

Mr. Chibesakunda: On the question of nomination, in our Constitution, the President is empowered to nominate up to eight Members of Parliament. One of the restrictions is that he is not allowed to nominate anyone who has failed in an election.

(Applause)

The Chairman (Mr. ole Kaparo): Order Hon. Members! With that hon, Members, we come to the end of the morning session. We will go for lunch and then come back for the afternoon session. All issues that we have put in the agenda for this seminar are stimulating as the ones we have gone through. I am sure Hon. Members are looking forward to this afternoon's discussions. So, *bon appetit!*

*[The Seminar adjourned at 1.05 pm
and resumed at 2.30 pm]*

THE POWER OF THE PURSE

- Financial provisions of the Constitution: No taxation without representation.
- Why power over finance is vested in elected Members.
- Ways and Means and Supply: An analysis of principles involved in:
 - (a) The budgetary process to provide funding for public expenditure..
 - (b) The Annual Estimates of Expenditure.

- Panel:*
- (i) Dr. Wilfred Koinange, The Permanent Secretary to the Treasury.
 - (ii) Mr. D.G. Njoroge, The Controller and Auditor-General, Kenya.
 - (iii) Mr. N.M. Chibesakunda, The Clerk of the National Assembly, Zambia.

(The Session Chairman - Hon. F.K. ole Kaparo)

The Chairman (Mr. ole Kaparo): It is time again to resume our session this afternoon which will be divided into two parts. In the first part of the afternoon session, we shall discuss the Power of the Purse and in the second part of the afternoon, we shall discuss the Role of a Member of Parliament in the Planning and Development Process. Well will go straight away to the first part and to help us discuss this particular topic are three eminent

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gentlemen. Immediately next to the Clerk of the National Assembly, is the Permanent Secretary to the Treasury - Dr. Wilfred Koinange, next is The Controller and Auditor-General - Mr. D.G. Njoroge and then the Clerk of the National Assembly of Zambia - Mr. Chibesakunda who has been with us from yesterday.

We will now open our discussion on this particular topic and we will have discussions beginning with Dr. Koinange, Mr. D.G. Njoroge and then Mr. Chibesakunda and after that in the usual manner, we will open the floor for questions and any panellists will be able to respond to the various questions that may arise. Without wasting more time, I now call upon Dr. Koinange to lead us in this discussion.

Dr. Koinange: Mr. Chairman, Sir, Hon. Members of Parliament, I wish in the next few minutes to share with you some aspects on the Power of the Purse and I shall concentrate in this regard to the financial management and budgeting as it occurs in this country. This should be a subject that is very familiar to Hon. Members because one of the highlights of this topic just took place recently when a statement of revenue and expenses were made known in Parliament.

Indeed the financial management and budget features a system that we enjoy in the country. Most of it has got major legal aspects and I will start with those before I go to the procedures. Section 99 of our Constitution, clearly stipulates that public revenues and other monies raised or received for the purposes of Government expenditure should be paid into the Consolidated Fund. The same section also lays down, I want to emphasize that "No money should be withdrawn from the Consolidated Fund unless authorized by the Constitution or by an Act of Parliament", which is a key issue in our discussion. Parliament is the only authority that can authorize any public expenditure. This implies that no public servant can spend public funds unless and until there is a budget provision for that particular expenditure which is approved annually during the budget. This is a fundamental requirement that governs the whole system into preparing, approving, revising and implementing annual budgets.

In summary, Parliament writes and signs cheques for the expenditure and thereafter assigns the Treasury and the office of the Controller and Auditor-General to make sure that the expenditure is incurred as authorized. Further to that Section 100 of the Constitution stipulates that the Minister for Finance, shall call the annual estimates of revenue and expenditure to be laid in Parliament every year for approval. I will not go into the details of that and would like to straight away go to the Budgeting Process. We have steps that we normally take to ensure that what I have just said is brought to operation. There are three budget exercises in this country in a year. These are:

1. The Forward Budget and Public Investments Programme.
2. The Annual Budget.
3. The Revised or Supplementary Estimates (when necessary).

The Forward Budget and Public Investment Programme is an exercise usually co-ordinated between the Office of the Vice-President and Ministry of Planning and National Development and the Treasury. In preparing this the Ministries are requested to ensure that they prioritize their activities for the purposes of guiding those who would be preparing the estimates later on. Again, I do not think it is necessary for me to go into the details of who

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does that, but there is a collective responsibility in all Government departments and Ministries in ensuring that there is an Estimates Working Groups (EWG) that goes through all the priorities that are submitted by the various Ministries and departments.

I would like to emphasize that the Public Investments Programme has assumed a far much more significant role recently than, perhaps, was the case in the past. It is so to the extent that Treasury now will not accept for inclusion in the annual estimates projects, programmes or any other activities that are not included in the Public Investments Programme well in advance.

The Forward Budget is an estimate of activities and programmes that are stipulated to be done in the next three years or so. This brings me quickly to the Annual Budget which again has mechanisms that trigger it and ends somewhere in June when the estimates are presented to Parliament.

With regard to the Supplementary estimates which I had referred to earlier on, during the course of the year often there are unexpected expenditure that might arise but as I said earlier, any expenditure must be approved by Parliament and if there were such unexpected expenditures they find their way in the Supplementary Estimates which are again forwarded to Parliament for approval. Obviously, all these budgeting depends very much on proper assessment of the resources that would be available for the subsequent expenditure. I have already pointed out that this exercise is very much co-ordinated between the Ministry of Finance and Office of the Vice-President and Ministry of Planning and National Development.

Mr. Chairman, Sir, as regards our own estimates of revenue and expenditure, we are not able to meet the expenditure and we always depend on external resources. The Government, therefore, in planning its own budget has got to take that into consideration and for many years now and for quite some time to come this source of support will be very necessary.

I, perhaps, need not go into the details of the Budget Preparation Process unless, it becomes necessary. I am sure Hon. Members will be able at their own leisure to read about that in the notes, which I believe have been distributed. However, I would like to point out that in the process of financial management and budgeting we should always remember the very close relationship that exists between generation of revenue and economic performance and perhaps, this is an issue we could discuss later on. I would also like to point out the importance of looking at the composition of Government expenditure and the rate of growth. Depending on how you divide your own expenditure you could spend most of that budget on projects that would either enhance a faster rate of growth or promote no growth at all. There is the other element that Kenyans have no control off namely what is happening in the rest of the world and that does affect our budgeting and financial management very much. Key to budgeting and management of the same is the issue of deficit and because it is a topic in itself we could discuss this later on.

With those four areas that I have mentioned, then one sees a very great need for budget rationalization. This, indeed, was found necessary in 1986 when as you can remember a famous paper came out during that year and this has been the guiding principle now in our budget process.

I would perhaps not be able to be very complete and I am sure I will not be complete on this subject within the time available if I did not touch on other aspects that affect the budget namely Government expenditures and contracts and again that is summarized in the

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notes that you have. The authority for revenue collection and expenditure has been spelt out by our Constitution and can only be authorized by Parliament.

I think the rest of the issues are in the notes and I would seek that I sit down and, maybe, later on areas that Hon. Member may wish to raise, we will be able to discuss or to respond to the various aspects that might crop up in the discussion. I, therefore, wish to take this opportunity, Mr. Chairman, Sir, to thank you for inviting me to be able to address Hon. Members of Parliament which is not a usual thing for a civil servant to do. Thank you.

(Applause)

The Chairman (Mr. ole Kaparo): Thank you, Dr. Koinange for your contributions. We have heard how the budget is prepared and how the money is collected and spent and so we will now hear from the person who checks how that money is spent or misspent. Can we then welcome the Controller and Auditor-General, Mr. D.G. Njoroge.

(Applause)

Mr. D.G. Njoroge: Mr. Chairman, Sir, Hon. Members, the topic for today is the Power of the Purse and I will attempt briefly to talk about the role of audit in helping Parliament to control that purse.

As implied by my colleague, Dr. Koinange, under Kenya's Constitution and form of Government Parliament has supremacy over financial matters pertaining to taxation and authorization of Government expenditure. Parliament also needs to be informed on how the Executive - the Government has dealt with its taxation concerning the raising of revenue through taxation and how the amount raised has been spent and especially whether the Executive arm of Government has observed the wishes of Parliament. To assist Parliament in receiving assurance on these matters the Office of the Controller and Auditor-General is established under Section 105 of the Constitution of Kenya which also defines the duties and responsibilities of the office. Broadly, these responsibilities include; one, control of withdrawals of Government monies from the Consolidated Fund to meet expenditure approved by Parliament either through the Appropriations Act or any other Act of Parliament, this is done on behalf of Parliament; two, to audit the accounts of all Government Ministries, departments and various institutions and at least once a year report to Parliament the results of these audits; and three, to audit the accounts of all the Authorities in the Republic. These responsibilities are set out in greater details in the Exchequer and Audit Act Cap. 412 of the laws of Kenya. In the discharge of these duties, the office carries out independent audits and the examination of Government accounts and financial activities with a view to providing meaningful and objective information and assurance to Parliament concerning the use of public resources by the Executive.

The audits are carried out with the aim of promoting accountability and best practice in Government operations with regard to proper management of public resources. I also believe that it is essential to promote frank and fair accounting of Government stewardship on financial matters and other resources and the audit Report to Parliament are made with this in mind. As part of meeting the Constitutional requirement, the Report to Parliament is also intended to appraise the legislators of the issues and actions which has been noted during the

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audit and which affect Government stewardship and management of resources. The office also endeavours to ensure that during the audit process, the Executive is properly informed of the issues involved and that those issues which are not adequately dealt with are subsequently and properly reported to Parliament. After presentation of the Reports to Parliament, such Reports are discussed and examined by the Public Accounts Committee (PAC), a Select Committee of Parliament.

Based on the evidence provided either in writing or verbally, the Committee makes recommendations which are then presented to the House for debate and approval as necessary. Such recommendations are supposed to correct situations which the PAC considers need correcting in addition to taking such disciplinary action as the Committee may recommend. Once these recommendations have been adopted by Parliament, the Executive arm of the Government is expected to implement them. Implementation of the past recommendations of the PAC have not, however, in all cases taken place and this is a situation which future Committees may wish to have corrected. To do this, the PAC might wish to consider insisting on receiving confirmation of action taken on previous recommendations at the time of discussion on the current Report.

(Applause)

The Controller and Auditor-General attends the hearings of the PAC, either personally, or whenever possible delegates his representation to the most senior staff in the office.

Government stewardship of resources must in my view also include proper management of the Civil Service so as to ensure the existence of an efficient and productive Public Service. I believe that if the Public Service is itself efficient, this would in turn result in effective delivery of Government programmes and service to citizens and that waste and extravagance might be avoided or at least minimized. It is for this reason, therefore, that when discussions take place during PAC meetings opportunity is taken to bring up issues related to staff discipline and efficiency or lack of it in relation to the matter being discussed by the Committee. The audit process is a continuous exercise and results of audit findings are made known to the Ministry or the department concerned immediately so as to give the accounting officer an opportunity to explain the position and to take action as necessary.

It is also pertinent to mention that before deciding on the actual form and content of the Report to Parliament and in order to ensure that the Executive is fully aware of matters which appear in the Audit Report, my office makes available the actual draft report to the accounting officer first and invites comments and views on the matters being raised. The aim is to communicate the message and a true significance of the issues involved to the Executive, especially to the accounting officer hoping that corrective action would be taken as appropriate. If these were done then, perhaps, the audit function might start to be viewed by the Executive as a service which adds value and support to Government accountability and in the process help safeguard the public resources, avoid waste and extravagance, perhaps, even in fact discover fraudulent inclinations and practices and sometimes outright theft.

In this regard the value of audit should be seen not merely in terms of what is disclosed in the Report of the misdeeds or wrongs that are done by others, I believe that someone checking somebody else work and activities will always come out with some finding. The essential factor is that corrective action is taken to avoid similar

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misdeeds and those responsible for the wrong doing are held fully responsible for their actions. Unless this is done and the tax-payer's see that action is taken against those found responsible for losses to the public purse, audit work will simply be regarded as a fruitless exercise without any value.

Mr. Chairman, I would like with your permission perhaps, to turn to another matter which is vital in the proper carrying out of the audit functions. The independence of the office of the Controller and Auditor-General is vital if the office is to perform its duties effectively. To cater for this the Constitution provides for the security of tenure of the holder of the office of the Controller and Auditor-General. This independence must not just be on paper, but it must be seen to be there to ensure a strong and effective external audit function. At present, the office is dependent on the Executive and other Government agencies for other vital needs. I believe that this is a situation which might at some stage need addressing to and I hope to have an opportunity to have the matter discussed openly by those concerned. In my view, a more transparent independence of the office would be enhanced if the office operated as a arm of the Legislature, as is the case in other countries. But, again, the proposal is one that might better be discussed by a Select Committee of Parliament or by those concerned.

Mr. Chairman, Sir, this is probably a brief statement of the role of the audit in ensuring public accountability in the expenditure authorized by Government, but I will be quite happy to respond if there are any comments.

Thank you.

The Chairman (Mr. ole Kaparo): Thank you, Mr. Njoroge for your contribution. Let us now here from the Clerk from the House of Zambia, Mr. Chibesakunda.

Mr. Chibesakunda: Mr. Chairman, Sir, I must admit from the word "go" that I do not know why three public servants were selected to deal with this subject instead of getting the politicians who are on the panel because they are the ones who deal with that more.

(Applause)

All the same, Mr. Chairman, in my view, the most representative body in any country is Parliament. Every inch of any country is covered by a constituency and, therefore, the right people who should control expenditure and taxation of any country are Members of Parliament.

Having said that, I would like to say that the Parliamentary role of approving taxation and expenditure has a basis in the British Parliament where the House of Commons sets two conditions for approving the King's request for taxes. First of all, they wanted to have a chance of bringing forward grievances from their own areas before they agreed to any taxation. Secondly, they wanted to know where that money is going to be taken to once people are taxed. I confess that this has been the basis for almost the majority of Commonwealth Parliaments and I think it also goes outside the Commonwealth Parliaments. First of all, the Government decides to tax people, but before they do that they must ask whether they will get that support from ordinary people. The Government can only get that support through elected Members of Parliament thus they introduce taxation measures through the Committee of Ways and Means. In doing so, first of all they get the Head of State to be involved. Before any Minister of Finance introduces any Bill involving taxation, I often hear

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in my Parliament "I am a bearer of a message from the President recommending favourable consideration of the Motion and I now lay on the Table". Secondly, before any authority is granted to spend any money by any Government Ministry, Department or parastatal again the Minister for Finance comes before Parliament through a Motion of Supply. In a similar manner, the President is also involved through a message which the Minister brings before the House.

In dealing with budget proposals which involve collection of revenue and expenditure I would like to state that it is not the responsibility of Hon. Members to begin proposing increases on the Floor of the House because any Hon. Member who does that is asking for early exit from the House. No one wants to be taxed. They would only propose for increases in expenditures, for example, in the budget or supplementary estimates to be brought later on. However, Hon. Members have got powers to propose reduction in any monies put forward by the Government for expenditure in any Department or Ministry for reasons which they think are genuine. For example, if expenditure on the Ministry of Agriculture is not sufficient, but somebody thinks of spending money on construction of a football stadium, obviously Hon. Members have a right to say that we will not like to have this money spent on a football stadium but would like it to go for Ministry of Agriculture. They have a right to vary the expenditure from a football stadium to the Ministry of Agriculture. On the other hand, I pity Ministers when they begin defending estimates.

Sometimes some of them do not explain fully the reasons for the proposals which have been put forward on their behalf by Ministers responsible for finance. This leads to a lot of problems in the House. I recall that some years back we had a problem in the Zambian Parliament when the Minister of Foreign Affairs - not the current Minister of Foreign Affairs but another one - was asked to explain fully why we had so many diplomatic missions abroad, some of them uneconomical and some of them just based on politics, but for some reason he thought he was a very important Minister and had the support of the Head of State. He was arrogant. Unfortunately he ended up with a sum of money deducted from the total budget of his Ministry before the annual budget was approved and this affected his entire budget for that year. What followed after that was the early exit of the Minister from his portfolio.

So, Hon. Members have that responsibility of ensuring that whatever resources are put forward by the government are used for a good cause for the interest of the country as a whole. Once they approve the funds they have no right to turn round and say "we do not know anything about this." On the other hand if, during the course of the year, it has been found that certain things need more financial attention than was initially approved in the estimates of expenditure, Hon. Members have the right to go back to the Minister for Finance and ask him to prepare supplementary estimates to provide finances to go for essential services but not the other way round; of asking for a reduction at the spur of the moment.

The Auditor-General prepares the work of the Public Accounts Committee. I regard the Public Accounts Committee as one of the most important Committees in any Parliament. Some of the critics of the Public Accounts Committee, ask "Why do you talk about money which has already been spent; they have wasted this money and you are wasting the time of the House." But the Public Accounts Committee serves a very good purpose, one way or the other in that, as the Controller and Auditor-General mentioned, it reminds Hon. Members and public officers of their responsibilities to the representatives of the people;

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that the money they are handling is money from taxpayers and it has to be spent in the interest of the country as a whole.

We have established, in Zambia, a system whereby once the report of the Public Accounts Committee has been adopted by the House, the Government is given 60 days within which they must respond to whatever recommendations are contained in the report. If the response from the Government is not satisfactory, before the Committee meets, it will be sent back. In some cases you hear some departments saying "we have noted what the Public Accounts Committee has said" but the Public Accounts Committee will not accept such remarks. The Ministry or department concerned must state specifically what action they are going to take on certain issues. Recently the Public Accounts has even gone further where, unfortunately for public servants, they have gone on to make certain recommendations on certain public officers whom they think are not suitable to be working in certain Ministries. They recommended to the appointing authorities that those officers should be removed. I am aware of some public officers who were removed as a result of recommendations coming from the Public Accounts Committee.

In addition to the Public Accounts Committee, we have a Committee on parastatal bodies or public enterprises. That Committee also deals with funds voted by Parliament to those public institutions to ensure that those funds have been spent in accordance with the wishes of Parliament itself. That Committee also submits a report to the House and it is not different from the Public Accounts Committee because the same requirement of 60 days also applies with this Committee.

Mr. Chairman, Sir, that is what I have to say. I will be ready to answer any questions later.

The Chairman (Mr. ole Kaparo): Well, we have heard from the panellist and the issue will now be put to the Floor. I will recognise Dr. Opere.

Dr. Opere: Thank you, Mr. Chairman, Sir. I have three specific questions to raise. In the past we have experienced generalised over-expenditure in this country. I wonder what mechanisms the Treasury is instituting to ensure that there is no further unnecessary and unauthorized over-expenditure. The second question which I am directing to the Controller and Auditor-General is based on the old adage which states that prevention is better than cure. We all laud, of course, the work that you and your team are doing. Are there mechanisms that you can put in place to ensure that the situation is corrected at *ex-ante* and not *ex-poste*, in other words, before the expenditure or over-expenditures are undertaken? Is there any way you, and your office could intervene? My third and last question is as follows: The Public Investment Programme that is currently in use was prepared over two years ago and the economic situations and circumstances have changed drastically. If that is the case, and as the Permanent Secretary, Ministry of Finance, has told us - and this is the basis for preparing the budget and in particular the development budget - I wonder what basis was used to prepare this year's Budget since the Public Investment Programme is out of date and the new one has not been finalised. Thank you.

The Chairman (Mr. ole Kaparo): Well, I suppose we will begin with the question directed to the Permanent Secretary and then we will go to the Controller and Auditor-General.

Dr. Koinange: Mr. Chairman, Sir, over-expenditure is a very important aspect in Treasury and its control even more important. This is normally done through the Accounting

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Officers. When the Accounting Officers are appointed their responsibilities are specifically spelt out. One of these responsibilities is to ensure that they live within the Budget. This requirement is emphasised throughout and I am sure that the Hon. Member would appreciate that although there was an over-expenditure last year, it was far much better than in the previous year. I would like to believe that it will even be better this year. However, I must also admit, and as I said I referred to this during the discussion, that there may crop issues that one may not have foreseen. I said that this, of course, should be covered by Supplementary Estimates and approval. I have in mind, for example, the budget that we have for a Ministry like the Ministry of Foreign Affairs and International Co-operation. You all know that the exchange rate has moved from whatever it was, in dollar terms; from Kshs.45 to Kshs.65. When for example, we prepared the Estimates, the exchange rates were different and we have got on-going contracts overseas. So, I am sure that when a supplementary budget for that Ministry comes, I would like to believe that Members of Parliament will understand that otherwise it will end up as an over-expenditure.

I will now touch on the second point, namely that the Budget may not be accurate because the Public Investment Programme and others were not in place by the time the budgeting was done and because also of the cycle that we used to have, of three years and five years. I do not think this would prove correct because although we do budget for the next 12 months even within those 12 months so many things can change. I think the most important thing is to be able to adjust; adjust in terms of saving from already voted Votes and re-allocation with necessary approvals to make sure that we are able to live within that Budget. I must also add, right now, that for any Ministry of Finance in any developing country, including Kenya, it is extremely difficult to be very accurate because of what I referred to earlier on; external happenings that developing countries have no control over. I am sure the Hon. Member knows the sort of points I am trying to make.

The Chairman (Mr. ole Kaparo): Thank you. We have not finished yet. There was an issue to be responded to by the Controller and Auditor-General. I will give the chance to the Controller and Auditor-General to respond to Dr. Opere's question.

Mr. Odinga: Mr. Chairman, Sir, I have a question for Dr. Koinange.

The Chairman (Mr. ole Kaparo): Let us do this, Mr. Odinga. Let us finish with Dr. Opere's question first and I will allow you to put your question.

Mr. D.G. Njoroge: Mr. Chairman, Sir, the question was whether there is anything that can be done to avoid wrongs before they are done; to avoid unauthorised expenditures before they take place. The problem here is not that there are no rules or controls in place. I believe there are internal controls which have been set up in all Government Ministries and Departments. The Treasury has got very good rules and regulations available in every Ministry and Department. I think the problem is that these rules are not always adhered to. If they were adhered to I believe that most of the mistakes and the wrong doings we see around would be avoided. To do that I believe that there is need to be more strict with implementing or ensuring that there is discipline within the Executive itself; from top to bottom. Those who are found to be wrong, no matter what their positions are, they should be held responsible for their actions. It is not until, for example, an Accounting Officer in charge of a Ministry is seen to have taken his fair share of blame and censured for wrongs done in his Ministry that the clerks at their desks will also take these matters seriously. Once you let off one person, no matter his position, you set off a whole chain of reaction such that

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when people see one person getting away they will start asking "why can I not also get away with it?" The whole problem is one of discipline within the Public Sector.

The Chairman (Mr. ole Kaparo): Thank you. Mr. Odinga, please!

Mr. Odinga: Thank you, Mr. Chairman, Sir. I want to get a clarification from the Permanent Secretary, Treasury, about the Consolidated Fund. With regard to the Consolidated Fund, I would like to know whether it includes all the aid money or grants from outside and so on. Are they all consolidated together or consolidation only includes the revenue from within Kenya?

The Chairman (Mr. ole Kaparo): Dr. Koinange will respond to that question.

Dr. Koinange: Mr. Chairman, Sir, the question is whether in the Consolidated Fund we include the monies and grants from outside and so on. The answer is that in some aspects we do while in others we do not and I will explain why. If you take a donor that works through a special project and where we are only supervising their work, for example a donor supporting a project for constructing a dam, such a donor would like to do that through his own contracting mechanism and pay directly to the contracting agent. Then that money, although it will be reflected as assistance to Kenya and so on, will not be part of the Consolidated Fund. However, if the same donor was to support the same project through direct payment to Government then that will be revenue and it will be reflected in the Fund.

Mr. Kamuyu: Thank you, Mr. Chairman, Sir. I have one question which I would like to direct to the Clerk of the National Assembly of Zambia. This is in relation to Implementation Committee. Lack of an Implementation Committee is a cause of a lot of frustration in our Parliament. I would like to know from Chibesakunda whether they have an Implementation Committee in Zambia and whether it does its work particularly with regard to recommendations from the Controller Auditor-General and other Committees of the House. I would also like to know whether Motions passed by the Zambian Parliament are suspended or indeed implemented. My next question is directed to the Permanent Secretary, Ministry of Finance. We do understand that there were a lot of notes which were printed. We would like to know how many currency notes were printed and how they affected the economy of this country and whether there are any mopping up operations going on and what it will cost the country to mop up all these currency notes.

The Chairman (Mr. ole Kaparo): I think we will begin with the Clerk to the Parliament of Zambia and then come to Dr. Koinange.

Mr. Chibesakunda: Mr. Chairman, Sir, in the Zambian Parliament we do not have what is known as Implementation Committee. But each investigatory committee like the Public Accounts Committee, Parastatal Bodies Committee or any committees of that nature, has a responsibility of reporting first to the Speaker, that Such-and-such Ministries have not implemented the recommendations contained in the Motion for the adoption of their report. I would say, without any contradiction, that any Ministry that fails to implement the decisions of any of the Parliamentary Committees will be doing that at its own risk. This is because there will be a danger even of the supplementary estimates for such a Ministry being rejected. This has happened. Therefore, all Ministries do ensure that whatever has been recommended by the Public Accounts Committee or the Parastatal Bodies Committee are implemented. Where they think they are unable to implement such recommendations, they must give genuine reasons and which must convince Hon. Members.

The Chairman (Mr. ole Kaparo): Dr. Koinange may now respond to the question directed to him.

Dr. Koinange: Mr. Chairman, Sir, the printing of currency notes and coins is a normal process in any country and the number of coins and notes in circulation is determined by the need for the same. The numbers that circulate are made public in this country regularly in the Official *Kenya Gazette*. I am sure that the Hon. Members see the publication by the Central Bank of Kenya.

I think the second point was on the question of mopping up, I assume not notes but I would like to believe that it is the excess liquidity that has been there. If I understood that question correctly, then it would be: what efforts are being made to mop up the excess liquidity and at what cost? I think Hon. Members have seen, in the last few weeks, that there have been Treasury Bills that are being sold every week to the tune of Kshs.5 billion. That is the method that is being used to mop up the excess liquidity the cost of which I cannot give now because the exercise is not yet finished. Thank you.

Mr. Wamae: Thank you, Mr. Chairman, Sir, for giving me this opportunity to ask one question to the Permanent Secretary, Treasury. We realise that export compensation is paid from Customs revenue. How come you are able to pay export compensation directly from Treasury? The next question is to the Controller and Auditor-General. After the Public Accounts Committee has made its recommendations, do you ensure that those recommendations are implemented by respective Ministries on behalf of the Public Accounts Committee?

Dr. Koinange: Mr. Chairman, Sir, the question was how come that Treasury was paying export compensation which is linked with revenues that are earned from exports. I think Hon. Members would appreciate that in any given programme there is an agreed way of payments, be it in export compensations or for that matter any other form of payments. The Export Compensation Scheme is an on-going programme, even now, which the Kenya Government agreed upon with various donors and unless the Hon. Member wishes to be very specific about any export compensation, the methodology that has been used and even that is being used right now is that Treasury is paying some of the compensation.

Mr. Wamae: Mr. Chairman, Sir, I want to help the Permanent Secretary. There is a case of Goldenberg International which was paid an enhanced compensation of 35 per cent, instead of 20 per cent. Where did you get money from to pay the extra 15 per cent export compensation?

Dr. Koinange: Mr. Chairman, Sir, I do not think it will be proper for me to comment on that issue because I am sure it will be coming before the Public Accounts Committee.

Hon. Members: Yes, it is before the Public Accounts Committee!

The Chairman (Mr. ole Kaparo): Order! Order! Hon. Members, we agreed yesterday that however much you may not like what is being said by any particular Member or person, at least hear it first. Can you let Dr. Koinange finish what he was saying?

Mr. Brancker: Mr. Chairman, Sir, if you will excuse me please, there seems to be a misunderstanding developing amongst the Members which I personally would like corrected right away. As I understand, these two officials are here to answer questions in relation to their own Departments excluding policy. They are not responsible for questions touching on policy and they cannot give answers.

Hon. Members: No! No! No!

Mr. Brancker: No! They would be very wrong to attempt it because that policy is not for the Permanent Secretary or the Controller and Auditor-General. In so far as the Public Accounts Committee is concerned, I should like to draw to your attention a very major difference which is set out in the clearest and the most positive detail in May's book "Parliamentary Procedures" on page 676, which is that not even the Public Accounts Committee can concern itself with policy. This is it! That is a very big difference.

The Chairman (Mr. ole Kaparo): That answers the issue. Can Dr. Koinange respond?

Dr. Koinange: Mr. Chairman, Sir, I wish to get your indulgence. This matter that has been raised is subject to Public Accounts Committee and I think it should be dealt with when that issue is raised in the Public Accounts Committee.

The Chairman (Mr. ole Kaparo): That is quite right. I do not know whether there was an issue unrelated to this point that was directed to the Controller and Auditor-General.

First, I want to make it absolutely clear that I invited the panellists and they came on their own free will; they were under no compulsion at all. Secondly, I would like interjections from the Floor when somebody else is talking to be minimised because I do not think they do assist our learning process. If we really want to learn the best thing to do is to listen and ask questions. Unless, of course, we do that we shall just reduce this meeting again into a congregation of jeers and boors. I am not sure whether that is precisely what we came to do here. So, can we keep again to what we have heard the whole of the last two days and ask questions and listen.

Mr. D.G. Njoroge: Mr. Chairman, Sir, I will, perhaps, respond first to a question asked earlier which was whether there is anything that can be done to ensure that the recommendations of the Public Accounts Committee are implemented? I think the first thing is to ensure that those in Government entrusted with the responsibilities for implementing these recommendations do so and that those who fail to do so are dealt with individually. I think the Public Accounts Committee can go a stage further, but this a consideration by the Committee. It could easily take the Ministry that has failed to implement the recommendations to task and if they are not satisfied they can consider what other steps to take, including that of withholding approvals for that Ministry. But this is a decision the Committee would have to consider very seriously, each case being dealt with individually and on merit. I believe that the Hon. Members who were speaking about compensation were, probably, referring to the Report that has been made to Parliament. I think my colleague from the Treasury is quite right to say that is a matter which is before the Public Accounts Committee. But for my part, I will say that what is contained in that Report, as I sit here now, still holds unless I am proved wrong.

The Assistant Minister for Tourism and Wildlife (Mr. Kisiero): Mr. Chairman, my question is in relation to the preparation of the Budget. We all know that each District Development Committee (DDC) prepares proposals according to priorities in each sector of our economy and then these are forwarded to the Ministry of Planning and National Development, or wherever. But when the Forward Budget is prepared, or even for that matter the annual Budget, we find that may be those proposals have been changed and what was number one might be number ten. What may now appear in the Forward Budget may not have appeared even in the district proposals. Now, sometimes we have problems with our colleagues because when they ask Questions because they say "Look, our DDC has forwarded this and that on a first priority basis", but when we check we find that is not even in there.

[The Assistant Minister for Tourism and Wildlife]

So, my question is: What could be happening in between? Are there any moles who go to change priorities? What happens between the DDC and the Ministries concerned?

The Chairman (Mr. ole Kaparo): Very well. I think Dr. Koinange can now respond to that.

Dr. Koinange: Mr. Chairman, this is a question that I have heard elsewhere and it is very important. I am sure I share the concern of the Hon. Member. With respect to the Forward Budget now and the Public Investment Programme we have requested that DDCs, together with planning officers, should be able to identify what are now being referred to as "core projects". The reason for this is simple, in that in the past there has been a tendency to have very many proposals made and said to be very important. I am sure they are important but at the end of the day the funds for executing those programmes are not there. It is quite possible that while the DDC might have identified five projects as being very important only one or two might end up being so recognised, simply because there are not enough funds for that, and not because there is a mole between the DDCs and Ministries' headquarters.

Mr. Anyona: Mr. Chairman, I would like to direct one question to each of the panellists. The first question goes to the Permanent Secretary, Treasury. Lately, I have been reading the Exchequer and Audit Act and I have noticed there are very clear provisions as to the control of public funds, and yet we have had a lot of cases of financial scandals in the public sector, including tendering procedures. Could the Permanent Secretary explain how come that the Treasury has abdicated its role of controlling these public funds and subsequently these scandals have arisen? The second question is to the Controller and Auditor-General, whose work from year to year continues to impress some of us. I would like to find out whether, in fact, there have been any cases where funds have been withdrawn from the Consolidated Fund without parliamentary approval. Finally, I have a question regarding the case of Zambia, which I am very interested in. We were told that the Public Accounts Committee and what is the equivalent of our Public Investments Committee in Zambia have set implementation deadlines within which the Ministries must act. Who has, in fact, set those deadlines? Is it the Committees or the House? Or, how have they been set? Thank you, Sir.

The Chairman (Mr. ole Kaparo): Just before those questions are responded to, I would like to make a few announcements on procedure. We will break for tea at 4.00 o'clock and we will resume at 4.30 pm. to proceed until 6.00 o'clock when we shall adjourn until the following morning. In the following morning we will resume at 9.00 am. I think the questions can be taken in order in which they were asked.

[The Chairman (Mr. Kaparo) left the Chair]

[The Acting Chairman (Dr. B.A. Godana) took the Chair]

Dr. Koinange: Mr. Acting Chairman, Sir, I fully share the concern of Hon. Members on this issue of control of expenditure. I must also admit that there has been problems every year as has been shown by the Report of the Controller and Auditor-General. What I would like to assure Hon. Members is that right now we in Treasury have started a new programme which has never been there before and which should be able to help us in knowing who is

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incurring more expenditure without expenditure. Over the last two weeks now we have started a system where we will be able to tell the balances of each Ministry almost on a day to day basis. We may not be as exact as that because you would appreciate that expenditures incurred at the district level will take a bit of time before you capture it at the Ministries' headquarters. But, certainly, we are now able to tell, what has happened in the last two days. We hope to be able to improve this system until we are able to capture the expenses and expenditures at the district level. The system is very new, but I think this is a right thing that we should have, perhaps, done some years back. I very much hope that with new system should be able to show some improvement before the end of this year.

Mr. D.G. Njoroge: Mr. Acting Chairman, Sir, if I understood the question, it was in two parts. The first part was, I think, on whether there has been any occasion when funds have been withdrawn from the Consolidated Fund without my agreeing to its withdrawal. The answer to that part of the question is "no"; all withdrawals from the Consolidated Fund have been properly authorised as provided for by law. I think the second part of the question is whether there has been any expenditure charged on the Consolidated Fund without authority. Again, I can only remember one such occasion and that case, in fact, is in the Report which will come before the Public Accounts Committee, when fund withdrawn for an allowed purpose have been used without parliamentary authority.

Mr. Chibesakunda: Mr. Acting Chairman, the times within which the Ministries have to act are recommended by the Committees, especially the Public Accounts Committee, and approved by the House. So, the set time limits have the backing of the House.

Mr. Wamalwa: Mr. Acting Chairman, I would like to put this question to both the Permanent Secretary, Treasury, and the Controller and Auditor-General. With the scheme of planning and development based on the DDCs, proposals for development are suggested at the district level and transmitted directly to the Ministries. So, does the provincial administration set-up, particularly the provincial commissioner, provincial director of agriculture, provincial police officer and so on, not become an unnecessary millstone around the taxpayer's neck?

The Acting Chairman (Dr. B.A. Godana): Hon. Wamalwa, I think you will appreciate, perhaps better than most of us here, that, that too will be what is a "policy question", which the Permanent Secretary, Treasury, will not be able to tackle.

Mr. Wamalwa: What about a personal view on the matter?

The Acting Chairman (Dr. B.A. Godana): Yes, Mr. Galgallo.

Mr. Galgallo: Mr. Acting Chairman, the Constitution provides for the free operation of the work of the Controller and Auditor-General and yet, if I heard him well, in the part of his speech he seems to be concerned about the operation of his office and its inability, or incapacitation, due to dependence on other branches of the system. Can he elaborate on what is actually hindering the operation of his office since we very much appreciate the good work he is doing?

Mr. D.G. Njoroge: Mr. Acting Chairman, in response to that question, one of the statements I would like to make is that for some time now I have had very good co-operation from the Government on audit matters. But, and this a very big "BUT", a situation where the Office is dependent on the executive for certain aspects, for example budget, staff supervision, approval of pay level, and at the same time the same executive is subject to audit by the Controller and Auditor-General is a subject which has been exercising the minds a lot

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of audit offices around the world. In fact, what has been happening is that Parliament has recognised the anomaly and they are moving towards making the Audit Office part of the services under the supervision of Parliament directly, as opposed to the Executive. I think these are issues on which I have not asked the Government for redress. So, I think it would be unfair for me to say that I have asked for something and been denied.

Ms. Karua: Mr. Acting Chairman, mine is not a question to the panellists; it a comment more directed to the Chair. Now, this being a seminar, my understanding of a seminar is that, although one may not have a question we are entitled to interventions. And I do hope that those of us who have no questions can---

The Acting Chairman (Dr. B.A. Godana): Hon. Karua, you have just shown up!

Ms. Karua: Mr. Acting Chairman, please, may I finish? I am suggesting that we should be free to exchange ideas because this is a seminar, and I am asking whether I can make my contribution because I have something to say.

The Acting Chairman (Dr. B.A. Godana): Hon. Karua, I think you have just shown up this afternoon--- in the seminar---

Ms. Karua: That is very true, but I am ready to contribute!

The Acting Chairman (Dr. B.A. Godana): Order, Hon. Karua! The seminar has been continuing since yesterday and we had proceeded fairly well without any problems on the premise that the panellists and Members will share their views.

Ms. Karua: Is it taken that my contributing is a problem? This is our seminar and you should not dictate to us as if we are in Parliament. We cannot be gagged as though we are in Parliament!

(Ms. Karua withdrew from the hall)

Mr. Obure: Mr. Acting Chairman, my question is directed to the Controller and Auditor-General and the Permanent Secretary, Treasury. Over the years we have received institutional reports and, according to the auditors' financial reports since 1974, every report indicates that in one way or the other there were misappropriations of public funds and that the Controller and Auditor-General's Report and recommendations are not implemented. Now, does the Permanent Secretary, Treasury, have any way in which he can seal the loopholes through which public funds are siphoned off? Secondly, to whom are accounting officers in state corporations accountable? Are they answerable to the Ministry or to the Controller and Auditor-General?

Mr. D.G. Njoroge: Mr. Acting Chairman, if I may respond to that question briefly, as I said earlier, the rules are there, but the problem is that these rules are not obeyed by those who should obey them. I believe the answer here lies with the Government institutions being firm with taking action against those found to be breaching rules. The rules have not changed and there is nothing you can do by setting more rules when the ones in existence are not being obeyed. I think the first thing is to insist that the rules be obeyed.

The Acting Chairman (Dr. B.A. Godana): Yes, Prof. Saitoti; yours will be the last question.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): Mr. Acting Chairman, my first question is addressed to both the Controller and Auditor-General and the Permanent Secretary, Treasury. What is the role of the Accounting

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Officer - I am sure many Hon. Members would want to know this - *vis-a-vis* that of the Minister? The second question, which is addressed to the Controller and Auditor-General, is, I am sure if he goes through his Reports he will find several issues have been raised for many years. However, are all those issues which appear before the Public Accounts Committee revisited or not? A number of them do not appear to have been revisited. In other words, what is the legal position?

Dr. Koinange: Mr. Acting Chairman, Sir, Accounting Officers are appointed by the Treasury and they are responsible for all financial affairs of the Ministry or Department to which they are appointed as Accounting Officers. Their role is really to ensure that all proper procedures are followed in incurring expenditure and commitment of the expenditure. They are also responsible for ensuring that all expenditures under their votes - because they are specifically appointed to various votes - are the ones duly authorised by Parliament. Thank you, Sir.

Mr. Brancker: Mr. Acting Chairman, Sir, may I say this, in connection with the Public Accounts Committee. When the Committee makes its recommendations to the National Assembly those recommendations are laid before the House until such a time that the House accepts or rejects it. So, the recommendations cannot be implemented by direction until such a time that the report has been adopted. There are a few other considerations. First, the Controller and Auditor-General's authority is both expressed and limited by the legislation creating his office. He is a true Controller Auditor-General, but he is not a true controller in the sense that he does not have the range of authority which is given to his equivalent in the United Kingdom, the Controller and Auditor-General who is given much wider powers by legislation. Nor is he in the position of the separate Controller and separate Auditor-General in Canada, who has not only the responsibility for dealing with the accounts, but also has independent investigative powers separate and apart from looking at matters such as accounts. This is what the Controller and Auditor-General of the United Kingdom and the Controller and also Auditor-General of Canada have. The other parameters to be satisfied, and I hope the Controller and Auditor-General will agree with me that this is, perhaps, a universal thing right throughout the Commonwealth and other countries, is that in the first place the Auditor-General's right of independence is recognised in a number of ways, and not simply in the extent to which he depends on other departments to provide services for his department, but also in the absence of a budget which will facilitate him in providing all the services out of that money.

The second thing is that in relation to his staffing; he draws his staff from the Civil Service and his staff are transferable from his Department. In the United Kingdom when one falls under the jurisdiction of the Controller and Auditor-General any transferability out of that jurisdiction can only be a by a request which he accepts. The Controller and Auditor-General also becomes totally responsible not only for recruitment and promotion of his own staff but also, more importantly, he has the right to bring in staff from outside the Civil Service to satisfy the requirements of his Department. In circumstances where, for example, he does not have enough staff to do the work or he has special situations that need control he can bring in staff for that purposes. Also, the Audit Department must have some form of a career structure. In the nature of things it is a very large Department and it needs to be recognised as a professional Department. I know there will be some professional officers near the top, but right through the office it seems to me that there ought to be training through the

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office. The final thing in relation to Accounting Officers - and I think it is a fact that must be recognised in Departments - is this, that while Accounting Officers are legally responsible, they are generally not physically able to look after the accounting areas in their Departments. There ought, therefore, to be a proper service provided to each Department that has accounts, not only revenue accounts but also ordinary accounts, whereby its trained personnel - I do not mean necessarily professionally trained personnel - are well catered for. Trained personnel are put in there just in the same way as if you had an accounting firm and you have a client and you send somebody to work in that office to make sure that the accounting system is kept in order. The Auditor-General's Department ought to be in a position - it is not a policing operation, but an operation dealing with efficiency - to send somebody to work in that department or to allocate somebody to that department to assist with the efficiency of that department. We will then be able to put to an end a tremendous number of the problems that we are facing in all the Commonwealth countries in relation to the management of public accounts.

Thank you, Mr. Acting Chairman.

The Acting Chairman (Dr. B.A. Godana): Thank you, Mr. Brancker. We have come to the end of this Session. We shall now break for tea and as I said this morning, Members are, of course, free to continue if the Permanent Secretary and the Controller and Auditor-General will bear with us. We shall carry over some of those questions and continue when we resume after we have had tea.

Thank you.

*(The Seminar adjourned at 4.10 pm
and resumed at 4.40 pm)*

THE ROLE OF A MEMBER OF PARLIAMENT IN THE
PLANNING AND DEVELOPMENT PROCESS

- Representing Constituents.
- Supporting or criticizing Government proposals.

Panel:

- (i) Prof. M.S. Mukras
 - The Planning Process.
- (ii) Prof. G.C.M. Mutiso
 - Issues in strategic Planning.

(The Acting Session Chairman - Dr. B.A. Godana)

The Acting Chairman (Dr. B.A. Godana): Hon. Members, it is time for us to start on our next Session for which we had listed two panellists - two local resource persons. We were to have with us Prof. Mukras who is the Head of the Planning Division in the Ministry

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of Planning and National Development. Unfortunately, Prof. Mukras is not with us tonight; I understand he is not feeling well and, therefore, he could not turn up. The only other panellist for this Session is Prof. G.C.M. Mutiso, whom I believe is known to most of you. We are eager to share with him some thoughts this afternoon. Now that Prof. Mukras is not here, he will, perhaps, step in partially in his place. Please, Prof. Mutiso, welcome.

Prof. Mutiso: Hon. Members of Parliament, like Mr. Njoroge, I am honoured to address you. It is not usual for some of us strangers to have the privilege of talking to you. My paper was predicated to this Session on National Planning. It is not very easy for me to discuss about national planning because as some of you know, I have never worked in Government; I have always taught. After teaching, I became a journalist for five years and I have been a consultant for the last 10 years on development planning.

The title of my Paper - that is why it was important that you hear about national planning - is "The Role of the Member of Parliament in Planning and Development Process - Issues in Constituency Strategic Planning."

[The Acting Chairman (Dr. B.A. Godana) left the Chair]

[The Chairman (Mr. ole Kaparo) resumed the Chair]

I think we also have a little hitch in reproducing this Paper, but it will be supplied to you later. In this Paper, we will discuss some planning and development strategic issues which confront a Member of Parliament now and into the 21st century. I am not really going to address myself to national issues; I am going to talk about planning issues at the constituency level.

Strategic issues are issues which must be addressed if a person, a role or an organisation is to respond to a changed environment. If a strategic issue is not mediated, the person, role or organisation, does not survive in the new environment. In other words, strategic issues are so basic that if you have a role like a Member of Parliament and you do not address the changes which are changing the environment, then there is not very much probability that you would survive as a Member of Parliament or that, that role of a Member of Parliament will survive.

The way to try and put this into context, was to start at the earliest representation of applicants in the colonial legislature. Of course, all of us know, that the first legislator from the African community was Eliud Mathu. Eliud Mathu's world was very simple in the sense that all of us, Africans, wherever we were, we were sure he was representing us. He did not have to represent us in serious ways where he was doing specific things which would be of benefit to us individually; his world was then much simpler. It was much simpler than what confronts you and he was much simpler than the subsequent period.

Those of us who were there, supported Eliud Mathu fully. I was not one of them because I was born just about the years he was going to be around as a Member of Parliament. But those Africans who were around, supported Eliud Mathu fully; they did not question his role. They did not question his own role of representing them. However, when the Mau War started, Eliud Mathu's world fell apart because we Africans started having different ideas about who was representing us. Some of us thought that those who were in the forest were representing us much more efficiently than Eliud Mathu who was in a colonial

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legislature. It should be obvious why. Some of us thought that those who were fighting would deliver Independence to us faster than those who were in the talking shop.

Legislative leaders who followed Eliud Mathu like the Ohangas the Amalembas and others also---

An Hon. Member: And the Aworis !

Prof. Mutiso: It is true. I will acknowledge him later, but he did come in the same period. The Ohangas and the Amalembas and others also had problems because by that time, we, the Africans, were split in terms of what we wanted to get out of politics. By that time, the debate about who had what role; who was doing what; who was representing who, had changed. Therefore, we, the Africans, were split. Therefore, representation became problematic to that person who was supposed to represent us.

I do point out that we the Africans for this period - in terms of political outputs which we were interested in - were seen as a group. All of us were supposed to be in one basket. We were not indigenous, neither were we tribal or neither were we Kenyans. We were just Africans!

(Laughter)

The period 1955 to 1963 is, of course, most interesting in terms of our own ideas about a legislator. The role of a legislator in this period evolved to be not like the role under Eliud Mathu, but the person who was a Member of Parliament almost became a tribal representative. This is a tribal representative and a nationalist. He, therefore, had two hats. On one hand you can say he was a nationalist and on the other hand, he was really a tribal representative in the gathering of the tribes. Gathering of the tribes is the colonial legislature. We, the Africans, were now thinking in terms of what our immediate communities could get from our representatives. In other words, it is no longer all of us in one basket. You begin to talk about "What can I get for my people?" This is actually based on fact because most of you remember that. Look at the constituencies, they were essentially tribal. These are the areas those who were there were supposed to represent in this period of the colonial legislature.

Initially, many legislators created little political parties which only covered their tribes. It is true that pan-tribal organising was banned by the colonial government. I am not accusing some of these very important political leaders in our own history of being tribalistic. I am saying that the only organising level that they got to was that of the tribal because you were not allowed to create any organisation which went outside the boundaries of your particular tribe. It is not an accusation that these are tribalists.

Along the way, some adventurous legislators began to create organisations which were wider than the tribe. The momentum, of course, was in Nairobi. Our most cosmopolitan area of this Republic today and then. It is also in Nairobi that you could rent a crowd. All of you are politicians and you are skilled at the art of turning a mob into some political action. The Denis Akumus of this world were part of that organising. The crowd is not a name that I am calling the people who lived in Nairobi. It is a sociological category. If you asked the people who lived in Muthurwa and all the other African locations, they themselves were not essentially organised into what you would call a coherent political organisation. You had the cosmopolitanism in Nairobi and the crowd element and out of that, you were able to organise

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political action. This explains the rise of Tom Mboya as one of the major organisers in Nairobi. Indeed, some of you who are in this room participated in those kinds of activities. Some of us who were very young as high school students, were very much involved in organising the African locations. Some of you who are in this room remember that at that point, the feeling in Nairobi was that there was something which cut across wherever you came from.

However, the organising by Mboya in Nairobi did not mean that fundamentally we, the Africans, agreed that he was the leader we could all access to. He was a leader, but to get access to him was through the tribal legislator or the tribal legislator leader. If you look at the people who were around and you look at one of the outputs of that period towards the end of it, the most important patronage which was dispensed by Mzee Odinga and, indeed, Mboya, were the scholarships which were given to these other political leaders to dish out in their own tribal areas. Indeed, that is how a lot of people ended up going to the United States, Russia and other places because that was seen as the most important patronage output. Remember that up to Independence, there was the African Government which was to be the patronage; we did not have any other sources of patronage and, indeed, the only patronage which could be given to political followers was things like educational scholarships outside.

The legislator, for the period between 1955 and 1963, also suffered from our questions on the detained persons. Legislators had to declare their position on Kenyatta who was a triple proxy for the forest fighters, detainees and, indeed, nationalism. The strategic question by us, the Africans, was how we could be free while some of us were detained. In the future, Kenya historians and political scientists, will have to revisit the struggles for African leadership in the Legislative Council between 1958 and 1961, to give us much more light on the posturing on the detainees' issues. I call it posturing because most of the participants are around and, indeed, they become sensitive when you begin asking research questions from a political science point of view on these issues, you indeed land into some problems.

Therefore, it is one of these historic problems we can move only to the future and debate it a little bit better then. However, it is important, in terms of our understanding of the historical rules on the role of the legislator, to go behind the veneer of nationalism, the call for Independence, and to see the kind of development issues raised by legislators in that period. They concentrated on schools. You have two levels of political issues for the legislator. One, you were to maximise the people who were going outside and most of us who were in high schools and who were being sent outside, we were being told by our parents and our leaders that we were going to go and study so that we could come and build the Kenyan Republic which was yet to be.

Internally, political leaders concentrated heavily on the issue of building up schools in the local communities because putting up schools was development. Development was much simpler. Indeed, I did my Masters thesis on this very topic where I show clearly, through analyzing the texts of speeches in Parliament by all our Parliamentarians from 1955 up to 1963, that the central focus for all these legislators was the issue of education.

As regards our images on our leaders, we the Africans, were graphically portrayed by them. They wore the tribal regalia and, therefore, they enforced this other myth that they are also tribal legislators. The majority of the legislators of the period were ex-colonial teachers. This explains their concern with development as meaning only expansion of the educational facilities and their preachy style, derived from misguided colonial legacy in the name of

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pedagogy. Colonial teachers just shouted at you. In fact, to most of us these days who claim to be teachers, what I am doing is unacceptable; you do not lecture at people - you interact with them. Anyway, that is another matter.

We obeyed the teacher. We, the Africans, agreed. Since they were teachers mainly, most of them had earned community leadership roles for colonial teachers were special. They were likely to also have been church leaders, local business leaders, local leading farmers and the like. In other words, whoever ended up in the colonial legislature, chances were that he had multiple roles. He was successful as a teacher, that was the profession and then he went into other things. Therefore, you were legitimised in a much wider way that and, indeed, that is what a modern day legislature is all about.

Community leadership of this period - 1955 to 1963 - was not with the legislator. If you took his role, there were other more important community actors in his own constituency. Most of you do not like to think about it, but it is a fact. There were colonial chiefs, local preachers and other people like that. Indeed, after Independence, there was significant struggle between the legislators and other community leaders who were there.

The period between 1963 to 1969, gives you a different kind of role of a legislator. One of the ironies of the African independence was the belief that after independence, all things shall be added unto us according to Nkurumah who was the main thinker to almost any African who thought he was interested in politics either here or in Ghana or in Malawi or for that matter, any other African country. We were so busy believing that all things shall be added unto us that we, the Africans, did not take part in defining ourselves as Kenyans. Neither did we understand that the Kenya we want - I am para-phrasing that document which was produced just after the year of Independence - in development terms would only be possible if communities defined their own development needs and struggled for them.

In other words, we really believed that Independence would bring all things unto us. I can para-phrase one old man in Kenyan politics - with his own permission because I did not seek his authority to use him as an example in an earlier occasion, but I can repeat it - from Kitui who said that as far as he was concerned, between 1959 and 1963, he did the greatest damage to the people of Kitui by agitating for them to stop constructing terraces and improving their farms in Kitui because that was colonialist. He was working --- It is very funny in Kikamba to say you work like *ngilimiti*. In Kikamba, to work like *ngilimiti*, is to work by agreement. Some of you remember the practice during the time of the settler farms where you made an agreement and, therefore, you worked until your agreement was over.

The point about the period 1963 to 1969, is that we believed that politics was over after Independence and that it could save us. Reflect about it; think about it - most of you who come from that period. What we missed in own agreement that Independence would save us, was to pay attention to what was happening to the Civil Service. The Civil Service, which came from the colonial period, moved up the hierarchy and it, indeed, took the top positions in the Civil Service within short order. They believed that they are the ones who really created the Kenyan State. It is them who led us in accepting the colonial procedures and in accepting basically the colonial framework for the role of the Civil Service. Indeed, if you look at the writings of the Civil Service through the 60s, as quite a few researchers have done, they say in no uncertain terms that we created Kenya. They ultimately summed it up very well by the early 70s when they said "We created the State; we ran the Civil Service; the country is now running and it is time for us to go into business." It is time for

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us, the civil servants, to go into the private sector and shape it up for Kenya's end.

There was no politics in that process. Basically, it was an assumption that the Civil Service was so powerful and it knew where we were to go. They only need a Parliament in that sense to only create what they thought and, indeed, you can say that Parliament was seen as superfluous. Therefore, the role of a legislator was not seen as important.

In the merging of KANU, KADU and APP, the regionalization of KANU in Limuru in 1965, the founding and banning of KPU and the general de-politicisation of the first decade of Independence, we the Africans, were transformed into Kenyans essentially under the bureaucratic rule with the erstwhile tribal legislators marginalised as power brokers in the wider society. The point is simply this: We created an administrative system which became so powerful and, indeed, because it was not controlled by the legislator, even the political actors themselves became marginal.

On the role of the legislator in the 70s and 80s, beginning with the 70s, we, Kenyans, tribal and indigenous, became disillusioned with the bureaucratic and depoliticised state which planned development without involving us. We disengaged. The term "disengagement" is a very profound one in Kenya's political analysis. We were very slacken. During the colonial period, we talked about government belonging to them. We never really defined who "them" were. By the time we got into the 70s, we started talking about our own government as "that" government. You think about your own tribal language; that language exists in every Kenyan tribe and I have covered this Republic thoroughly and I can rattle the names off. We hear of such phrases "*ni mambo ya Serikali; siyo mambo yetu.*"

The conception by 70s of our "own" government, is perceived in the same way our fathers perceived the colonial government. If you are thinking about the history of this country, you have to be very humble about this process. It essentially took 13 years for us to be disillusioned about our own government. When we disengaged, a *Mheshimiwa* was just a mere mortal; he was just one of us; he was not every a tribal leader any more. He was just one of us. We could exist without him as long as we could corner the PC, DC and all other bureaucrats for our own development needs. After all, we had our eyes and ears in the Civil Service also. Each one of ours and the others that we could bribe, could deliver particular development service. After all, a *Mheshimiwa*, was just a youthwinger who had sought a licence.

The point I am making is simply this: Those who became *Waheshimiwa* in that period, economic circumstances suspect-- We all know about trading licenses. Let us not talk about things we all know.

(Laughter)

The second point I want to make about this period is that we, Kenyans, tribals and indigenous, depending on your choice, became *Harambee* fanatics in the 70s, for this was the way we could plan our own small development in our little corner of the Republic. In the process, our tribal legislators forgot about us other than just showing up to shout to us "me and my friends" during *Harambee!* Through the 70s, it was not too bad; we could organise our own *Harambees*. We even built colleges of technology. Remember all of them are tribal in that sense.

However, by the 80s, the state with a highly politicised and wealth bureaucracy, took

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over *Harambee*. Our little *Harambees* for each village or sub-location, were now centralised. The big national leaders wanted to compete nationally and *Harambees* had to be constituency or district-wide to show off who had more friends within the one party, one bureaucracy and one government. Our *Mheshimiwa* would not accept that we plan our little developments. Of course, money collected by all these big leaders was kept by them and we never even got it back.

(Laughter)

I am not suggesting that it disappeared and I am not calling for Mr. Njoroge, the Controller and Auditor-General, to come. The next point is that it was centrally planned and administered. In fact, in the Kenya Development Plan from the mid-70s, we began to impute *Harambee* contribution to development. Therefore, I am not rumour-mongering. Go and look at the Development Plans for the mid-70s and you will begin to see a component for *Harambee* on every project. So, it was centrally planned and administered by a wealthy bureaucracy which did not want us to do our little *Harambee* on the site.

Mr. Chairman, you see, we Kenyans, tribal and indigenous are not exactly stupid. We do not like being looted. We also made so much noise on the *Harambee* land buying companies that they had to be abolished and our plots given to us. We also forced politicians out of our co-operatives. This way, we deepened our local development planning so that much that national development plans began to assign us the role of *Harambee*.

Since the 70s, many of Kenyans, tribal and indigenous, did not really select their legislators until the multi-party era. They were vetoed by the one party and financed from outside our areas. Who became a *Mheshimiwa* was a function of a single party factionalism. This is why we concentrated on eating campaign money. It was not ours. It was one major service we got from our *Mheshimiwa*. We did not confuse this "eating" with development rather than when we forced those who wanted to get elected to contribute to our small projects. We chased them out of our co-operatives, school boards and local development activities. They did not like it. They fought us back. The more they fought us, the more we articulated, the need for change.

This is the basic point. Others picked our ideas and created other political parties. We rebelled and looked for other development leaders locally. So, basic hypothesis is that by the time this comes about local communities will not be really interested in legislators. It is that which explains the rise of multi-parties. There is no conspiracy theory about how they came. People who wanted to create alternative political parties just found those community grievances and organised them into political parties. The community had already led the way.

This brings us to the role of the legislators at the multi-party era. This is a completely new environment. Strategically speaking, the development role of a legislator is being redefined. First, Members of a Seventh Parliament have extremely diverse backgrounds. Some come from the leadership of the '50's, and we honour them because they have survived all those years. Others are former bureaucrats, and they are many. We do not have to pick on anyone. That is why the paper does not mention any names. Others are former bureaucrats who have been radicalised to question the "arcana imperii". In other words, the reasons of state. "Arcana imperii" is the basic concept in state studying. You ask why does

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a state exist? Now, if you have been a bureaucrat, do you want to tell us that you question the very rationale of the system? You have to understand what is going on since you yourself have gone through some changes.

Other legislators are "ideologues" who are uncomfortable in the "talking shop", to use their language. "Ideologues" are the ones who see Parliament as talking shops. Many are professionals. Others are self-made businessmen. Others are farmers. Some by measure or sociological terms are just ordinary people. Others are academicians. Some are just local leaders.

(Laughter)

The Chairman (Mr. ole Kaparo): Order! Maybe, you are identifying yourselves!

Prof. Mutiso: Mr. Chairman, I apologise for entertaining Members. That was not my intention. But, basically, the sociological point is that you, as a Parliament, come from extremely diverse backgrounds. I do not think we have had a Parliament like this one. Even projecting it to the future, I do not think it will be possible to have it.

This Parliament and the ones to come is confronted by different Kenyans from those of the past. In other words, the Kenyans who have produced you are quite different. We Kenyans are different and young. It is estimated that only 8 per cent of the national population is above 50 years. So, you are all mainly endangered species! This is to say that only a tiny minority of the nation has the other older experience of pre-independence, and only about 24 per cent of the national population is above 30 years. This is to say that more than three-quarters of the national population has been born since Independence. In most constituencies - I know most of you do not believe in hiring people like Mutiso to check these facts for you - more than 80 per cent of the registered voters in the last election were under 25 years. In fact, they were between 18 and 25 years old. By the next election, it is estimated that more than 90-95 per cent of the voters in these constituencies will be between 18 and 25 years. Put it bluntly: If you want to go to Parliament, you got to do a deal with the young people!

(Applause)

We Kenyans do not then, therefore, understand what the "political pipe" in the first 30 years has been all about. We Kenyans do not have development reference on tribes. We aspire to modalities. Our leaders are many. So development cannot be economic, neither can it be political. Some of our leaders are dancing stars. Others are athletes. Others are religious leaders. Some are bankers, teachers, pimps, farmers, rugby players, engineers and so on. So, we do not subscribe to the idea of having one leader. We are not used to seeing leaders only in Kenya.

For us, "a mwanasiasa" is a contradictory term for one has to have a profession. For us, "political leadership" is what one does to fulfil community obligation and not an occupation. For us, "a mwanasiasa" cannot be seen as an occupation. You got to be something else and then you are a politician, secondary. You can be a doctor, dancer, rugby player, pimp-- or whatever else you want to be. We look to solutions to specific personal and community development problems. Jobs and inflation are currently priorities. For us, as

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legislators, it is just one of the many in society who are in leadership position and not necessarily the supreme leader. We are aware that the old folk do not share our vision of poly leadership for development. We also do not understand how they are basically lobbed into thinking that legislators are primary to the development process.

To complicate matters, for us Kenyans, tribes and indigenous, legislators are now organising too many parties, each party seeks to direct its legislators to some policies. These have been codified into documents. There are obvious divergences from the statements of party policy and the behaviour of the party. More important though, it is the feeling we have that the parties are still locked up in some of the fights for the last 30 years for many of the national party officials are creatures of that period. All of them articulate past concerns primarily.

It can be stated that the parties still see the legislatures as the most important of their officials. Put it in another way: The validation of a successful party leader is to be elected into Parliament. Perhaps, this will change. Perhaps it needs to change quickly for local-level leadership in some development activities and this is what the young needs more than politics.

THE LEGISLATOR AS A LOCAL LEVEL ORGANISER

If we were to summarise the whole background - and that was only background to come to present - the development role of a legislator enjoys fairly low status now. Hon. Martin Shikuku caught part of the spirit in this when he said that they are "miserable" persons; or he was reported to have said that. I do not vouch for it since I was not in Parliament. He did not capture all of it for he should have added: "They are also ignored by the bulk of the population". Not many of the young voters know their MPs. Many do not go to MPs for any particular service. It seems to me then that the challenge of a legislator is to redefine the role of an MP to the local community to become development leaders. This assumes an organisational role. It also assumes a listening role for the silence of the community. A community does not have to talk to you. It can keep quiet from you and you should listen to that silence.

For me, this is the "strategic thinking" about the role of a legislator in the future. Historical roles are over and done with. What is called for is a development organiser. There are several reasons for this arguments, but the state is increasingly being marginalised especially in development and economic sectors. Somehow, this idea does not seem to have settled in the conscience of this country. Our thinking about the state has changed. The state is not the provider state that all of us globally and in this country thought it was. Some of the development activities will have to be done by these communities although in the past we assumed that they have to be done by the state.

The second reason has to do with the competing development leaders. As Kenyan local communities become more complex and need services which were increasingly bought outside the public sector, other individuals, professions and organisations, have become more important than the legislative leaders. They command more skills, more influence, more power, more wealth than most legislators can command even when cash flowed by political parties for electoral reasons.

The legislators are not going to be the only important development "power brokers" in the local communities. They can though become important development organisers of

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different local influence power and economic fractions. The strategic purpose of an MP, therefore, will be that of a local organiser. In this role, the legislator will be dealing increasingly with equals. In other words, there is nothing absolutely special about being an MP. You have to deal with your local influentials and other impending organising interests that are going on in your constituency.

One of the most creative actions by the state - the Kenya State - was the creation of the district focus strategy for rural development. This strategy anticipated that some of the planning and development problems now confronting the country at the local level, district focus was supposed to draw communities and development agencies, be they the state or donor, into a dialogue for local development priorities. Thus, at the local level, the institution has not yet been used to its fullest potential.

Basically, since MPs have not paid enough attention to the problem of organising at the local level, the sub-locational development committees and the divisional development committees, have never really been organised unless a politician went out of his way to make sure that those things were organised in their areas. People are trained in terms of what they had to do in their local areas.

Most of you attend district development committees (DDCs), and there you try to allocate resources between constituencies. What we are talking about here is not allocation of Central Government resources. We are talking about communities raising their own resources and deciding what activities they are going to undertake and how they are going to undertake them. That is the pattern of the future and it is not something that is imported from Nairobi by a Ministry. It has to be organised locally, and those communities that are going to do that are going to get ahead faster than all other communities for the two reasons I talked about before. The role of the state is going to be diminished. The power of the state to raise revenue is diminishing until these communities develop more so that the state can tax the communities more. Simple argument. No complicated economics.

STRATEGIC THINKING

There are several strategic issues which I think all local communities should address themselves to. We have finished with yours if we defined your role as an organiser; an organiser of "equals" is the best. There is nothing special from a community point of view about the role you play. We are talking "local" here; we are not talking about Parliament.

The strategic issues that I think we need to address ourselves to is agriculture, or sustainable agriculture. For most of us, we know in this country we have fed ourselves for the last 40 or so years, and we have done so with an agricultural system that was utilising modern inputs in a way we cannot sustain it now. We used fertilizers and we never adapted sustainable agriculture. "Sustainable agriculture" is defined as basically the protection of soil resource and improvement of that soil recourse by increasing the amount of natural hummus that goes into that soil to retain water in it, and the other things that most of us who are technical officers in agriculture would care to comment on.

The agricultural system that we have had in the past had to get rid of some cash crops because it is clear now that significant amount of our national land resources are tied up to some cash crops of dubious value in the international trade. If we cannot feed ourselves, then we have to depend on resources from outside. If the Kenyan agriculture does not become

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sustainable, then we will use massive national resources to buy food. We can also finance such imports. The external financiers will impose controls on our nation. We shall be involved in the "global politics of food" which have replaced the "politics of the cold war".

Central in sustainable agriculture are means to save our soils. One study of Athi Catchment estimated that 400 tons of soil per square kilometre is lost through erosion. Another study of the Tana Catchment estimated that 4,600 tons of soil is lost in the Tana catchment. The previous statistics refers to average. We have not collected a systematic data for the nation so that we can make a definitive study about the erosion rate in the whole country. However, it is estimated that they are in that kind of order.

The implication of those statistics is that in 100 years we shall be importing soil to Kenya. If you do not believe me just go to Ethiopia and check what is happening to some of the districts which were high potential areas like Zone 3 in this country. Zone 3 are places like Kiambu, Nandi Hills, upper Machakos, Kangundo, or the best agricultural lands. It should be clear to every legislator that a key development issue is to ensure that each local area saves its soil and produces the maximum amount of food possible to enable the nation to survive. This is not to deny the fact that there is something called "comparative advantage in cropping". It is an argument that Trans Nzoia can produce maize more efficiently than Makueni. It is not to deny that, but to say that Turkana ought to produce enough sorghum for consumption of some part of the year so that they are not dependent on maize from Trans Nzoia for the whole year. That is simple argument.

The second strategic issue is education. Traditionally, educational systems of all the Kenyan people ensured that the local communities trained their people for those tasks which those communities were confronted with. If you grew up next to a lake, you learned how to fish. Or if you grew up in an area where only camels could survive, like Mr. Deputy Speaker here, you had to learn how to manage camels. Somewhere along the way, we have forgotten that. I am not an advocate of local schools and I believe there should be some clear national educational policy and basic curriculum for every Kenyan. But there must be specific education for specific areas. There are areas with comparative advantages which others do not have. For instance, a tea zone is very different from a millet zone. So, those children who grow up and go to school in millet zone areas should indeed learn how to grow millet.

The basic policy of education for the educational system is to "retrieve" people from the cities. If you do not believe me, take a look at your grandchildren and your children, and ask them what skills they have for the rural areas other than the urban areas. In the urban regions, we must go technological and modern. We must have that right across the nation. But we have to get education to begin to relate to local ecology. That is a portion of the educational system.

Planning of education for specific communities presents an opportunity for leadership. If legislators do not incorporate that and get their role in definition, they will also become marginal. As you know, we Kenyans take the business of education fairly seriously. Local communities do spend a lot of money on shaping their own educational systems and, indeed, financing them. It is Government policy for cost-sharing in education and the local communities have serious problems in organising how they are going to raise some of these issues.

The next one I want to talk about is the strategic issue of technology. When you mention the word "technology" in most Kenyan audience, everybody will ask, "What are you

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talking about?" "Technology" is the way to go to the future for two reasons, as far as this country is concerned. Only 12 per cent of Kenya's land mass is arable under rain-fed agriculture. 82 per cent of this Republic is arid and semi-arid. If you are the semi-arid, you are talking about land resource which is only about 30 to 40 per cent of the total land mass of this Republic. If you are doing long-term strategic thinking, then given our population base of about 21 to 30 million, we have to find other ways of existing in economic terms.

We have not been very good in setting up technology policies at both the macro and micro-levels at local and national levels. We also have been rather slow in upgrading our skills of our workers in terms of modern technology for factory production and for using new synthetic materials. At the macro-level, we are what we call "marginalisation of technologies". This is where we find different technologies applying across different ecological areas. For example, when you settle people in Maai Mahiu from Limuru, they move with the technology of growing maize in Maai Mahiu whereas Maai Mahiu is not really suitable for growing maize. So, technologies are messed up that way.

In thinking about technologies, it should also be understood that one is not only talking about making better pangas, but also locally assembling tractors, computers software systems for peculiar Kenyan systems. So, we are not talking about the small stuff. We are saying, "we gonna go big". We have to design how we are going to train people how to go this big. How do we go about that? My own view is that you start organising that by saying local communities can absorb some specific technologies much faster, and all circumstances are suited to local communities than others.

Therefore, there is the need for you, legislators and leaders, to specify what it is that you need. Where are we going to irrigate land? Where are we going to get factories to make pipes for irrigation purposes?

Mr. Raila: On a point of order, Mr. Chairman. This is a Seminar, and I am enjoying what Prof. Mutiso is saying immensely, but we are running short of time to discuss those very important issues that he is raising.

The Chairman (Mr. ole Kaparo): Well, I think, the Hon. speaker is coming close to the end. Of course, we had agreed that panellists should also abridge their speeches so that Members can participate in asking questions. But he is also filling the space for Professor Mukras who is not here!

Prof. Mutiso: Today, the only technological educational institution started rather than the self-driven Jua Kali is essentially the system that started with the village polytechnics and later on colleges of technology. Now, we are trying to shift the nation to technical education and then universities. It is these issues that show action at the national level.

At the local level, each one is researching the issue of technology. A lot of our people have adapted a lot of vague modern techniques, including bio-technology, and yet these are not recognised at the policy or financing level. That is the point I wanted to make on technology. In the interest of the concern shown here, I will finish with the other strategic issues which I think all of us should concern ourselves with.

In 1987, a series of African academics met in Kericho and wrote a book in which they said that one of the major potential problems for this continent was the issue of AIDS. AIDS is something communities have not discussed and internalised. But if we, as leaders of all types, are going to be concerned about AIDS in this Republic of ours, I think, we have to discuss AIDS much more than we have done before. That is an issue of discussion so that

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we can find a solution to a problem that is new and harassing everybody internationally since there are no easy answers.

Finally, Mr. Chairman, the issue of community organising. When we talk about community organising, at least, among my people who study development, we refer to it as a process of creating organisations and processes in a community which reflect on the development problems and find solutions to them. So, you are not going to organise communities in the way the Ministry of Culture and Social Services talks about organising communities. We are talking about defining specific problems in a specific region and finding solutions within that particular area. We are talking about community organising as the role of the Member of Parliament in terms of the future, whereby the issues of *Mheshimiwa* and the divergence between the population and the leaders does not exist, where also the idea that government is going to be a residual category where you can go looking for help is no longer tenable. I think I argued about that earlier and the point is made that, that the state, as such, is not going to have the necessary resources and nor are the donors in case you think they will come from there, nor are we going to raise more taxes unless these local communities are organised to save resources so that they can produce at a much higher level.

The Chairman (Mr. ole Kaparo): Well, that was quite a speech, and I must thank Professor Mutiso for sparing nobody. I am anxious to know what is your reaction to being referred to as "ignored persons".

The Minister for Information and Broadcasting (Mr. Makau): Thank you very much, Mr. Chairman. Having listened to that stimulating lecture from Prof. Mutiso, where he referred to Kenyan Members of Parliament as an "endangered species", I would like to solicit reaction from the speakers from Barbados and Britain whether the same applies where they come from.

Mr. Brancker: Mr. Chairman, the "endangered species" has a very strong sense of survival.

The Chairman (Mr. ole Kaparo): Very well. I think it has been very well responded to.

Dr. Otieno-Kopiyo: Prof. Mutiso, I am intrigued in many respects, but we do not have time to go into the intrigues. You talked about the diversification of power, which is actually enshrined in the Constitution. In my view, the evolution, the nature, and the need for political control produce the one-eyed godhead who, in time, became in charge of everything. As it were, what you described as a pattern of the future was always the only way forward because the utopian model of a member of parliament, as a godhead or a chief provider - the god of rain and sunshine - was really not tenable and sustainable. I wonder whether you agree with me that it was really an evolution that took place to retain power, and in order to retain power the people who were in power needed to loot to provide because there was shortage of provisions. Do you subscribe to this?

Secondly, you have called upon us to organise our communities but, at the same time, you predict that our developmental leadership role is going to diminish because of the development of other cadre below us. Which one do you believe in? Should we continue to organise ourselves or to work at enhancing the development of leadership roles at a diversified level?

Prof. Mutiso: Mr. Chairman, I think we should continue to organise. What I am suggesting is that you will be essentially organising some who are more powerful than you, some who have more skills than you and some who are richer than you. But there is a role for that organising because it is out of that harmonising role that your role becomes tenable. In other words, there is always need for that organiser's role in political terms.

With regard to the other issue of the past, you can never divorce critical leadership from the people. The people get the leaders they deserve, and that is a basic truism. So, the Kenyan public also has responsibility for this kind of leadership you are trying to explain in terms of some individual needs. I would not go along with you on that one. I think what went wrong is what I tried to explain by making the transition from "We Africans" to "We Kenyans" to tribes. The idea is that we, Kenyans, are also party to the kind of leadership mess we are in. You cannot explain history in terms of just individuals; that is just a partial explanation.

Mr. Mak'Onyango: Prof. Mutiso, out of this disposition, you have made it very clear that very soon we, as members of parliament, will have to go local and become the organisers of the local people down there, and that when it comes to development we are going to spearhead everything. Now, you have not mentioned anything to do with things like taxation. Generally the people are paying taxes and, whatever happens, they do expect something from government at the end of the day. Could you expound a bit on this and say, whether or not, in your view, because of the changing circumstances in which things are going to be more local, there will be need for us to decentralise our administration system or retain the centralisation we have in place now?

Prof. Mutiso: There has been some controversy in Kenyan scholarship on how much taxation there should be. If you assume that *Harambee* fund-raising is also taxation, you will also realise that there has been a lot of controversy among economists about how much taxation was coming in through that *Harambee* scheme and how much was coming in through the normal taxation system as such. So, I think we still need to do a little bit more work that is there already because some of those studies were very local and very limited. But the impression which this study has shown is that local communities were actually generating many more resources than the government in terms of some activities.

Now, every corner of this Republic is entitled to get its fair share of taxation, and I think one of the ways of assuring that - and this is my personal preference - is first of all, by reducing the number of ministries. I think we should centralise a lot of ministerial functions. That is why, in my opinion, I still think that one of the major achievements of the Kenyan State was the creation of the District Focus for Rural Development Strategy. But, unfortunately, it has not been followed through. It was alluded there that you would decentralise revenue and that you would find a mechanism for spending and accounting responsibilities to the districts. This was raised in the previous session and it is still a problem; it has never become the main way of doing business in Kenya although it should be.

The Minister for Transport and Communications (Mr. Otieno): Thank you, Mr. Chairman. I would like to thank Prof. Mutiso first for telling us how others look at us, and there is quite a bit of truth in it. Honestly, the role of the Member of Parliament as a developer requires a totally separate seminar and I feel it is urgent that we hold it ourselves. At present we are a developing country without adequate development orientation at the grassroot level. I feel that as of now we do not have a person you would hold accountable

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for the development of a district. Is it the county council chairman, the ruling party chairman or is it the opposition party chairman? We are in an amorphous situation, and unless we find a way of establishing that grassroot organisation for development, it is a pity that after several years we shall find that we have not dealt with poverty, ignorance and disease.

Having said that, Prof. Mutiso, do you think it is time that there was legislation regarding *Harambee* fund-raising in the country?

Prof. Mutiso: Mr. Chairman, I do not think there should be legislation over *Harambee* fund-raising. I do not know what you have in mind, but what I have in mind is that they should allow *Harambee* to be conducted by the local actors. I think the problem with *Harambee* has been this problem I talked about earlier. Let me talk about the constituency in which I was born. There was a point in time in the 1970s when some of us felt that the local member of parliament would not allow anybody else to conduct *Harambee*. That continued and, in fact, it was the main reason why some of us organised ourselves against that member of parliament. This phenomenon is not just locked to my own constituency; there are a lot of constituencies where a lot of people have problems when they try to do a little *Harambee* work to help a church or for some other activity. My own feeling is that this thing should be open and it should be the practice that it is open that way.

The second side of *Harambee* is that where the provincial administration comes in as part of managing of this intra-party factionalism I talked about, you find that if you are not in the right KANU faction you do not get licensed. Or, to bring it up to date, where if you are not in the right party you are then not licensed to conduct *Harambee*. I think we should do away with those kinds of things. But I think if you legislate on *Harambee* and set protocols on how it should be done, you have a problem. Given the district accounting system which is fairly sophisticated, I think we should account for *Harambee* money. There are a whole lot of people who raise some money under the name of *Harambee* and then it shrinks. Personally, I am of the view that some of these things, particularly *Harambee*, are better non-legislated than legislated.

Mr. Maore: Thank you, Mr. Chairman. My question will build upon the era that we are in now as legislators, in that government is undergoing a transitional syndrome whereby the elected leaders are subservient to the provincial administration. It is on this point that I would like to ask the opinion of Prof. Mutiso, and even of our friends from Britain. What do you do when you have a system that is kind of attempting, with every effort, to diminish the role of an elected leader and replace it with a provincial administration that is not accountable to the people, but to the Executive branch of government?

Prof. Mutiso: As far as I am concerned, provincial administration is much weaker now than it was in the 1970s---

Hon. Members: No! No!

Prof. Mutiso: I am a political scientist and I---

Mr. Ogur: Intervention! In which area? That is nonsense! What are you talking about? From where do you come?

The Chairman (Mr. ole Kaparo): Order, Hon. Members! Order! I think you remember the kind of description Prof. Mutiso used to describe the kind of people we are. Do not just justify that. Can you answer, Prof. Mutiso?

Prof. Mutiso: Please, let me clarify myself. I think provincial administration as a system was much stronger in the 1970s than it is now.

Hon. Members: No! No!

Prof. Mutiso: I think, further than that, there is the detail that in some districts there are some district commissioners who are much stronger now than provincial administration was in the 1970s. This is an important qualification because provincial administration as a system was extremely powerful in the 1970s; it played all sorts of roles, some of which were not really in line with provincial administration.

Hon. Members: No! No!

The Chairman (Mr. ole Kaparo): Order, Hon. Members! It if appears that Hon. Members are not interested--

An Hon. Member: The man is just here!

(Hon. Members pointed at Mr. Mathenge)

The Chairman (Mr. ole Kaparo): Order, Hon. Members! What is happening now?

Hon. Members: Mathenge is here!

The Chairman (Mr. ole Kaparo): Can you give him a loud clap?

(Hon. Members clapped their hands)

Okay, then. Order, Hon. Members! It does appear to me that what is making all the waves is because the paper under discussion seems to be quite in variance with what we actually have down here, that is, *Representing Constituents and Supporting or Criticising Government Proposals*. I think what is generating some heat from Hon. Members is, maybe, what they would not otherwise want to hear, particularly when it is in reference to them. You called for it because you wanted the Seminar to hear from others what they think of you. We have always been seeing others and talking about and against them, and it is our turn now to be looked at, talked about, criticised and to be described in epithets that others think will stick to our. So, let us be a little patient.

Mr. Brancker: Mr. Chairman, I just want to say that the elected leader is struggling for survival throughout the world; it is not just here. What the professor has said is true in my estimation. In smaller countries, the tendency is for power to be concentrated at the centre. In larger countries, basic elements of a suggestion of power go to local areas; to provinces or, if you like, to states. But the ultimate strings are still at the centre.

The politician has continued to campaign and activate himself in a very similar pattern to what he used to do 30 years ago. But the world is a totally different place from what it was 30 years; everything about it is different. What you want to achieve in politics is not what you looked for 30 years ago. What trade unions wanted to do for their people 30 years ago is not what they want to do for them today. Those issues do not exist any longer. It seems to me now that the political leader has to look for a new myth for himself. The very representations we have here, as a matter of fact, is a manifestation of that. If you cast your mind back to the Kenya House of Parliament of 30 years ago, you will see the nature and general composition of that House was, in every sense, different. It was different sociologically, educationally, objectively and also in terms of the sense of awareness and momentum for the future. We really need to adjust our minds to that and see precisely how we are going to determine our future role as parliamentarians and as others' representatives. That is as I see it.

Hon. Members: Give us a chance, Mr. Chairman! Give us a chance!

The Chairman (Mr. ole Kaparo): Order, Hon. Members! Unfortunately, we just have to distribute the time we have to the very many Hon. Members we have, and that is what we have been endeavouring to do in the last two days.

The Vice-President and Minister for Planning and National Development (Prof. Saitoti): I am sure Hon. Members will find that my question concerns us. Prof. Mutiso, after analyzing the age composition of the Kenyan population, you did say that if Hon. Members really want to come back to parliament, they will have to make a deal with the youth. Can you elaborate on that?

Mr. Shikuku: But he has not fought an election!

Prof. Mutiso: Mr. Chairman, what I had in mind was that essentially the constituencies are changing, and so are the voters and the demography. What Hon. Shikuku is saying is true, that I have not fought an election, but I am saying that if you look at the results of the last elections, you will find that the people who were sensitive to that issue made it, but others who were not sensitive to it were surprised. This is even from politicians themselves, who talk about this as a new major problem that they had not anticipated. That is all.

Mr. Akumu: Thank you, Mr. Chairman. I just wanted to thank the Professor, but I would like to put a suggestion to you, that the organisation of this Seminar is going to be a great beginning. The Professor should have come earlier so that we should have discussed political issues. He has discussed economic and historic issues very well and I want to thank him.

But, Sir, I want to plead with you, because I know that tomorrow is the last day and I see we are going to end this Seminar without having evaluated the two days, to re-organise the work for tomorrow so that we can finish discussions within time and then take two hours to evaluate what brought us here. That way, at least, we can have some conclusion on what we have done and learned.

The Chairman (Mr. ole Kaparo): Well, it will be very difficult to get 200 Hon. Members to come to an agreement on what we have talked on for two days. It probably will require another one month to get to the conclusion. Anyway, we have noted that.

Hon. Members, before we close for today, I should like to thank Prof. Mutiso for sharing his thoughts with us. I think the greatest thing that ever happens when a congregation like this meets is that ideas are disseminated and that there is an exchange of ideas. We will not be able to exhaust every possible idea that has been floated on the Floor, but it is possible to continue to discuss and to analyze whatever has been floated.

We will meet tomorrow at 9.00 am and the procedure will be as set out on the programme. There will be a panel for the topic "*The Development of the Commonwealth and the History of the CPA*", and then after that we shall have a free-for-all question time without notice this time so that Hon. Members can ask questions---

An Hon. Member: Can we have Prof. Mutiso back tomorrow?

The Chairman (Mr. ole Kaparo): After the questions we will then have the official closing by the Leader of the Official Opposition. That is what it will be tomorrow. I think there were a few questions that were raised yesterday on the Constitution and we may have a little time to ventilate on. Thank you very much.

(The Seminar adjourned at 6.05 pm)

(The Seminar commenced at 9.20 am on Third and Final Day)

EVOLUTION OF PARLIAMENTARY DEMOCRACY IN THE COMMONWEALTH

- Evolution of Parliamentary Democracy.
- The development of the Commonwealth and the history of the CPA.

- Panel:
- (i) Mr. Arthur R. Donahoe, QC, CPA Secretary-General.
 - (ii) Hon. Clive Griffiths, MLC, President of the Legislative Council, Perth, and Chairman of the CPA Executive Council.
 - (iii) Mr. Japhet Masya, Clerk of the National Assembly, Kenya.

(The Session Chairman - Hon. F.K. ole Kaparo)

The Chairman (Mr. ole Kaparo): Hon. Members, can we now take our positions for today's discussions.

This morning we will have two issues on the main theme, and these are: "*The Evolution of Parliamentary Democracy*" and "*The Development of the Commonwealth and History of the CPA*", and the panellists are as listed. After that, maybe, if we finish early enough, we will have a tea break and then have an open forum where Hon. Members can make comments on any subject that has been discussed or not discussed. They may also ask questions to any of the panellists or to the panellists as a whole. After we have had that open forum, then we will have the closing by the Leader of the Official Opposition and then we shall all go and start other aspects of our various duties as Members of Parliament.

For this morning, to lead us in discussion will be the Secretary-General of the CPA, Mr. Arthur Donahoe. After Mr. Donahoe, we will have the Chairman, Mr. Griffiths. Welcome, Mr. Donahoe.

Mr. Donahoe: Thank you, Mr. Chairman, colleagues and Hon. Members of the Parliament of Kenya.

I am going to endeavour to deal with two things this morning and talk about two organisations. First of all, I am going to talk briefly about the Commonwealth of Nations and then about the organisation which, I believe, is an important partner in developing parliamentary democracy throughout the world, namely, the Commonwealth Parliamentary Association (CPA).

I think many, if not all of you, will be aware that the Commonwealth is a free association of sovereign independent nations whose people are united by common bonds of history, language, parliamentary democracy and a community of interest symbolised by their acceptance of the Queen as the Head of the Commonwealth. The Queen is not the head of state in a large number of Commonwealth countries, as she is not the head of state here in Kenya. But she is accepted by Commonwealth countries as the Head of the Commonwealth.

There is no charter or a formal set of laws governing the Commonwealth, the people of each country being responsible for their own affairs, but consulting and co-operating in the common interest and working to promote greater understanding and friendship among all

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peoples of the Commonwealth. Its origins go back to the turn of the century, when the countries of the British Empire began increasingly to seek self-rule and eventual independence. The recognition of Canada in 1867 and of Australia in 1901 as virtually autonomous dominions laid the foundation of the present Commonwealth, and the Statute of Westminster in 1931 formerly opened the way for the Commonwealth of Nations. As more and more countries became independent, they chose to remain within the Commonwealth family and adopted the Westminster form of parliamentary democracy as the basis for their own administrations.

The CPA began in 1911. It was then known as the Empire of Parliamentary Association. Through its members, who have included many prime ministers and speakers, the CPA has been directly involved in the development of the Commonwealth from its inception right up to the present time. It has been promoting parliamentary democracy, strengthening democratic institutions and encouraging understanding and friendship between the parliamentarians of the Commonwealth since it began. For many years it has provided the forum where the representatives of the people of the Commonwealth can meet to exchange concerns and experiences. In earlier years, it also provided the meeting place for heads of government, many of whom led their delegations to the Commonwealth Parliamentary Conference. In 1948, as the Commonwealth was formally recognised by name, the Empire of Parliamentary Association became the Commonwealth Parliamentary Association.

I mentioned a moment ago that member countries of the Commonwealth share ideals of co-operation and common principles of democracy and equality. These common principles have been reiterated in the post cold war period by the Commonwealth heads of government in what has become known as the Harare Commonwealth Declaration of October, 1991. Central among the re-defined Commonwealth priorities are the protection and promotion of the Commonwealth fundamental political values, namely, democracy, rule of law, just and honest government and human rights, including equality and equal rights for women.

Other areas for priority action set out in the Harare Declaration are the provision of universal access to education, continuing action to end apartheid and establish a non-racial democracy in South Africa, the promotion of sustainable development and the alleviation of poverty, extending the benefits of development within a framework of respect to human rights, protection of the environment through sustainable development, action to combat drug trafficking and abuse and communicable diseases, special help to small Commonwealth countries and support to the United Nations and the promotion of international consensus and global issues.

In recent years, the Commonwealth has been seeking to fulfil the promise of its commitment to democracy by placing new emphasis on the use of Commonwealth assets and experience in fostering democracy, good governance and human rights. It is in this context that the CPA, which is specifically referred to in the Harare Commonwealth Declaration, plays its role.

As I have mentioned, the CPA began in 1911 and grew out of the meeting of British political leaders to its dominion colleagues who had been invited to London to attend the coronation of King George V. At the meeting, the members in attendance quickly realised that in addition to the common bond of empire policies and the English language, they also shared the challenge of politics: representing their people, conducting business under

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basically common parliamentary procedures, fighting elections and making a wide range of decisions and public policy in spending. They quickly discovered that by exchanging ideas they were able to improve their own understanding of their system of government and the way the system actually operated.

From its modest beginning, the Association grew with representative government in Empire and later in the Commonwealth, so that today the annual plenary conferences bring together approximately 275 delegates who are speakers, ministers and members from 121 parliaments and legislatures. In addition to national parliamentarians, members of the legislatures in the states, provinces and territories of the federations and in the assemblies of independent territories are also involved in the CPA. Today about 10,500 Commonwealth Members of Parliament belong to the CPA, representing six continents and all the world's major religious and ethnic groups. They come from some of the largest parliaments in the world and from some of the very smallest; from some democratic traditions such as the Isle of Man, which dates back centuries, and others which count their political history in months; from highly industrialised developed nations and agriculturally based developing states; from tropical lands and from vast expanses of Northern Canada.

One of the major means through which the CPA promotes the advancement of parliamentary democracy is through the annual parliamentary conference. Held in a different Commonwealth country each year, these conferences enable representatives from each member assembly to exchange ideas and explain their own policies and major contemporary issues. These conferences provide the means for legislators to share experiences and exchange ideas and to learn from each other by talking shop. They can also help to create friendship among members, some of which can last a life-time.

The CPA Branch here in Kenya was host to the 29th Parliamentary Conference in 1983, and I have fond memories of my visit to your country at that time. This year, the 39th Parliamentary Conference will be held in Cyprus from September 3rd to 11th. The delegates will seek to resolve the competing demand for economic development and environmental protection. They will examine the need for world security with respect to human rights. They will discuss ways to further strengthen the parliamentary process so that the peoples of our countries continue to benefit from government-based and democratic consultation. They will also focus on issues such as reducing the economic gap between developed and developing countries, the constant threat to democracy posed by poverty, famine, illiteracy, population explosion and environmental degradation. They will talk about ways to bring the views of women into the mainstream of political debate and measures to strengthen the family. The role of the United Nations in solving international disputes will also be assessed. In addition to the annual parliamentary conference, we arrange national, regional and Commonwealth-wide parliamentary seminars where members provide guidelines to new and some not so new members on matters of practice and parliamentary practice and procedure. The Seminar we have held here in Kenya is a perfect example of the type of seminars about which I am speaking.

Most of you will also be aware that we publish a quarterly magazine, *The Parliamentarian*, and various newsletters and reports to keep our members in close touch with parliamentary developments throughout the Commonwealth. We also maintain in London a Parliamentary Information and Reference Centre which collects data on practices and procedures. Parliaments, governments and individual members consult the Centre for

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precedents from other Commonwealth jurisdiction when they face problems they have not previously come across, or which they have not been able to deal with in a satisfactory manner using their own resources and established practices.

We also hold an annual small countries' conference which brings together members from about 30 small Houses in jurisdictions with populations of under a quarter of a million people. In 1989, under our Parliamentary Conference in Barbados, a group of women who wanted to see a more effective response by the Commonwealth to women, assembled and established a women's caucus now known as the Commonwealth Women Parliamentarian Group. This organisation meets regularly at the time of the CPA annual conference and has become an active force within our organisation in bringing women's issues to the fore.

In short, we do all we can to promote parliamentary democracy and, of equal importance, to build up links between Commonwealth Parliamentarians based on better understanding, mutual respect and friendship. In this way, the CPA does a great deal to help keep the Commonwealth together. While I believe that there is a general agreement that the activities we engage in are carried out professionally and well, the fact that these activities only reach a small proportion of our membership and are often not well publicised, are matters about which I have become very much aware since taking over my new duties and about which I hope something will be done during my term of office.

The CPA maintains a secretariat of 12 people in London, and our mandate is to broaden the outreach of the CPA and establish it as a recognised authority on parliamentary democracy and democratic institutions. In this regard, we are well aware that while we often organise excellent discussions about the important problems, very often discussion is as far as things go. So, we are looking at ways of creating out-of-discussion projects which can be implemented in each country or by each branch. A natural consequence of this will be to endeavour to involve more other members in CPA activities. We will also be looking at ways of making younger people aware of the meaning and workings of the Commonwealth, seeking ways of improving the training of Commonwealth Parliamentary Officials and making students aware of the democratic process, elections, parliamentary procedures and similar matters.

We also plan to strengthen our publications, for example, by sponsoring an authoritative publication on elections and in monitoring, which we hope will come out of a seminar which will be held in the United Kingdom early in January, 1994.

I hardly need to kindly remind you here that there have been momentous changes in world politics in the last three years, and many new demands for democracy, and that there is more to democracy than just the name. People are becoming increasingly aware that if they are to create suitable democratic societies in which economic development can occur, they must also have democratic governments that are chosen by the people and answerable to them. Given the wide experience of its members, the CPA is extremely well qualified to advise on matters relating to constitutional change, electoral systems, parliamentary procedure, election monitoring and the transition to multi-party parliaments. Indeed, we are becoming recognised as a pre-eminent organisation in organising post-election parliamentary seminars.

The CPA governs itself through an executive committee of 24 members, three from each of the eight regions into which the CPA divides the Commonwealth. The branches in Africa form one of our regions, and this year it is Kenya's turn to nominate one of the members of the executive committee. I was pleased to learn recently that your nominee will

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be Mrs. Winfred Mwendwa. We look forward to her contribution to our organisation. Next year Kenya will host the CPA African Regional Meeting, bringing together delegates from all African branches to discuss matters of common interests and concern.

This year also marks the end of the Hon. Clive Griffiths' three-year term as Chairman of the Executive Committee. Mr. Griffiths has served the CPA diligently and well, and his successor will be chosen from among four candidates. Those candidates, for those of you who might be interested, are Senator E. Carter of Trinidad and Tobago; Hon. Mrs. Adams, MLC, of New South Wales, Australia; Hon. Robert Morris, MP, of Barbados, and Mr. Collins Shepherd, MP, of the United Kingdom. So, the election of chairman will add interest to this year's meeting.

In the years since the 10th Century when a high court of Tynwald was established in the Isle of Man, thereby creating the oldest continuous parliament in the world, parliaments in established democracies have had the primary responsibility for ensuring that governments adhere to the principles of democracy. Although governments may sometimes resent parliamentary scrutiny, it is significant that wherever there is a soundly based democratic government, there is also an act of legislature operating within the principles of parliamentary democracy. Since 1911, the CPA has played an important role in maintaining that parliamentary democracy.

The National Assembly of Kenya has been an active member branch for many years, and your continuing Commonwealth involvement in the years ahead with CPA will help maintain the valuable contribution we make to good governance throughout the Commonwealth of Nations and the larger world community.

Thank you very much.

Mr. Griffiths: Thank you very much, Mr. Chairman, Hon. Members and members of the panel. It is not my intention to endeavour to add anything to that very comprehensive explanation of the history of the Commonwealth Parliamentary Association, except to place a little more emphasis on one of the aspects of the work that the CPA has been very much involved in during the past four years, and that is the role of election monitoring.

As you people in Africa know, there have been many examples over the last half a dozen years of nations deciding to move from single party systems to multi-party systems. Most of them have sought to have their elections monitored by outside bodies. The CPA, together with Commonwealth Office in London, has played a very important part in providing some of its members with this very important monitoring service. For example, we provided monitoring services in Malaysia, Bangladesh, Ghana, Zambia, Namibia, Guyana, Kenya and Lesotho. I have been to Lesotho myself, monitoring another election. As Mr. Donahoe has said, subsequent to the holding of those elections, we have been in the fore in holding seminars for those newly established multi-party parliaments.

You will be interested, I am sure, to know that about one year ago, the CPA was invited by the United Nations to attend the conference held in Ottawa, Canada, in conjunction with the Canadian Government, to hold the convention on the subject matter of rationalising the resources applied to election monitoring. I was representing the CPA, and the title of the main theme of the paper which was given a very permanent place in that conference was the fact that just to hold an election and declare it free and fair is not sufficient; there has to be more than that. You cannot just walk away and say that you held a free and fair election and leave the people to flounder and find their own way. My presentation to the United Nations

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was that there is need to ensure that there is a beginning, a middle and an end, and the end is never ending. That is to say that election monitors should visit the countries before the elections to ensure that all is correctly in place with regard to electors' registers, that prior to the holding the election the process itself is monitored and that subsequent to the election you hold this type of seminar in a continuous way to ensure that there is an exchange of views and that people can learn from each other.

I said the other day when we opened this Seminar that even though I participate in the holding of these seminars, I do not ever profess to be the repository of full knowledge of parliamentary democracy. Indeed, for the last three days I have been in Kenya and in this particular Seminar, there are many things that I have learned as a result of the questions and discussions we have had. Democracy is an evolutionary process that continues, and I think the key to the success of the Westminster system is that it is not a static system, but a dynamic and evolving system that can be adapted to the local environment. It is a system that allows us all to progress at our own pace and in accordance with the desires of our own people.

Mr. Chairman, I do not propose to prolong this discussion because Mr. Donahoe has adequately covered it, but I just wanted to make those few points and quickly resume my seat so that we can get on to the general discussion in which you will be individually involved.

Thank you, Mr. Chairman.

The Chairman (Mr. ole Kaparo): Thank you, Mr. Griffiths. Just before we get into the general discussion on that topic, I will ask the Clerk of the Kenya National Assembly to say one word.

Mr. Masya: Mr. Chairman, Hon. Members, members of the panel, I can assure you that I am not going to talk. I was expected to speak on something, but in order to maximise our experience from the visiting guests, we have prepared a paper which we are going to distribute to all Hon. Members. I would appreciate it if Hon. Members could read the paper and raise the points they would like to discuss with us privately later. We are distributing the paper that we have prepared for that purpose, and I encourage Hon. Members to read it because, once they have gone through it, they will think we had a conference with visiting panellists. The points made in that paper are exactly what has been repeated very many times by the visitors about the practices and procedures of parliamentary systems within the Commonwealth.

Thank you, Mr. Chairman.

The Chairman (Mr. ole Kaparo): Thank you very much, Mr. Masya. Hon. Members, I do not think Mr. Masya has taken much of your time, and wisely so.

The discussion is now open to Hon. Members, and the first hand I saw raised was Mr. Sifuna's.

Mr. Sifuna: Thank you, Mr. Chairman---

The Chairman (Mr. ole Kaparo): Just a minute, Mr. Sifuna, please. I am sorry, Hon. Members, but I was just trying to get my house in order and it is now in order. Before I call Mr. Sifuna, I am told that all political questions will go to my left, and all procedural questions will go to my right. The reason for this is that on my right are Clerks-at-Table, and on my left are politicians who are better suited to respond to political questions than the Clerks-at-Table.

Mr. Sifuna: Mr. Chairman, I would like to ask one question relating to the speech by Mr. Arthur Donahoe. He mentioned that Kenya will be represented by Hon. Mrs. Winfred Nyiva Mwendwa at the CPA. I would like to know how she was nominated because we do not know how it happened. We have six ladies in the Kenya National Assembly and she is the only one representing the minority, KANU, while the other five ladies are in the Opposition. Can we know how she was nominated, who did so, when and why?

The Chairman (Mr. ole Kaparo): In all fairness, that question cannot go to Mr. Donahoe because he does not know the process. That question will go to Mr. Speaker, but that is not an issue for this Seminar.

Hon. Members: Why? No!

The Chairman (Mr. ole Kaparo): Indeed, those of you who are members of the CPA, Kenya Branch, will have the forum and the right to ask that question.

Mr. Sifuna: On a point of order, Mr. Chairman. Would I be in order to move that we revoke the nomination of Hon. Mrs. Winfred Mwendwa until we meet? We do not want to be marshalled around about Mrs. Nyiva Mwendwa when we do not know anything about her nomination.

The Chairman (Mr. ole Kaparo): I really think that, that is not a matter for this Seminar.

Hon. Members: It is! It is!

Mr. Shikuku: It was corruption!

An Hon. Member: Mr. Chairman, that issue was brought to the Seminar, and that is why it is raising eyebrows.

Dr. Lwali-Oyondi: You can see it is a clear case of rigging.

Mr. Donahoe: Mr. Chairman, Sir, I want to make a comment on that. The branches in the Africa region have a rotation, and the opportunity to nominate Members to the Executive Committee of the CPA moves around the region. Mr. Martin Shikuku knows about this very well because him and I served together in the Executive Committee from 1983 to 1986. At that time it was Kenya's turn to nominate a Member, and Mr. Shikuku was the nominee of his branch. Rotation will come round again, and it will be Kenya's turn. But it is for the branch to decide who its nominee will be.

Now, having said that, there are different procedures followed in different branches. We, at the Secretariat, do not question the internal operations, or the methods used by the branch to choose its nominee.

Now, having said that, this Seminar is something totally different from a meeting of the CPA Branch of the Kenya National Assembly. I want to suggest to you that if there is some unhappiness with the manner in which the "samaki" was made, it should be taken up with Mr. Speaker who is the President of the Kenyan Branch. But I am also suggesting that this Seminar is not the appropriate time to do that. The nominee will have to be put forward after the meeting in Cyprus to which I referred to. So, there is time between now and then to work out the mechanisms.

Now, Mr. Chairman, I do not intend to get involved in the internal workings of the Kenyan Branch, because that is not my proper function. But I will suggest to you with respect to this Seminar this morning, it is not here to try and work out the situation.

Mr. Shikuku: Mr. Chairman, I must thank my friend, Mr. Donahoe. As far as procedures as to how one gets nominated are concerned, it is normally done by the branches. In my case, the Kenya Branch sat and forwarded by name. I am also a Member of that

[Mr. Shikuku]

Executive Committee, but I do not recall any time we ever sat and proposed any name. So, we would like transparency here. If we can get corruption in Parliament, then God help us!

The Chairman (Mr. ole Kaparo): Well, Mr. Shikuku has made his views known. Can we then go back to the Seminar?

Mr. Michuki: In the address we had this morning on the role of the Commonwealth or the position of the Commonwealth, and the development of the CPA, and what are likely to be its pursuits in future, particularly in relation to this meeting in Cyprus on development and environment, the past pre-occupation of the Commonwealth, the CPA and so on, has been the building up of the institution itself, an institution that actually consists of the members of the Commonwealth, and if we are now going to discuss about the development and environment, Membership of the CPA is more of Members of Parliament, perhaps a step or two away from the policy-makers in the north or even in the south, given that in certain countries, such as the Secretary-General of Australia, New Zealand and so on, Commonwealth is becoming irrelevant, and there has been constant challenges, including Canada in Quebec and so on, the challenges of the Commonwealth, particularly the Queen as the Head of the Commonwealth, which means that the Commonwealth has to assume a different role, and I see the agenda in Cyprus is in the right direction--- My question is this: How is that direction in the future on development and environment going to be funded? Most of it will depend on funds, not just discussions. This must come into fruition in terms of funding development and issues that relate to environment in terms of corrective measure? Thank you.

Mr. Donahoe: Mr. Chairman, Sir, I will just comment very briefly. I think, development in world politics in recent years, as I referred to them in my remarks earlier, have changed the situation globally so that while it may have been fair to argue, even as recent as five years ago, that Commonwealth was in danger of becoming irrelevant, that argument is not sustainable now. The Commonwealth involvement, particularly since the adoption of Harare Declaration in 1991, is becoming more and more relevant to what is going on in the world. We in the CPA, as the Commonwealth Organisation, but only one organisation, and a very specialised organisation at that, because of the nature of our membership, we are striving to play our part in furthering one of the main objectives identified in that Harare Declaration.

Now, you have talked about development and the environment. Those topics were deliberately chosen by our Executive Committee that sets up agenda for our conference each year as being extremely important topics of common interest in many countries throughout the world. At the conference in Cyprus, our delegates will come and there will be three delegates from our Branch here in Kenya, and delegates from all over the Commonwealth - a total of about 275 delegates - will all come. Some of them or many of them will be prepared to make contributions to the discussions on development and environmental topics, as well as the other topics on the agenda. I cannot tell you what will come out of those contributions since every Member who speaks will have a different input into the process. What we hope is that from the discussions, and again, CPA, in many ways like Parliament, can also be called a "talking shop". But I think it is an important "talking shop" where Members who go and are interested can learn from what they hear from other Members, and then go back to their own jurisdictions and try to apply what they learned to the circumstances in their own country. That is what we do and that is the objective that we engage in.

[Mr. Donahoe]

We are small organisations with small limited budgets. We do not have the resources to put on finance programmes ourselves. But we can make our Members aware of the fact that there are funding agencies available, if they wanted to go to them. There are programmes that have been put in place in other countries and they might work in their countries. So, we endeavour to disseminate information and it is up to our Members to decide what to do with that information when they get back home. We hope that they will apply some of the lessons that they will have learned at that conference.

Mr. Akumu: Mr. Chairman, I have three short questions; two are political and the other one is on development. I look at the Secretary-General of the CPA as a possible leader of the solidarity or trade unions within the Commonwealth. If that is true, have they established with the Commonwealth Secretariat a norm so that if a government is anti-Parliament since many of them are - they do not like or use Parliament, but operate outside it - ensuring that governments use Parliaments, they do not just give lip service or allowing Parliaments to operate? Do you have a norm that you have established? If you have, then what do you do, if you wake up in the morning and find that Parliament has been dissolved and somebody with a gun has taken over? Will you allow him to remain a member of the Commonwealth and enjoy certain facilities? Do you have a mechanism that forces him to go back to Parliamentary democracy? If you do, what about places like Nigeria where the leader refuses to go back to Parliamentary democracy? Do you expel them? Do you deny them the seat? Do you come out openly - the world is becoming transparent - and condemn that? People would like to know what action you are taking to ensure that Parliamentary democracy is getting root and assistance from the CPA. Those are my first two questions. What do you do? What are the functions of the CPA? If you do monitor elections, and if it is good, fine. But if it is bad, you should come out openly and say, "No". So, we reject it.

I followed very closely elections in British Guyana. They were delayed twice since CPA was not satisfied with the preparations and so on. What do you have to say about that? Do you come out openly and let the world know that you are not happy about that, or do you just handle things with soft gloves, and things end up there? What about a situation where Parliamentary immunity is also being violated? Mr. Shikuku who is a leading Parliamentarian in this country was once picked up within the precincts of Parliament, but we did not hear CPA protesting. In fact, the other day there was a very brutal attempt to pick up a Member of Parliament within Parliament, but we strongly protested against it. Thanks God, Mr. Speaker made a good statement about it! But we did not hear a solidarity statement from our trade unions of CPA protesting about that. Those are my political questions.

Mr. Chairman, Sir, finally, as an African, I seem to think that we have to work very hard. My feeling is that Canada, Britain, Australia, and New Zealand, although they are members of the Commonwealth, they are gradually moving more and more to the "other camps". I do not know whether to call them "enemy camps" or the "less solidarity camp". When it comes to structural adjustments, some countries strangle us. So, sometimes I wonder what this solidarity of the Commonwealth is all about, if our friends cannot see our needs. They understand us better. In fact, some of them have been our former colonial masters and know our problems. They were even part of our problems! But they still put us under very difficult conditions when it comes to aid, structural adjustments and so on. So, we begin to think that they are gradually joining the other people in the north who think that we are

[Mr. Akumu]

irrelevant. Their solidarity is not like the "old" we had in the Commonwealth. When it comes to development or putting money to development, I see that you prefer elsewhere. I say this because I see the pledges you have made to the former Soviet Union States and so on, and the little aid that is trickling down to Africa and so on. Taking the dollar for dollar, it seems that your interests are elsewhere, and not in Africa. What are you going to do to bring back the "old solidarity" so that we feel we have something in common in the Commonwealth and we are happy to belong there? Thank you.

Mr. Donahoe: Mr. Chairman, Sir, I will endeavour to refer to the Hon. Member's comments. Comparing CPA to a trade union of Commonwealth Parliamentarians is, perhaps, a good analogy. I do not know why we do not collect dues from individual members and yet we do collect fees from our branches for membership.

Now, the first question dealt with those branches or countries rather where parliamentary democracy has been suspended for one reason or another. In the CPA we have a mechanism not to sanction a country, but to decline to allow it to continue to be a member of the CPA. The most recent example is Sierra Leone which was a member of the CPA and then there was a military coup. So, Sierra Leone is now in what we call "a state of abeyance". Under the CPA constitution, if there is no Parliamentary government in place, then the branch ceases to have the right to be an active participant in our organisation.

Now, we cannot, of course, intervene in internal politics of any country. But all we can say is that if a country does not have a functioning and a popularly elected parliament, then I am sorry, you cannot belong to our organisation. For instance, a country like Uganda. It has a form of a democratic government, but it is not directly elected by the people. Therefore, as far as the CPA is concerned, Uganda at the moment is not qualified for membership. We also had a similar situation in Pakistan where there is a democratically elected government consisting of two Houses, the Lower and the Senate. Unfortunately, there is an argument between the two Houses, and our constitution or by-laws require that when it is a bi-cameral parliament, both houses pass a resolution requesting for membership in the CPA. In Pakistan, the Lower House has passed a resolution requesting for membership in the CPA, but the Upper House refused to do that. So, the national Parliament of Pakistan, unfortunately is not at the moment a member of the CPA. We would like to have Pakistan as a member of the CPA, but we have no mechanism to force them to pass that resolution. It is very much a matter for them to work it out between the two Houses. So, we have no mechanisms to force countries to agree to have a democratic government. All that we can say is that unless you have that form of parliament, you cannot belong to our organization.

Now, the Hon. Member also mentioned about election monitoring. As, Mr. Griffiths explained, this is a very important function that the Commonwealth has engaged itself in recent years. I think it is fair to say that the Commonwealth has developed more expertise in election monitoring than any other organisation and knows how to do it better than any other organisation. This is one of the areas where I think the argument that the Commonwealth is becoming irrelevant is no longer valid. It is no longer valid because of the Commonwealth involvement in election monitoring.

However, election monitoring is not solely done by the CPA. As Mr. Griffiths said, we co-operate with the Commonwealth Secretariat, and Chief Anyaoku the Commonwealth Secretary-General. We suggest to him the needs of people of our organisation whom we believe are well qualified to act as election monitors. We are of the view that nobody is

[Mr. Donahoe]

better to monitor elections if he/she is running a number of them. So, we co-operate with the Commonwealth Secretariat, but it is for them to actually choose the team to go to a particular country to monitor those elections.

The Commonwealth does not send its representatives the night before elections and have them back the day after the elections. It does not operate that way. Mr. Griffiths can tell you that in Lesotho, and Guyana, the Commonwealth team or top election officials went there well ahead of the elections. On election day, polling took place in a number of areas in the country, but the team cannot be large enough to have a representative in every polling station. However, it must be large enough so that it can cover a representative sample, and at the end of the day come to conclusion as to whether the elections have been freely and fairly conducted or not, and then make its report promptly after the elections. It does not sit back, wait and cause a delay. The Commonwealth team, unlike some of the others, makes its report very promptly and comes to conclusion very quickly.

The Hon. Member also talked about the human rights of Parliamentarians. This is an area that I think up until now perhaps the CPA is somehow deficient. But we have recently changed the structure of our Executive Committee and set up a new sub-committee called "Commonwealth Affairs Sub-Committee". One of the functions of that sub-committee is to deal with cases involving human rights of Parliamentarians, with particular reference to those Parliamentarians who may be persecuted for their political expressions. We hope to become more active and outspoken in those situations than we had in the past.

Finally, Mr. Chairman, Sir, the Hon. Member talked about the trend to "Republicanism". He mentioned specifically Canada, New Zealand and Australia. Actually, I do not think that the danger to the Commonwealth organisation is caused by that.

Mr. Mwiraria: Thank you, Mr. Chairman, Sir. My question is to the Secretary-General of the Commonwealth Parliamentary Association. I was glad to learn that the C.P.A. has assisted in the organization of this Seminar and that they organize seminars around the Commonwealth. My question is: To what extent does the C.P.A. Secretariat participate in the actual drawing up of the programme? In our present case, do you really genuinely consider the kind of Seminar we are in now, where you have had questions from Members of Parliament to panellists, to be the ideal kind of Seminar for people who belong to what you have referred to as "Talk Shop?"

Mr. Donahoe: Mr. Chairman, Sir, sometime ago I met with Mr. Speaker, Sir, and the Clerk of the National Assembly to indicate to them that the C.P.A. was willing to participate with the Parliament of Kenya in organising a seminar for the Members. Both the Speaker and the Clerk indicated their desire to have such a seminar. They indicated to me that they felt that in course, when the time is ripe, the seminar would be held. Some time after that, Mr. Masya, contacted me and sent along to me a suggested programme for the Seminar. That programme was reviewed by me and it compared favourably to programmes that we have put in place in other seminars in other countries in the last several years. I went over the programme and I made some suggestions for change. I indicated to Mr. Masya that I would be willing to endeavour to put together a team of people whom I felt would be able to make a contribution and that if he was agreeable that is the way we would proceed. He got back to me and said that he was agreeable to the suggestions that I had made for change in the programme and suggested the dates - these past three days - for the Seminar. So, essentially it has been a co-operative effort between me and the Kenyan branch of the C.P.A.

[Mr. Donahoe]

The Kenya branch of the C.P.A. is represented by the Secretary who is also the Clerk of the House, and I am representing the Headquarters Secretariat in London. I can tell you that the format that has been followed here is virtually identical to that which has been followed in all our other seminars in other countries. Now, there may be some criticism of the format but we feel is that we tried to give as much opportunity as possible for exchange but unfortunately, until we get to the next session, because of the fact that it has been compressed into two and half or three days there is no opportunity for every Member to speak at length on every subject and I know Members like to do that but time limitations prevents that. The Chairman, who is also your Speaker, has had to try to balance that and allow as much opportunity for questioning as possible. But a seminar is not a forum, it is not Parliament, where everybody can stand up and speak at length. In a seminar Members should endeavour to make their points as concisely as possible bearing in mind that there are others who want to get in and have their questions answered. There will be an opportunity for more open discussion by everybody, but that will only be for a couple of hours later this morning.

So, all I am saying is that my experience is that this Seminar compares favourably with others that the C.P.A. has conducted in recent years. Mr. Griffiths may want to add something to that.

Mr. Griffiths: Just briefly, Mr. Chairman, Sir, one thing about this particular Seminar that is slightly different from other seminars is that this one has far more subject matters on the agenda than some of the others. In other words, we have got the most comprehensive listing of subjects on the agenda. Therefore, that necessarily brings with it less time for discussing each individual subject.

You see, one of the other things that I said very early in the opening of this Seminar, and I repeated it again this morning, is that we are an evolving and an evolutionary sort of organization and we are trying to learn from each experience. I emphasised that we do not suggest that we are the repositories of all knowledge because we are not. We are learning many things from the conduct of this Seminar and the enthusiasm which you Members show in your attendance. Indeed the enthusiasm and the attendance at this particular Seminar is probably better than in any of the other seminars. Certainly this Seminar is as good as any other; everybody wants to participate. Just because you have one Seminar does not mean you cannot have two, three or more seminars. We can do it again and again. But I would remind the Members here that the words that each of us have uttered have not just flown out of the windows; they are all on the record and I would expect Hon. Members, and indeed I would be expecting for myself, a copy of that record so that I can refer to it in my Parliament in my country, to assist me in the future. You will be able to do the same thing; comments made by Hon. Members two or three days ago will be on the record and that record will be available to all of you and so, that information remains forever amongst us.

Certainly during the course of the rest of this morning, if you got some suggestions as to how differently from your point of view the Seminar ought to have been run we are delighted to hear them because we need to know. If you do not tell us we can keep on doing the same thing over again making the same mistake, if we have been making mistakes.

Thank you.

Mr. Mwaaura: Thank you, Mr. Chairman, Sir. I have two questions to the panellists. The first one relates to the fact that as far as we know, the Commonwealth has made some attempt in the area of development. I am wondering whether there is any link that the C.P.A.

[Mr. Mwaura]

can bring into the Commonwealth in order to create a Commonwealth university. This is because as we know the United Nations have their own university and the Commonwealth being an old institution, I think a university supported by the Commonwealth would help very greatly to enhance the Commonwealth link. I think this is one area which has been neglected. This is because I think if there was a university in Asia to cater for that region, including Australia and New Zealand, another one in Africa and another one in Canada, I think this would be very useful because education, particularly from a developing country's point of view, is an area which needs the support of the Commonwealth.

The final question is what we think about the way this Seminar has been organized. In my opinion, I think the Seminar could have been more successful. I do not blame the C.P.A. Secretariat, but I am just saying that in future it is necessary to involve the Opposition in consultation as to what type of speakers we need to bring to address us here. I think that is very important because if we had some retired Heads of State like Nyerere or some retired Prime Ministers from the United Kingdom or Canada, this would have made the Seminar a more credible thing. I am just saying that it is necessary in future for the Chairman to involve the Opposition.

Thank you very much.

Mr. Griffiths: That is a very good suggestion. I will respond only to your final question about the status and standing of those people on the panel. Perhaps some of those retired people may well be used in the future. But this is only a suggestion and I say we have no objection to following that point of view. I want to incidentally, very quickly, respond to something that the Secretary-General of the C.P.A. mentioned when he said that Australia was one of those countries that was discussing the replacing of Her Majesty as Head of State. That is a fact; the Australian people are discussing it. I want to quickly tell you that I am not one of the people who are doing it.

Mr. Donahoe: Just briefly, Mr. Chairman, Sir, the Hon. Member has made a valid suggestion but I would suggest, with respect, that what we were trying to set up is a Seminar on Parliamentary Practices and Procedures. There are many retired Heads of State and I served in Parliament for many years where the Premier of the province was an excellent politician, a very fine man who was able to work the crowd. He was an extremely popular politician but as a parliamentarian and as a man who knew parliamentary practice and procedures he would be the first to say that he himself was a bit lost. So, there are many people who have been extremely successful in politics, but who would not be appropriate for a Seminar of this type. If you wanted a different kind of seminar then that is the kind of person to invite. But what we were asked to do was to organize a Seminar on Parliamentary Practices and Procedures. What I endeavoured to do was to get a mix of people who have practical experience in Parliament either as a Member of Parliament or a Presiding Officer or on the Clerks' side. So, this panel is an effort to amalgamate people knowledgeable about Parliamentary Practices and Procedures. I think the way things have gone here the mix has worked reasonably well.

Mr. Mwaura: What about the question regarding the university point?

Mr. Donahoe: I am sorry, I did not mean to ignore that. I mentioned the topics that are going to be discussed in that meeting in Cyprus; talking about reducing the gap between developed and developing countries, and also the threat to democracy posed by poverty famine and illiteracy and so on. These are areas where that suggestion could well be made.

[Mr. Donahoe]

What I am going to suggest to you is that you contact one or all the delegates from Kenya who will be going to that meeting in Cyprus and have a discussion about that suggestion and one or all of them to make that suggestion at our meeting in Cyprus. I do not know where it might go from there, but it is an idea that I think merits a lot of consideration. The way to do it is to have your delegates talk about it in a larger forum so that others from other Commonwealth countries will have an opportunity to react to it. It needs some time to become reality, but that is what I would suggest as a way of furthering the idea and putting in a forum where others will have an opportunity to assess it.

Mrs. Ndetei: Thank you, Mr. Chairman, Sir. Mine is more or less a comment, but it may require reaction from the Secretary-General of the C.P.A. When you were delivering your speech you said that one of the roles of the C.P.A. is to see to it that the Members of C.P.A. are keeping a system of government which is elected by the people and is answerable to the people. But I feel, at the same time, that some of the Members of the C.P.A. have been living with a contradiction within their governments; like having an executive arm of the government which is not necessarily answerable to the people, when the politician might be answerable to the people. I do not know what comments you have to make about that because I do not know whether the C.P.A. has addressed itself to that.

Secondly, some of the Members of C.P.A. have been disappointed with the role played by the C.P.A. if some of the objectives of the existence of the C.P.A. is to ensure that there is adequate democracy within member States, when since independence some countries have lived to witness erosion of democracy while at the same time they are still members of the C.P.A. There has not been conspicuous efforts by the C.P.A. to ensure that these countries revert back to democratisation.

Mr. Donahoe: Mr. Chairman, Sir, I do not want to interrupt, but I would ask the Hon. Member if she would give me examples of what she is talking about so that I can have something concrete to respond to, please.

Mrs. Ndetei: Mr. Secretary-General, one of the countries is Kenya. Since the abolition of Section 2(A) of the Constitution we went into a system--- This is why Section 2(A) had to be re-introduced into our Constitution, otherwise if there was no need to introduce it to bring back into the Constitution, then we should be still living without it. So, I would like you to comment on that. Britain is known for its traditionalism and I am just wondering in the new world order where democracy is the key issue and where management in diversity is also a key issue and where the principle of subsidiarity is an issue--- I am just wondering whether the C.P.A., through its association with the old boys, the former colonies is not going to drag those countries back and not speed up their pace of technological advancement. Thank you.

Mr. Donahoe: Mr. Chairman, Sir, the Hon. Member has made a number of good points and I mentioned earlier in response to a question from an Hon. Member on this side that the C.P.A. does not have the ability or indeed the desire, to interfere in the internal politics of its member countries. What we do is ensure that there is a Parliament which has authority to pass laws and that the Members of that Parliament have been elected by the people in an election that is perceived to be free and fair. Once that requirement is satisfied, it is not for us to say whether one political party or another political party in that country would do the job of governing better than the one that is in power at the present time. That is not the role or the function of the C.P.A. Indeed, once we got into that situation I think

[Mr. Donahoe]

it is certainly obvious that, that would be the death knell of the C.P.A. So, I am not going to get dragged into a discussion about the political situation here in Kenya. That is why you are here; you have been elected by the people and you should work it out. As long as you are here, as Members elected by your constituents, then Kenya will continue to be an active member of our organization.

The Hon. Member also mentioned the fact that--- I think she said the "old boys" are holding back progress. In the C.P.A. the "old boys" are only part of our organization. Our organization is not run by the United Kingdom branch. Any of you who have been to any of our international meetings know that our organization is very much an internationalised based organization. The U.K. Branch is an important branch and so is the Kenya Branch of the C.P.A. and so are the other branches in other African countries that are members; so is the Branch in Barbados and so are the branches in other small Caribbean countries. We are very much an organization that responds to the needs and desires of our members in terms of our involvement with their governmental processes and parliamentary processes. That is the way we function. We are not a lobby group. We do not promote one particular policy at the expense of others, but we try to allow as broader scope as possible for the interests of all our members to be discussed and brought to the fore and for ideas to be exchanged. That is the way we have continued since 1911, and so long as I am in charge of the Secretariat, I hope it is the way we will continue into the future.

The Chairman (Mr. ole Kaparo): I will allow one last question because we are coming back for an open forum with all the panellists here. We will continue after tea. We will call in all the panellists and Members will be at liberty to question the suitability of any panellist who has been called here. In fact, today I want to get the feelings of the Members. You will all agree that I do not have any experience for organising seminars for Members of Parliament. I do not know whether any one of us has any such experience. So, I would like to get it out from you so that it does help me and the panellists here and, particularly, the C.P.A. Secretariat, with regard to future-actions and seminars. I will invite the last question from Mr. Shikuku, and then we will break for tea.

Mr. Shikuku: Thank you very much, Mr. Chairman, Sir. Having been a Member of the Commonwealth and having served on the Executive Committee for the C.P.A. would my friend, the C.P.A. Secretary-General, not be honest with my brothers here and tell them that the Commonwealth is a club where people meet and say "Hello", exchange views and that nothing serious really can take place? When it is convenient they can close their eyes to what they do not like.

Secondly, I thought it is time the Commonwealth changed its attitude because in the past it was a question of non-interference in the affairs of member countries. But given the fact that we no longer have the Cold War--- You will find that the United Nations peace keeping forces can come to Somalia or go to any other country and try to bring some sense to those who are oppressing or suppressing the citizens of those given countries. Is it not time that we also moved away from that idea so that we go and say what we feel should be done and what we think is being badly done in that given country and at least make our views known? For instance, now we have a situation where some Members are moving from the Opposition into the Government through financial influence, or whatever it is--- Surely this is not enhancing democracy, but rather trying to kill that democracy.

An Hon. Member: Why are you jittery?

Mr. Shikuku: You can see that it is hurting those that are involved! But the point is that if you find that, for example, Members of Parliament are constantly harassed and incarcerated for no apparent reason, surely--- I do not think the Secretary-General reacted to this. There was one attempt recently of grabbing a Member of Parliament from the precincts of Parliament. That was not something for fun. I thought the Secretary-General of C.P.A. could have probably expressed their dislike for that type of harassment. Hon. Icharia, who is seated on my right, was arrested and when I went to find out what had happened to him, I was also arrested and thrown into police cells and we have not been charged up to this moment. I think we should start behaving like the United Nations, whereby when we find something is wrong and goes against the very principles of democracy we should be open to tell our brothers we are not amused. You do not tell them that they must do what you want but you tell them "We are not amused." If you do not say that and keep patting them on their backs and telling them "Brother, you are doing well" I think that is not being honest with ourselves.

Thank you, Mr. Chairman.

Mr. Donahoe: Mr. Chairman, Sir, I mentioned earlier that in my view the C.P.A., up to the present time, has not perhaps been as active as it should be in dealing with cases similar to the ones Mr. Shikuku has just mentioned. We have never really had a mechanism to do anything about it. You know very well that ten years ago or so this was a topic that was under discussion on many occasions. We now do have, through our Commonwealth Affairs Sub-Committee, a mechanism by which we can comment on cases where the human rights of Members of Parliament are violated. We do need, however, to work out a system whereby cases of that type can be brought to our attention. We also have to have some kind of a mechanism to look into those cases and satisfy ourselves that the facts as alleged are in fact correct and allow our Members to make an informed comment, if it is wanted; a critical comment about the way the Member has been treated. We have to have a means by which it is drawn to our attention.

Mr. Shikuku also talked about the problem of Members moving from one party to another, and I want to say that, that is the situation that has existed in politics for years and years and years. The person whom I regard as the greatest Parliamentarian of all time, the late Sir Winston Churchill, changed political parties a number of times and he said, when he made his second change, "Anybody can rot, but it takes a very strong person to re-rot". So, I simply wanted to say that this is a problem. We talked about it a little bit the other day and I understand that there are provisions here about it, but it is a problem that exists whereby you have Parliamentarians who change their views about their allegiance to their political parties.

Mr. Griffiths: Mr. Chairman, I just want to be very brief. Mr. Donahoe has explained the establishment of his sub-committee. It has its charter and the facility to take some action in regard to those two issues that you raised. When I first became the Chairman three years ago, I raised a complaint in connection with one of the member countries - I will not mention it - regarding a political prisoner. He had been a political prisoner for a long time and he had appealed and the decision by the Appeal Court had not been handed down and the person was continuing to stay in jail notwithstanding that the appeal had been heard, but the Supreme Court had not given a decision.

What I was able to do within my ability, was to go to London - not specifically to do this - and called on the High Commissioner of that country which was a branch of the CPA.

[Mr. Griffiths]

I drew to his attention that his country was a branch of the CPA that had some standards and requirements in regard to the treatment of its people. I am not sure whether my visit had any effect but it was not long after that the High Court decision was brought down and that political prisoner was released. But I am not claiming any credit for that. What I am saying is that because I was the Chairman of the CPA, I could not have gone as an Australian Member of Parliament; I went there in my capacity as Chairman. Happily, some small amount of good was done then. Unless people bring up specific cases to us-- if you generalise -- For instance, I would like you to intervene on my behalf on some of the things the Government does in Australia.

(Laughter)

But you cannot generalise; you have to be specific about acts that conflict with the rules of our organisation.

The Chairman (Mr. ole Kaparo): Let us now break for tea and we come back for the Open Session.

*(The Seminar adjourned at 10.50 am
and resumed at 11.20 am)*

QUESTIONS AND ANSWERS SESSION

Panel: All visiting Panellists.

The Chairman (Mr. ole Kaparo): The meeting is now called to order. Let us now proceed with the balance of our programme this morning which is an Open Forum. All the panellists are present. Some of them are sitting on this side and others on the other side. Occasionally, it might be difficult for me to see a panellist who would like to respond to a particular issue but I will be, of course, advised when that comes up.

Generally, the Seminar, whose title is "*Orientation Seminar for Members of the Seventh Parliament*" is almost coming to an end, and if you look at your programme, you will see that we have covered quite a number of topics. I thought it was useful to give Members this Open Forum to make comments or to ask questions and to also make suggestions. Comments, questions and suggestions, will go along way to assist the CPA in future seminars if they are thought useful. If they are not thought useful, it will also give them an idea of the feelings of this Seminar so that they may also save their resources and time on things like this.

Mr. Ndicho: Thank you, Mr. Chairman. My request is - I think it is the feeling of the Members - that this being the last moment of this Seminar, we allow the Press to come in. I am saying this because I, think, it will also serve the interests of the nation if the Press could be allowed in to report on what we are discussing instead of them asking us later what we talked about here.

The Chairman (Mr. ole Kaparo): Hon. Members, let me repeat what I said last time, and this is the idea that was in my head when we thought of organising this Seminar. As Members of Parliament, for the last two or three months, you have been addressing the Press

[The Chairman]

in the Press Gallery of the National Assembly and also in public meetings wherever you went. We thought it was the right time for us to exchange our own ideas when addressing ourselves rather than addressing the Press. It never crossed my mind that what we really wanted was a meeting where we are not concentrating on issues at hand, but rather trying to make political news.

I have not commented this morning on what appeared in the Press - which naturally came out of the Hon. Members - and the most surprising thing is a report on the papers that are alleged to have been discussed in this meeting that were never there. Anyway, we thought that we should meet as Member of Parliament and in my view, it is to our advantage so that we discuss our issues and we should keep it to that. The Press will be here when we come to the closing ceremony. I cannot control any Member from making any comment to the Press at all. It is not my job to do so. Hon. Members who want to talk to the Press thereafter, can do so.

The Session is now open to comments and questions.

Mr. Murungi: Thank you, Mr. Chairman. I am glad that at last I have caught your eye. I am basically worried about "what next" after this Seminar. Very beautiful ideas have been floated in this Seminar and in many of the seminars that we have attended, people go there, make a lot of noise, and in the end, good ideas come out of them. After that we go home and business continues as usual; nothing happens. My question is: The Controller and Auditor-General said that he would like his Office to be part of Parliament and all these gentlemen and lady from the Commonwealth said that the staff of the National Assembly has no business being part of the general Civil Service. Now, are we going to take some action so that our Parliament can be fully independent and be in control of its own staff? Are we going to be shadowed by the Special Branch as we take tea in Parliament? Are we going to have a way of excluding them from the tea?

Will this Seminar come up with some resolutions which the Clerk is going to find ways and means of implementing, or are we just going to have its proceedings simply incorporated in the HANSARD and they form part of history which does not affect our daily lives as Parliamentarians?

That is all, Mr. Chairman.

The Chairman (Mr. ole Kaparo): I do not know whom you are addressing, but I suppose it is myself.

Mr. Murungi: Mr. Chairman, Sir, I would be very happy if any panellist, especially those who have experience in organising conferences, could tell us what happens at the end of the conferences that they organise.

Mr. Brancker: Mr. Chairman, Sir, if I may respond as to the best of my knowledge, the ideas that come out of programmes such as this one, are intended to be taken as far as Members will allow them to be taken. As we heard before tea break, a Seminar on Parliamentary Practices and Procedures is intent in enlightening Members and panellists. Our object here is not to get involved in the politics of Kenya, or how to teach Kenya Parliamentarians their politics. Our aim is how to teach you to be successful Parliamentarians and to be effective contributors on the Floor of the Chamber. He who does not know his Standing Orders, does not belong to Parliament to begin with. If you master them, you will be astonished to see how many times you can catch Mr. Speaker's eye when you never thought you could.

[Mr. Brancker]

I am glad that the question of staffing of Parliament has come up. A general pattern is developing in a number of countries in the Commonwealth. The larger countries not to be, but this is found in others also whereby Parliament has a staff which is totally independent of the Civil Service. The staff may be recruited from the Civil Service on terms of secondment and thereafter be fully absorbed permanently or they may be recruited by public advertisements, or by what the Americans call a "funding". Ideally, you might have, as in the United Kingdom and in Barbados, a commission - or call it whatever name you will - which has an ex-officio membership together with one or two members of Parliament who are elected to the commission for a period of time. They look towards the management of the whole business of Parliament under the Chairmanship of the Speaker.

The staffing of Parliament is such that the Clerk is in charge of day to day administration and, of course, the other offices are there. Terms and conditions of service are worked out by the commission with the assistance of the Clerk alongside information drawn from the public service and other agencies. Similarly, that commission will contribute significantly towards looking at the conditions - not only staff - relating to Members. For example, keeping an eye on what Members might find more desirable in terms of increased allowances; keeping an eye on the available amenities on a day to day basis; keeping an eye on the day to day organisation of Parliament and ways in which its functions could be improved so that you take yourself completely away from the Civil Service.

It is imperative to do that for a number of reasons, but the primary one is that while the work of the members of staff - I am not saying that we are better than anybody else - is extremely important to Parliament and very valuable too, is of little use elsewhere in the public service. By the same token, the work which is done in the public service is, as you know, of no use in Parliament. Therefore, you want to have specially skilled people retained there and you do not want a situation where a member of staff who wants promotion goes to seek it outside Parliament instead of inside Parliament.

For instance, people like Mr. Shikuku with great experience as a Parliamentarians will form and develop his own skills of speech in the institution. You will recognize that, that is also the case with the Clerk's Department. You want to find yourself in a situation where not only is employment fully protected, but also that there are resources for all Members of Parliament, the Government, official opposition, minority opposition, single-Member party or whatever it is. That method of dealing with Parliament helps considerably towards strengthening every aspect of the fabric of your Government in the end. That is the way a number of Parliaments are going nowadays and there is an enormous amount of material collected and collated on that from the CPA sources at the Headquarters. I am sure that the Speaker and our Clerk here, can draw on that and whatever other resources that he would like to in the meantime.

I hope that answers what the Hon. Member is asking, Mr. Chairman.

The Chairman (Mr. ole Kaparo): I think it does. I just want to add one more little thing on that particular issue raised by the Hon. Murungi. He is perfectly aware of the Motion which was recently passed by the House and this issue was referred to the Speaker's Committee which is composed of Members from all parties represented in the House except in instances where we have single-Member parties. That issue is effectively being followed by the Speaker's Committee. I thought we were quite aware of that by now.

Dr. Miso: Thank you, Mr. Chairman. My question relates to the current democratisation processes we have seen throughout the world. Does the CPA have any historical facts in relation to the upheavals which have characterised these democratisation processes both in the developing countries and parts of Europe? Are these upheavals and conflicts a natural phenomena to democratic changes where people who resist change create other avenues to vent their frustration? Do you have any historical records on this?

Thank you.

Mr. Donahoe: Mr Chairman, may I respond simply by saying that we are living in a time in which the history is being made. These developments are very recent in origin and I think it is recognized that the main cause of moving towards democratisation was the collapse of the communist regime in the former USSR and Eastern Europe, and the end of the cold war. This has allowed countries that previously had been maintained in a sort of state of apprehension and equilibrium, are now able to make changes. Some of this has been caused by internal and also external pressures. The reasons for the moves are different in each of the countries.

The point I am trying to make is that these developments are recent happenings and it is difficult to go back and assess their historical causes. It would involve a major study and I am sure that, that study will be done by historians and political scientists and sociologists in the years to come. We, in our office in London, have a Parliamentary Information and Research Centre which has a great deal of material dealing with constitutional development and the development of Standing Orders in the Parliaments in the Commonwealth and so on. Much of that information at our Headquarters is available to any Member who wants to access it. Any Member of Parliament here who wants to know about some background material and development on this subject, can write to us and, if we have the information on hand, it will certainly be made available.

Mr. Moiben: Thank you, Mr. Chairman. I have two very serious questions for the three panellists to your left, Sir. The first one is: Since the year 1993 has been declared the Year of the Indigenous People by the United Nations, what does the CPA have in store for the marginalised indigenous people within the Commonwealth and especially in Kenya? The second question is: Since multi-party politics guarantees the rights of the so-called larger tribes, how will the rights of the minority tribes be guaranteed?

Thank you, Mr. Chairman.

An Hon. Member: What is the question? That is very primitive! His head is always going round.

An Hon. Member: We expect arrows!

The Chairman (Mr. ole Kaparo): Order, Hon. Members! Any volunteer on the panel to respond to that?

Mr. Moiben: Mr. Chairman, I directed my questions to the panellists on your left, Sir.

Mr. Donahoe: Mr. Chairman, Sir, I am not sure whether I see the relevance of the question. I think it is an important question and I am not diminishing its importance in any way by saying that I am not sure that it is relevant to Parliamentary Practices and Procedures except that the CPA endeavours to set its programmes in such a way as to allow the interests of all our members to be expressed particularly at our Parliamentary Conferences each year. It seems to me that there are a number of items on our agenda for our meeting so that any Member who wishes to talk about indigenous people and their problems and suggestions for

[Mr. Donahoe]

the improvement of their circumstances, would have an opportunity to do so at a number of sessions that are under our programme in Cyprus.

The question was: What does the CPA plan-- As I mentioned earlier, the CPA plans to provide a forum within which our Members can discuss matters that are of interest to them. That is our plan and that is what we will try to do. We will not try to devise our own CPA plans to help indigenous people. That is not our function. We will provide a forum for Members who are interested in helping indigenous people to put their course forward to allow members in other parts of the world who are not as familiar with the plight of the indigenous people, to be made aware of the situation.

That, in my view, is the role and function of the CPA. For those who want this programme in place, we would encourage them to do so and we will try and make resources available to help. But the Commonwealth Parliamentary Association (CPA), as I mentioned earlier, is a not a funding organisation, and we do not have the funds to put on the programmes of the type that are necessary to help indigenous peoples in the way I am sure the Hon. Member would like to see them helped. So, I do not know whether I have responded the way the Hon. Member would like me to, but that is the best answer I can provide to his question.

The Chairman (Mr. ole Kaparo): Hon. Members, I do not think that when it comes to Parliamentary Practices and Procedures there is exemption to any Hon. Member, be he either indigenous or native. I think the rules of the House will apply to both indigenous and natives with equal force. So, I do not think we should get into that; let us get into more serious things. Yes, Mr. Gethenji.

Mr. Gethenji: Mr. Chairman, Sir, I wanted to talk about the whole question of the CPA and the Commonwealth. As we used to know the Commonwealth, it was a body that was bringing together Members of a certain group of people who had some common interests. In those days the Commonwealth was able to be a useful vehicle for various activities, including some development activities and help to the less developed countries and, possibly, cared more about the plight of the less developed countries. In the new order of things, it looks as if really the Commonwealth is becoming totally irrelevant and, in fact, not a body that has any particular agenda, other than meeting together, for some kind of shop talk and that is the end of it. In fact, we have not seen, over the last so many years, any concrete results come out of this body. Indeed, it looks like the rearrangement of the world is getting very different. The European Community groups are getting together and the more advanced groups are getting together in groups of rich countries. The problem is that when they get together, they do not deal with conflicts in a particular country. In fact, the Commonwealth seems to have no concern at all if any problem arises in a particular country. It is more like the United Nations is now playing a more active role in sorting out problems. The American Government is taking a more prominent part--

Hon. Members: That is too long! Ask your question!

Mr. Gethenji: No; we are not in a Parliament; we are in a seminar and I am allowed to make my own observations!

Hon. Members: No! put your question.

The Chairman (Mr. ole Kaparo): Order! Hon. Members who have been given a chance to comment or ask questions must also take note of the reaction of the House.

Mr. Gethenji: Mr. Chairman, may be the problem is coming from KANU, but I am going to finish. I was going to touch on the problem of monitoring of elections, particularly when we talk of the Commonwealth as being one of the vehicles that have been used in the last few years in elections in various countries. Of course, the Commonwealth has done this and failed in certain aspects, particularly because when they monitor elections they leave after the day of the elections and are not even present when the votes are being counted. This is what happened in this country in the last elections; the failure of the elections did not result from the voters' casting of the ballots, but it resulted from the irregularities that occurred during the counting of the votes. So, I am saying that one of the things that the CPA, and the Commonwealth, should try to do when they monitor elections is to try and ensure that they actually monitor the elections up to the actual counting of the ballots to ensure that they are not rigged, or no other ballot boxes are introduced during the counting stage.

The other point I wanted to make regards the question of organisation---

Hon. Members: That is enough! What is the question?

The Chairman (Mr. ole Kaparo): Order! Mr. Gethenji, apparently, Hon. Members do not want you to continue any further. Can his remarks be responded to?

Mrs. Dunwoody: Mr. Chairman, can I just make a brief comment before we ask the CPA Secretary-General to respond to specific points on monitoring teams? I just want to say one thing; I am a Member of the Commonwealth, and I am proud to be a Member of it. I am also a Member of the Commonwealth Parliamentary Association (CPA). These are two different things because the CPA is, by definition, a gathering together of Parliamentarians of the Commonwealth. The interesting and important thing to me about the Commonwealth itself is that its relevance is becoming stronger, and not weaker, as we go on. We do have a very unique organisation that is held together by invisible bonds and, therefore, it seems to me to be the stronger for that. I do think it is sometimes fashionable to say that we can no longer defend the Commonwealth because we are all in different spheres doing different things. I have to say that those of us who, for example, sit on the European Committees which deal with negotiations between the African, Caribbean and Pacific Countries (ACP) have found that it is not only extremely useful to be a Member of the Commonwealth, but other nations outside the Commonwealth frequently find it difficult to understand how we are able to work together and how we understand one another's attitudes so frequently. That does not mean to say that we will always agree; it certainly does not mean that we will always have common political platforms, nor would you expect it to be so. There are 650 Members in our House and I can tell you there is good number, some of them in my own party, with whom I do not agree.

So, we just have to be quite clear that what we have in the Commonwealth is important precisely because it allows the flexibility of people of very diverse nations, religions and backgrounds to work together on a common commitment towards the creation of democratic states. That the CPA which, like any good organisation, does not have enough money to do what it wants must be a reflection of views of the Parliamentarians of the Commonwealth countries. All that I am saying to you is, "Do not underestimate it; do not write it off and remember, if it is to work, it will work because we resolve to work in its interests". Thank you, Sir.

Mr. Griffiths: Mr. Chairman, just to briefly again make some comments about election monitoring and where we, as Members of the CPA, fit into the scheme of things.

Firstly, Members of the CPA participate in election monitoring at the invitation of the

[Mr. Griffiths]

Commonwealth Secretary-General. When you are considering the status of the Members of the CPA you better understand that there are two organisations. One is the Commonwealth, which represents the Commonwealth Heads of executive governments. The other organisation, which is the one we represent, is one which represents individual Members of Parliaments as distinct from governments. When an election is taking place the country holding the elections has, firstly, to initiate an invitation for monitors to come into its country. The Commonwealth does not get into monitoring an election, unless it is invited to do so by all the participants in the elections, the Opposition and the Government. The Commonwealth then looks at the resources that are available to it to provide the monitors to participate in that particular election. One of the organisations that it looks to is the CPA, and we provide to them some of the monitors who participate in such an election. The Commonwealth is the organisation that receives the invitation and the CPA is one of the resources that the Commonwealth uses.

My Secretary-General earlier said something which is quite true; that there are a multitude of organisations other than the Commonwealth that provide election monitors. There are the Jimmy Carter Centre, the Republican Organisation in the USA and other organisations in Sweden, Spain and elsewhere in the world, including where I come from. What the Secretary-General said was that the Commonwealth has established a reputation for being one of the leading authorities on carrying out election monitoring. Why has it got this reputation? The Commonwealth has got this reputation because it does not go in on the eve of the election and leave the day after the election, and then decide that it is all. The Commonwealth always has in place a group of monitors for many weeks, in some cases, before the election. The same monitors do not necessarily stay there for the entire period because recently, for example, in Lesotho among the people that the Commonwealth brought in was the Chief Electoral Officer from Jamaica, who was supported by the Chief Electoral Officer from Trinidad and Tobago. Those people were in there long before the election to set up the election rolls and making sure that all the facilities were in place. Then came along the Members of the CPA and others who are skilled in monitoring the election itself. Subsequent to election, the Commonwealth stays around to ensure that the duly elected Government is properly installed. The CPA maintains its individual contact by offering to the newly elected Members of Parliament, through the Speaker and whoever else is interested, the opportunity of running seminars similar to the ones we are running here and there. So, to get to the point, the Commonwealth does not pop in the day the election is on and go off the day after the election: They arrive long before the election and are available long after the election. Thank you.

Mr. G.G. Kariuki: Mr. Chairman, mine will be simple and specific. I would like to say that if the role of Parliament is to enhance democracy and make it work, and considering that in Africa we have more tribes who have never felt represented in Parliament because election is based on majority, and if this majority is what we consider to be democracy, then many people in Africa will remain unrepresented. That is why I suggest to the CPA Secretary General that time has come when, if we want to enhance and protect democracy, we cannot think of doing this unless we think and find a way of how those Members of Parliament, who were elected can be protected by the so called democracy. I am saying so because the fights and problems that we now find in Africa arise because some people have been muzzled by the so called big tribes. I suggest to the CPA Secretary-General

[**Mr. G.G. Kariuki**]

and his colleagues that they start considering proportional representation in Commonwealth Parliaments. Thank you.

Mr. Donahoe: Mr. Chairman, the Hon. Member has made a good point. The only thing I can say is that I did not hear him say that Members of the small tribes were denied their right to vote. If that was the case then it would, in fact, be of serious concern. But what he is now getting into is a debate which goes on in the CPA at great length; it has been there for a long time and will continue to be there long after I am gone - about ways and the appropriate method by which Members of Parliament are chosen. Some countries have adopted first past post system; others have adopted the proportional representation in one form or another and, of course, we all know there are many variations about how the form of proportional representation that can be put in place. The debate is going on in the Labour Party in the United Kingdom and Mrs Dunwoody can testify to that. There are very many ways by which the people can choose their representatives.

Again, all that the CPA can do is to let its Members know that we have, in our office in London, information about all these systems. Electoral systems is something that the CPA knows a great deal about. Electoral law is something that we know a great deal about and, as Mr. Griffiths said, election monitoring is something about which we have some expertise as well. So, we have available to the Hon. Members, or anybody here, or any of the 10,500 Members of our Associations throughout the Commonwealth, reams of material on electoral systems.

What we are not going to do is to come to Kenya and say, "This is the electoral system the CPA recommends for Kenya" because it is for you Kenyans to decide what your best system is. We will provide you with all the information we have as to what systems there are, and then tell you to decide which system is best for Kenya.

The Chairman (Mr. ole Kaparo): Hon. Members, I think we should get to the next question because we have a variety of topics and also a variety of panellists. Yes, Mr. Farah.

Mr. Farah: Mr. Chairman, I want to know what the composition of the Central Tender Board is and the penalties or retribution members of the Central Tender Board suffer in the event of tenders being awarded to inappropriate bidders at grossly overpriced rates for reasons that can only be assumed to have been influenced by graft or corruption.

The Chairman (Mr. ole Kaparo): Hon. Members, I think we are confusing issues. We are here on an orientation on procedures and practices. Now, other issues which we can easily deal with in Parliament by way of Questions and Motions are not proper before this Seminar. I think we can always ask them in the House.

Mr. Farah: I have another question for the Attorney-General because we did not have a chance to ask questions for the last two days.

The Chairman (Mr. ole Kaparo): Mr. Farah, I am and I will give you the chance.

Mr. Farah: Mr. Chairman, I wanted to ask the Attorney-General whether there is a provision in our Constitution for special private prosecution, and what the procedure for doing so is. I also wanted to ask the Hon. Members from Australia and the United States to give us a picture of this issue in their countries.

The Chairman (Mr. ole Kaparo): Hon. Members, I think we are confusing issues here. And I must also put the record straight: We do not have any panellist from the United States. By the very nature the United States system of Parliament is very different from our system; we are operating on different rules. I will again ask Hon. Members that we keep

[The Chairman]

things which we can ask in Parliament to ourselves and, after we have learned the procedure for doing that, we can raise them in the House. So, ask the panellists about the procedures we do not know and also the things your Speaker has been doing wrongly; ask them what they do in their place.

The Minister for Agriculture, Livestock Development and Marketing (Mr. Nyachae): Thank you, Mr. Chairman. My comments are directed to Mr. Hilary Ng'weno. I agree entirely with the paper prepared by Mr. Ng'weno, particularly with regard to the freedom of speech and that of the Press. However, in recent months the trend in our country has been that a number of journalists, whose ethics Mr. Ng'weno talked about, have tended to include their personal feelings and political leanings in their presentation of whatever Press reports they give us. Whereas they are demanding that we recognise their freedom, what is the Press doing to ensure that it is impartial? I think it is very important that we give them freedom, but they themselves must ensure that they serve the nation as opposed to serving certain leanings.

My second observation is not seeking for response. Listening to the speech which was given on budgeting and financial management, one thing was left out. We hope that when we hold a seminar next time, somebody will make it clear to the nation and Parliament how we arrive at national priorities in terms of utilization of the limited resources which we have in the country at present. The spending allocation of the very limited funds does not seem to be very clear to Parliament, except that each Minister is expected to present to Parliament for approval what has been allocated to him. But are you quite clear that allocation is in line with national priorities? For example, what do we need to do in Kenya first when we have a crisis? Do we have enough food for the nation? What are our priorities? I am not asking for any comments here, but I think this point needs to be looked into and we get guidance as to how priorities in resource allocations are arrived at.

Thank you.

Mr. Ng'weno: Hon. Members, the question is what the Press can do to deserve the freedom that Parliament has given it. I am afraid we are talking about what the Press can do, but I understood that this Seminar is concerned about what Parliament can do, and what kind of procedures Parliament can adopt, in order to make sure that the freedoms of the public are protected. The challenge I gave you yesterday, as you look at some of the constitutional changes that may come to you before the end of this Parliament, was precisely to address yourselves to the issue of how to strengthen the Press. The Press has the right to have a biased or non biased opinion and that is the nature of individuals, and that is what you are protecting as one of the fundamental rights of every individual. Every Pressman has the right to be tribalistic or not to be tribalistic. The question to Parliament, is how do you protect that right and, at the same time, protect other rights and responsibilities that need to be taken care of?

I suggested that in addition to protecting the individual rights of Press men or journalists as part of the society, you should try and go beyond and become pro-active; that is, make it possible for those who have opinions that have not been expressed for whatever reasons, whether they do not have the resources or whether the Press at the moment does not appear to be interested in those opinions are being expressed. I think it is the duty of parliaments all over the world, in addition to protecting Press freedom for those who have the means to express their opinions, like me, to worry about those who wish to express their

[Mr. Ng'weno]

opinions and do not have the resources to express those opinions. I suggested that, for instance, you look into the possibility of passing legislation which in other countries is known as freedom of information; that is; expand the area of freedom not just to publish and not just to receive information, but also to seek information. That freedom is not explicit either in the Constitution or in the laws of our country. I think we will be going a long way towards expanding the freedoms of other people who do not have the wherewithal forum to express their views.

After all, as I said, the Press is a self-appointed watch dog. None of you elected me to be an editor of anything. I stood up and decided one day to be a publisher and I am still around. But there are many other people who wish to be in a position to express their opinions, and I am afraid that the system we have at the moment does not make it possible for that to happen. It is up to Parliament to expand the plurality of opportunity for expression of opinions so that if one group or one person happens to express their opinions somebody else also has the opportunity to express that opinion. I think it is up to Parliament to look at these issues rather than to throw it back at the Press because you are not likely to change the procedures of Parliament merely by passing the buck onto the Press. Thank you.

Mr. Griffiths: Mr. Chairman, Sir, I have a couple of things that I would like to share with you with regard to my views as to the role of the Press. It is my opinion that an important ingredient of democracy is to easily influence the role and the power of the media in the effective work of the parliamentary system. It is essential that the media remains a free and independent agent but, again, I emphasize that it is the will of the media to want to report fairly and provide any necessary essential checks and balances on the Government. Scandals and foul play can be either be exposed and reported for what they are, or covered up and hidden and that would encourage corruption. The media, however, is an essential force in our democracy. It must, at all times, adhere to a high standard of integrity and honesty in its reporting, and I think that is pretty vital to our democracy.

Mr. Michuki: Mr. Chairman, Sir, my questions are directed to Mr. Justice Chesoni, the Chairman of the Electoral Commission, Dr. Koinange and Prof. Mutiso. The first question to Mr. Justice Chesoni, which arises from his own paper, where he seems to interchange Government with the Executive, the Presidency and Membership of Parliament, and that refers to pages 9, 10 and 11, and it appears to contradict our Standing Orders Nos. 12, 13 and 14 as to the position of the President. He is talking about unlimited powers, and my understanding is that if someone is responsible to somebody else, it follows that, that person who is responsible to that other person has limited powers. Even our own Constitution goes further to state, in Section 17 (3) that the Cabinet is responsible to the National Assembly for all things done by or under the authority of the President, the Vice-President or any other Minister in execution of his office. You might wish to clarify that.

Mr. Chairman, Sir, the other point I wanted to raise regarding Prof. Mutiso's paper is about his views regarding resources. He gave a challenge to Hon. Members of Parliament to organize themselves and gave a very good exposition of the situation on the ground-- the youth, the aged and so forth-- and suggested certain things, but he did not talk about resources with which to do this. We have come to a point where even the hierarchy in Government has used the personal contributions, or lack of them, as a point to be held against an Hon. Member of Parliament because he is not dishing out enough. Prof. Mutiso, is development in the hands of a Member of Parliament, or in Parliament and the Government

[Mr. Michuki]

itself? Perhaps, you would wish to clarify that.

The Chairman (Mr. ole Kaparo): Let us begin with Mr. Justice Chesoni and then Prof. Mutiso will follow.

Mr. Justice Chesoni: Thank you, Mr. Chairman, Sir. Before I answer that question by the Hon. Member, may I request that you do allow me to make one comment or two, either at the end or at the start, about observation of elections because when these questions were being raised you seemed not to have asked any of the local panellists to make their comments on the matter.

I would humbly request the Hon. Member perhaps to assist me, since my presentation is serialized, by giving me the page and exact paragraph he is referring to because in paragraph 10, I have stated that you cannot draw a complete catalogue of the functions of the President because the functions and powers are different. Therefore, I would like to answer each one of them depending on whether he is referring to the powers only, so that I can appropriately answer the question. Secondly, my presentation is based strictly on the Constitution as it is and not what I am offering as my opinion. Consequently, if I say that, that power is unlimited, that is what the Kenyan Constitution says and it is not what Chesoni says. Can we then get the particular place, Hon. Michuki?

Mr. Michuki: Mr. Chairman, Sir, my reference is to Page 9 where function (a) is quite correct, but continues to say "...to attend meeting of the National Assembly". But the way the President attends the meetings of the National Assembly are stipulated in the Standing Orders, since where he sits makes all the difference: whether on his Seat of State, or on the Speaker's Seat or on the benches. You do not make that differentiation, and that is where my doubts about what you say come in.

Mr. Justice Chesoni: Mr. Chairman, Sir, that comes under the "Functions of the President", which include attending meetings of the National Assembly, taking part in all proceedings and voting. That is a provision of the Constitution. If you want me to go into details and differentiate, we would definitely go into details but, if it is a conflict between the Constitution and the Standing Orders, I am not here sitting in my judicial capacity to say which would prevail. The matter would have to be tested somewhere else and in another forum. If it is tested in a court of law, then the court would decide, if there is conflict between the Standing Orders of the august House and the Constitution of Kenya, what would prevail. My understanding of the law in Kenya is that the Constitution is a fundamental law and any other provision whether an Act of Parliament, Standing Orders or resolutions which conflict with the Constitution of Kenya, the Constitution will always prevail. So, if your Standing Orders conflict with the Constitution of Kenya then it is up to the House Committee that deals with Standing Orders to see that they rectify the position. I will offer that the best person, therefore, to look into that would be the Hon. Attorney-General and the Speaker of the National Assembly.

As far as I am concerned, I leave that matter there because both the Speaker of the National Assembly and the Attorney-General know who is in-charge, and I think the Speaker of the House is in-charge of the Standing Orders and the Attorney-General is responsible as far as the Constitution is concerned. The two of them can consult each other and reach an amicable situation with your assistance, Hon. Members, and then they will come out with something that is acceptable to all of us. Thank you.

If, with your permission, Mr. Chairman, Sir, I may just make a brief comment on the

[Mr. Justice Chesoni]

issue of observation of election, I would like to make an appeal to the CPA because I realize that the Commonwealth has different institution and CPA is not the body which deals with observing elections. The Secretary General with the Secretariat deal mostly with this part, but we would like this to be perhaps communicated because in observing elections it seems that until such a time that the Commonwealth accepts the fact that elections should be observed in almost every Commonwealth country and not only developing countries, that observation may not have much meaning. There are mistakes which are made in developed countries which may not be made in developing countries.

Another point that I feel that Hon. Members perhaps should look into is whether the CPA is going to be treated as what the European countries are doing. There is a European Parliament, but unless there is a Commonwealth Parliament, I think that it still becomes difficult for the CPA to pass any regulations and be able to comply with them. I think it is high time that you started thinking in terms of a Commonwealth Parliament if you want really to think in terms of implementing anything.

Thank you.

(Applause)

Prof. Mutiso: Mr. Chairman, Sir, the question from Hon. Michuki has also been put to me by a couple of other Hon. Members since I presented my paper. I think the burden of the question is that I seem to be emphasizing that communities were to rely more on *Harambee* outside Government revenue. That is my intention and the reasons are on Page 14 of my papers. I clearly specifically state that one of the ironies of our own time is that all those things we expected the State to do, the State is not going to be able to do them because it is no longer fashionable to expect those things to be done by the State. That is one argument.

The second argument is that the Kenyan State does not have resources, either human or economic, to actually do a lot of the things which we expect to be done. Whatever little this State is going to raise should be equitably distributed; it should not be looted or spent in any way in which you yourselves are not involved. But, beyond that, I think it would be highly irresponsible of me as an academic, not as a politician, to actually pretend that in the next ten year this Kenyan State is going to have more resources than it has had up to now. I think this is a basic point I want to make, that it is not likely, until we get to a much higher level of development, that this State is going to raise more revenue to spread around for development. All you have to do is look at the development plans for the last 20 years and you will see that development resources have been reducing year by year. In fact, most of you who were running Ministries and are here, know that you do not have any development resources in your own Ministries.

Dr. Otieno-Kopiyo: Thank you, Mr. Chairman, Sir. First of all allow me to throw in a criticism regarding the way the Seminar has been carried out. At the beginning, my understanding was that we were brought here to address specific issues, one of which being to try and find ways and means of reducing the underlying tensions that have accrued since the last General Elections, in order to create a more cordial working atmosphere. That was defeated by the fact that the programme was not availed to us in time to prepare ourselves, so I can see you have noted the confusion whereby Hon. Members are asking questions that

[Dr. Otieno-Kopiyo]

are not relevant to the programme because they did not have enough time to prepare themselves.

The other issue was the understanding and the use of rules and procedures of Parliament by both Mr. Speaker and the Members. I envisaged a situation where the Speaker and the Members of Parliament lumped together, but you chaired all meetings like you always do in Parliament, and so we had no means to differentiate you now and as you work in Parliament. So, I just wanted to say that we lost an opportunity and, maybe, in future we could look into that.

Having taken the risk of criticizing you, Mr. Chairman, I will now ask my question to the panellists.

(Laughter)

The Standing Orders are a powerful weapon, both in the hands of the House and in the hands of the Speaker. Has it been the experience of any of the panellists that the Standing Orders could also become a negative tool if it landed into the hands of a negative or a dictatorial Speaker?

Thank you, Mr. Chairman.

The Chairman (Mr. ole Kaparo): Just before I invite one of the panellist to respond, I would like to assure the Hon. Member that I have a very "thick skin", and I will stand all manner of criticism, and it will not be held against any Hon. Member!

Mr. Farah: On a point of order, Mr. Chairman, Sir. I have noticed that the speakers who have been asking questions were asking panellists who made their presentations yesterday and the day before to be educated on some salient points. Why was I denied the chance to be educated by the Attorney-General, especially on the issue of private prosecution and the procedure and what the Constitution of Kenya says about it?

The Chairman (Mr. ole Kaparo): Order, Hon. Members! I do not know really what it is that some Hon. Members want to create a scene out of nowhere. The Hon. Kopiyo has asked questions relating to a topic that is already on programme because the conduct of business in the House shall be in accordance with the Standing Orders. Yesterday, we did discuss the position of the Chair in Parliament and I think it is quite right that Hon. Members do seek from other Parliaments how their Standing Orders have been applied in the discharge of the Chair's duties. I think that is basically what the Seminar was all about, the practices and procedures of the House. I will call upon the Deputy Clerk of the House of Commons to respond to that.

Mr. Limon: Mr. Chairman, I am afraid my answer is very simple. If the Standing Orders are found to be inadequate, different parliaments make--- The Sixth Parliament might not have used the Standing Orders the same way as the Seventh Parliament. But, again, you have, in the Standing Orders, a procedure for regulating and changing the same. The Standing Orders say that the Standing Orders Committee shall, from time to time, consider and report on all matters relating to the Standing Orders. If the Standing Orders are found to be inadequate or you need some few ones, then the Committee should sit and recommend so and the plenary should decide whether the recommendations of that Committee should be accepted or not. The Speaker and other people would give evidence to the Committee, but the destiny of the text of the Standing Orders rests with the plenary, and they have the powers

[Mr. Limon]

to have the Standing Orders they wish.

Mrs. Dunwoody: Mr. Chairman, could I just make this one point, that the Standing Orders of Parliament are for all Members irrespective of their parties. If there is a criticism of the Standing Orders, it can be made in public and with force, but it is very important to realise that individual Members should use the Standing Orders to the full. If I may speak personally, I have to say that many Members of Parliament do not bother to find out what they can do before they complain of what they cannot do. I was very amused when one of the panellists said this morning that people who did not know the Standing Orders had no right to be Parliamentarians. I agree, but that would also wipe out a large number of Members of the House of Commons.

Mr. Anyona: Thank you, Mr. Chairman. I will be very brief because I know that many Hon. Members want to speak. I have three points to make, the first of which concerns Prof. Ogendo and the Attorney-General, and it is to do with what they told us about constitutionalism, civic consciousness and constitutional reform. If the three factors are involved in a constitutional process, is the Attorney-General satisfied that the principle of constitutionalism is deeply ingrained in the civic consciousness of this nation and, in that case, is he satisfied that the constitutional reform process that he set in motion meets the very components that would go to make a durable constitution in this country?

The second point is with regard to the Press, and it is directed to Mr. Hilary Ng'weno. In this era of multi-party democracy, and having looked at the profile of the Press in this country for quite a while, one finds that different media have taken different positions at different times. Hilary Ng'weno himself is a very good example. He started as a very radical journalist and then in between I was not quite sure what was going on. Right now--- Could he explain this? I know that people have a right to express themselves the way they feel at different times, but, in terms of an orderly process of change, could he explain what goes to cause that kind of process to happen?

My final point is partly addressed to the Speaker and is based on the comments made by all the panellists. The role of a Member of Parliament - and in this Assembly there is no difference between the Government and the Opposition, as far as the role of a Member of Parliament is concerned - is heavily disadvantaged in very many ways in that he has to apply for a permit which gets cancelled at the last minute. A Member of Parliament has no facilities even in Parliament; he does not even have an office or a secretary. Would I be in order to say that one constructive proposal that this Assembly can make is that, since both sides of the Assembly seem to be in agreement, this Assembly comes out with a resolution that the Speaker or the Government, or all of us together, start a process in which a Member of Parliament in this country can be afforded facilities, particularly in the constituency, so that his role gets enhanced in order that he plays a constructive function in the transformation of the Kenyan society?

The Chairman (Mr. ole Kaparo): Before I allow Mr. Ng'weno to respond to the question directed to him, I wish to say that Mr. Anyona has expressed his sentiments. There is a Committee of the House called the Speaker's Committee and another one called the Privileges Committee, and Hon. Members are at liberty - and I do encourage them - to bring forward suggestions for consideration by those Committees.

I may also add here that there are various Committees that do exist in the Standing Orders which manage the business of the House as effectively as you would want it to be.

[The Chairman]

You must be prepared to give your suggestions and alternatives to what you think is wrong. It is absolutely easy to say that something is wrong, but it can be difficult to give an alternative situation. I do not want to believe that you will take the easier option of always pointing out the wrongs and never suggesting alternatives.

The second issue I would like to raise is that when we make interventions to panellists, I would urge Hon. Members not to be personal, but to make interventions that are general and not directed to individual panellists.

Mr. Ng'weno, could you, please, respond to Mr. Anyona in a general manner?

Hon. Members: The Attorney-General first!

The Attorney-General (Mr. Wako): Thank you very much, Mr. Chairman. I wish to take this opportunity, first, to assure Hon. Members that there is no conflict between the Standing Orders and the Constitution, as relates to the procedures of the President coming to the House and so on. Section 52 of the Constitution is very clear. According to this Section, the President shall be entitled:-

(a) In the exercise of his function as Head of State, to address the National Assembly at any time he thinks fit to do so; and

(b) In the exercise of his function as Head of Government and as a Member of the National Assembly to attend all meetings of the National Assembly.

The Standing Orders have correctly reflected the division of powers of the Head of State and Head of Government in Part IV. Standing Orders 11, 12 and 13 relate to the functions of the President as Head of State as stipulated in the Constitution. Standing Order No. 15 relates to his function as Head of Government; he leaves that chair, comes to the Front-Bench and participates in debate. So, rest assured that, as far as that aspect of the matter is concerned, the Standing Orders and the Constitution are united.

Secondly, Mr. Chairman, Hon. George Anyona has asked a very important question, as to whether I am satisfied that the spirit of the principle of constitutionalism is imbedded in our society, and whether the reform process that is going to be set in motion will meet that spirit. I can say that, on the whole, the principle of constitutionalism is respected by the people of Kenya. It is the bedrock on which the whole society, the rule of law and respect for human rights which are provided for in the Constitution are founded. I would say that the people of Kenya, particularly if you take into account what we have gone through in a very peaceful manner for the last few years and what has happened since Independence, have had regular and periodical elections at which, both under one-party and multi-party rule, there has been a high turnover of Members of Parliament. In other words, the people have made their voice felt in the election of their representatives.

If you take into account the fact that we have been a peaceful society all along, one can say that, on the whole the people of Kenya are committed to the spirit of constitutionalism. Obviously, we are now in a multi-party democratic system and we need to enhance certain aspects, the democratic spirit, respect for other people's opinions and remove from our system what one may call a "personalised approach to issues". In short, we need to have more political hygiene in our society, as Prof. Okoth-Ogendo said here the other day. So, whereas, on the whole, we do respect the spirit of constitutionalism, there are still a number of things that we need to do, as leaders and as Kenyans to enhance that spirit of constitutionalism and the speed of the democratic spirit we have.

[The Attorney-General]

Now, as to whether the reform process will respect that, I can say that taking into account the commitments of Government, we hope that the Seventh Parliament will be given an opportunity to look into the whole constitutional reform process. As I said on Monday, any constitutional amendment must be made by the Constitution. I remember I quoted a famous international jurist and constitutional expert, Dicey, who has said that Parliament cannot abdicate its role; it cannot delegate its role in matters relating to legislation. Even more so, it cannot delegate its role in matters relating to the amendment of the constitution. It is important, particularly 30 years after Independence, that we approach this process with due deliberation, commitment and with sober minds, each one of us thinking about what is best for Kenya, and not about what is best for KANU, FORD-A, FORD-K, the Democratic Party, the Kenya National Congress and other parties. Each one of us, particularly as Members of Parliament, should think about what is best for Kenya. That is why I did appeal in Parliament that I hope that when we embark on the process, it will be with the spirit of "non-partisanship".

That is both realistic and necessary. It is realistic because for any constitutional amendment to go through, it must obtain a two-thirds majority of all the Members of the National Assembly. It is necessary because the constitutional amendments that are going to be proposed have to really take root in society and, if they have to be respected in the society, then it must be seen to it that they carry, at least, the overwhelming majority of the society and that the majority of the people in this country have the conviction that the amendments made to the Constitution are the proper ones. So, whatever reform process that is going to be set in motion, it will be a process in which, I am quite sure, the people will be given an opportunity to express their views on what those amendments should be. It will be a process in which, I am sure, there will be adequate consultations among not only the people, but also between the leaders who represent the people. I am sure that at the end of the day we are going to have a good Constitution that we can all be proud of as Kenyans.

Mr. Ng'weno: Hon. Members, I am not going to answer this particular question in personal terms.

Hon. Members: Why? Why?

Mr. Ng'weno: I am going to deal with a very simple principle with respect to political, social and economic change within society. There are Hon. Members in front of me today who stand for positions which are 180 degrees different from those which they stood for when I started off as a young journalist 30 years ago. If those Hon. Members have the right to change their minds with respect to what they believed in at one time and what they believe in today, I plead that I, and any other citizen of this country, have the right to so express himself or herself in such manner that the rest of the society can be free to say that today one is less radical than one was 30 years ago.

Mr. Salat: Mr. Chairman, I have two questions, one of which is on procedure. I want to ask the members from other countries whether they have estimates committees in their parliaments and, if they have, what the functions of these committees are in relation to the preparation of annual estimates?

The second question is political. Since the end of the cold war, the United States of America has emerged as the sole and unchallenged super power in the world. The United States of America has thereafter flexed its muscles all over the world and has, undoubtedly, assumed the role of the United Nations. Many members of the Commonwealth, being also

[Mr. Salat]

members of the United Nations, I would like to know from the CPA officials here how the CPA views this inevitable threat of the American influence over the affairs of the world without any regard for others, particularly members of the Commonwealth?

Mr. Donahoe: Mr. Chairman, I would like to respond to the points that the Hon. Member has raised. First of all, in the Nova Scotia Legislature, there is, in fact, an Estimates Committee which is a Committee of the Whole House. I talked about reform to the rules and one of the reforms that I wanted to make in Nova Scotia was to get the Estimates out of the Committee of the Whole and put it into a smaller committee where scrutiny could be done in a better way.

In our legislature, the Estimates were scrutinised by the Committee of the Whole House for a maximum of 75 sitting hours over a minimum of 12 Sitting Days. The Estimates of the various departments were put before the House and the Minister was there, he was grilled thoroughly by Members on both sides of the House - but mostly from the Opposition - on the details of the expenditures that were made by his or her department during the previous year in relation to the expenditures that were focused for the coming year. Estimates review is one of the main ways in which Parliament can exercise its watchdog role over the way in which the Government is functioning and spending public money.

The Nova Scotia situation is unique because in every other legislature in Canada that I am aware of, the review of Estimates is done in Estimates Committees outside the House. They meet during the time the House is sitting and give the Estimates a very detailed scrutiny. That is the way it is done in every other jurisdiction other than the one which I am most familiar with.

The second point of the Hon. Member talked about the issue of the United States assuming the role of the United Nations. It is a fact of life that the communist system has collapsed and there is now only one Super Power in the world. That I think is a totally new situation in world politics and which the world has to come to grips with. It seems to me that in some instances, the Americans have been very, very careful to ensure that when they act, they do so with the approval of the United Nations and the Security Council of the United Nations. There have been other instances in which they act on their own.

The question of how that can be regulated is something that CPA will be looking at in its meeting in Cyprus and the entire world of the United Nations in the light of changing world political circumstances will be discussed at our meeting in September. In the meantime, I can tell the Hon. Member that there are some people who welcome American intervention in certain circumstances or would welcome it when they decline to act in certain circumstances. Therefore, what he is talking about is really a two-edged sword, and it is something that I think requires consideration by every country throughout the world.

Mr. Griffiths: Mr. Chairman, in response to the Hon. Member's first question, I would like to tell him that from the Parliament that I come from in Western Australia, we have an Estimates Committee. The Government does not have any money; it belongs to the people. The Government only administers that money. The Estimates Committee in Australian Parliament examines the way in which the Government spends the people's money. The Estimates Committee is a relatively small one in our Parliament. It consists of about five Members both from the Government and the Opposition. Ministers appear before this Committee and they have to give a detailed explanation on how the funds have been expended during the previous year in exactly the same way the Committee of the Whole

[Mr. Griffiths]

House does in Nova Scotia.

Thank you.

The Chairman (Mr. ole Kaparo): I think that, that is a very important issue. We are coming to end of this Session and I would like to give this opportunity to the Clerk of the House of Commons because that is a very important question, and I think we should hear how these committees work in other parliaments.

Mr. Limon: Mr. Chairman, I spoke yesterday about our departmental related committees which are 16 in number and which cover major Government Departments. All these committees are able to scrutinise the estimates of their departments. Most of them do so with great intensity and some of them with less, but they are able to do so in exercising their powers. First of all, these committees can requisition time on the Floor of the House for the discussion of the Estimates and three fully Parliamentary Days are allocated to that function every Session.

The Chairman (Mr. ole Kaparo): Hon. Members, it is now the agreed time, and I would invite every Member to observe the---

Mr. Obondo: On a point of---

The Chairman (Mr. ole Kaparo): I am sorry. I will not bend to that. I will now invite Hon. Jaramogi Oginga Odinga to do two things: First, to pass a vote of thanks, on our behalf, to our panellists; and secondly, to officially close our function. We will give the Hon. Odinga this opportunity now.

(Applause)

CLOSING REMARKS AND VOTE OF THANKS BY THE LEADER OF THE
OFFICIAL OPPOSITION, HON. JARAMOGI OGINGA ODINGA

Mr. Odinga: Mr. Chairman, Sir, Ladies and Gentlemen, I would like to say in my preliminary observation that our work here today, is that we were coming here to be in school. We have different categories of people here today. For instance, there are graduates of the CPA and novices in here. Novices are the majority amongst us and, as such, we must always be patient with this category of people. This Seminar was actually convened for the novices to come here and learn Parliamentary Procedures and some old practices which are actually practised in Parliament and so on.

We, the graduates of the CPA, seem to be impatient and we want things to go beyond what the majority of Members here should know. Those who came from Great Britain, Canada, Australia, Barbados and Zambia, were the teachers. They came here to teach us Parliamentary Procedures. Today was not the day for us to pass resolutions and so on, but only to learn. We were here to learn and also to listen. Our work was to pose questions and theirs was to reply to them. I am very pleased that they have done their best in doing so.

(Applause)

Mr. Chairman, Sir, I would like to begin by thanking the organisers of this Seminar for the good they have done. This Seminar is timely and it has given us the opportunity to discuss and reflect on many issues that concern us law makers. The CPA brings together law

[Mr. Odinga]

makers who share a common tradition. This is the tradition of law making through a legislative process in which party politics and policies help in shaping the laws made.

Now, Mr. Chairman, Sir, I hope that from now on, we will take this matter very seriously. The strength of political parties in a democracy, is reflected in the values upheld by the legislative process. The quality of laws passed also reflect the policies that political parties pursue. As a leader of a political party that has fought for the restoration of democracy in Kenya, I feel strongly that our party systems need to be strengthened. In this regard, Parliament needs to discuss with a very open mind, the role and place of political parties in building democracy in Kenya. We should look at this issue objectively putting aside partisan interests. Our commitment should be to serve the long-term national interest of all Kenyans.

(Applause)

Mr. Chairman, Sir, if we strengthen political parties, we shall also strengthen Parliament. I have a strong feeling that parties, at the moment, have very little influence on parliamentary debates in Kenya. This is because parties do not get to discuss issues coming up for debate; parties do not have the resources for doing this. As a result, Parliament does not get the best output from its Members. Members of Parliament need to be provided with offices, secretarial services and research facilities to make their work in Parliament effective. They need to have an area, away from Parliament, where they can meet their constituents.

Mr. Chairman, Sir, let us now not behave as if we are asking for any privilege. We are trying to build long lasting institutions. Our nation must be able to invest in such institutions. Parliament itself needs to be strengthened by a better committee system. Committees of the Whole House are ineffective in discussing such important Bills, like the Finance Bill. We need to have such Bills discussed in small committees and we shall then be able to call civil servants to testify. We shall get members of the public who have good information to give us, to come along and talk to us. There is a lot that we shall be able to do with stronger political parties and in a better organised Parliament.

Mr. Chairman, Sir, enough has been said about the dignity of law makers and the conditions under which they work. I only hope that urgent action - not simply more talk - will follow this Seminar. I want to see a Member of Parliament, who is a Member of the Investments Committee, with the latest journal on development economics in his Parliamentary office. I want to see Members of Parliament from Tana River, well versed in the affairs of the Tana River Delta Project.

(Applause)

Mr. Chairman, Sir, we cannot run away from the demands of the 20th Century, or can we any longer, refuse to recognize the needs of the 21st Century. If we do not respond to those demands now, we will never be able to satisfy those impending needs.

We have an urgent demand on us today to feed our people, to provide them with proper health care and to house them. We cannot do all these things if we do not have a working and productive economy. Why have we neglected to rebuild the East African Community so as to strengthen our economy? In the century to come, we shall not get

[Mr. Odinga]

anywhere without economic integration in East Africa.

Now, Mr. Chairman, Sir, I want to spend the rest of my life fighting for economic and real political integration in Africa. I would like to see a joint Seminar of Parliamentarians from Kenya, Uganda and Tanzania discussing issues that will make us meet the needs of our people in the 21st Century as a united East Africa. Let us continue with the struggle.

(Applause)

Now, Mr. Chairman, Sir, as you requested me, I will actually give the vote of thanks. I would like to thank all our guests for having participated in this Seminar. Special thanks go to those resource persons who travelled from distant areas. These include the Hon. C. Griffiths, Hon. Mrs. Dunwoody, Mr. Donald Limon, Mr. Arthur Donahoe and Mr. George Brancker. I would also like to thank Mr. Chibesakunda for bringing to us fresh experience from a multi-party legislature in Africa.

Mr. Chairman, Sir, you and your team have done some good work. I hope you will express our gratitude to all Kenyans who gave papers to this Seminar. We hope we shall continue our dialogue to help improve the work of the House. This Seventh Parliament must complete the task of democratising our nation.

Thank you.

(Applause)

Mr. Griffiths: Mr. Chairman, Mr. Vice-President, the Hon. Leader of the Opposition, Hon. Members of the Kenya Parliament, my Panel Colleagues, the Clerk and Staff of Parliament, Ladies and Gentlemen; it is with great pleasure that I, as Chairman of the Commonwealth Parliamentary Association Executive Committee, take this opportunity to thank the Hon. Leader of the Opposition for the very kind words he spoke in favour of the visiting Panel Members.

(Applause)

We also want to extend their thanks to the Clerk and his staff for the kind courtesies which have been extended to us since we arrived in your beautiful country. We would like you to know that nothing has been spared as far as making available things to make us comfortable and enable us to participate and share with you in this Seminar over the last three days.

I would like to say to the Hon. Leader of the Opposition that we all agree with what he said in relation to the need to provide all Members of Parliament with sufficient resources to carry out their functions effectively. It is their belief that good government comes from having an effective Parliament. We would also agree with him that an effective committee system is a vital ingredient.

I would suggest to you that it is my belief that we can never afford to become complacent and we are actively ensuring that the working practices of democratic systems are carried out with integrity. We must actively protect the principles of democracy at all times.

Ladies and Gentlemen, we have enjoyed what we have been able to do in contributing

[Mr. Griffiths]

to the activities of the Seminar. As I have mentioned two or three times before, we did not come here with any report that we are the repositories of all knowledge. We did come here as members of the family of the Commonwealth. We came here to share with you the experiences that we have from the Parliaments that we come from.

A wonderful thing about our system is that it is a system that can be adapted to the environment of each particular country. It is a system that shares the vital basic principles, but does not deny each individual Parliament with adopting its own particular method of putting into effect those principles.

It has been a great pleasure for us to being with you in Kenya. We wish you a step forward into a multi-party democracy, great success and leave you with the message that "if ever there is any way in which we can come again, please, send us an invitation".

Thank you very much indeed.

(Applause)

Finally, Mr. Chairman, Sir, I understand that in your Parliament you have a CPA Room and, as it is our desire, we wish to present to you this Plaque as an indication that this Seminar has been carried out at this particular time. It is my pleasure, on behalf of the CPA, to present it to you.

(Mr. Griffiths presented a plaque to Mr. ole Kaparo)

(Applause)

The Chairman (Mr. ole Kaparo): Well, I suppose that concludes our business. However, I would like to let Members know that we still have a luncheon. That concludes the Seminar.

Thank you.

(Applause)

[THE SEMINAR ENDED AT 1.30 PM]

APPENDIX 1THE MEDIA AND PARLIAMENT

By Hilary Ng'weno

Safari Park Hotel, Nairobi; on 4th August, 1993

A PAPER GIVEN AT THE ORIENTATION SEMINAR FOR MEMBERS OF THE SEVENTH PARLIAMENT

"Congress shall make no law ... abridging the freedom of speech, or of the Press. That is one of the rights enshrined in the First Amendment of the American Constitution. Note the distinction between freedom of speech and freedom of the Press. And contrast that amendment, the first article of the American Bill of Rights, with its Kenyan counterpart that protects the freedom of expression without specific reference to the Press.

Admittedly, the Constitution of Kenya assumes freedom of Press to be just one aspect of freedom of expression. Section 70 states: except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of any persons) and freedom from interference with his correspondence. Obviously, somewhere in that definition of freedom of expression lies freedom of the Press. But you will notice that the protection of the freedom of speech and that of the Press is among the first rights mentioned in the American Bill of Rights. In the Kenya equivalent of the bill of rights, it is listed 9th - coming after the right to life to personal liberty, to protection from slavery and forced labour, protection from inhuman treatment, protection from the deprivation of property, protection against arbitrary search and entry, the right to protection by the law, and the right to freedom of conscience. In order of mention, freedom of expression comes ahead of only freedom of assembly and association, freedom of movement and the right to protection against discrimination on grounds such as of race.

Now, there may be no significance in the order in which the different rights are listed in the American and Kenyan bills of rights. This may have to do with the history of the freedom struggle. At independence, there were no indigenously owned newspapers. Indeed, the Press just before and after independence was considered by nationalists to be hostile to the African cause. So, students of constitutional law and history would not fail to see the different emphases which the two nations have given the freedom of the Press. Indeed, whilst the American Constitution seems to suggest that the Press is an institution with rights deserving of protection just like individuals, the Kenyan Constitution does not explicitly recognise the institution called the Press. Chapter V of the Constitution is titled "*Protection of Fundamental Rights and Freedoms of the individual*", and not merely "Fundamental Rights and Freedoms".

The importance which the American founding fathers attached to the concept of freedom of the Press is manifestly much greater than that which our founding fathers attached

to our freedom of the Press, and certainly, if one goes by practice as well as law, it is much greater than what Kenyan law makers today attach to freedom of Press.

Standing Order No. 170 of the National Assembly, for instance, confers upon Parliament the power to curtail the freedom of any newspaper which persistently misreports the proceedings of the House, or neglects or refuses on request from the Clerk to correct any wrong report thereof to the satisfaction of Mr. Speaker, by excluding the newspaper from representation in the Press gallery for such terms as the House shall direct. Kenyans consider such a ruling quite reasonable, but Americans would find it most abhorrent.

Indeed, there are many aspects of freedom of the Press on which Americans would differ very strongly with other democratic nations such as Britain. Whilst the Americans tend to view Press freedom in absolute terms, many other democracies view Press freedom within the strictures stipulated by the need to protect other freedoms and the public interest. A good case in point is the issue of reporting on matters which are *sub judice*. In the United States, it is expected that the Press will analyze and even pass judgement on a case even before it goes before the courts. What we call due process here in Kenya cannot be allowed to interfere with the rights of the Press to publish. The practice has led to some strange judicial behaviour in the United States. Hearings have sometimes had to be moved from one location to another in order to minimise the impact of Press publicity. The jury system, so central to the American judicial process, has often come under great strain due to the free reign that the American Constitution gives to freedom of the Press.

If I dwell for a while upon the American philosophy and practice of Press freedom, it is because of the fact that America today is the single most powerful nation in the world. Because of the demise of world communism, not only is America capable of transporting its values to the rest of the world, but it may be safe to say that it is tempted to impose those values rather than merely promote them. Weak nations, such as Kenya, which are in no position to resist the enormous pressure of American influence, would be well advised to understand the special historical, social, economic and political background in which the freedom of the American Press has developed. It is a background which is unlikely to be replicated with any success elsewhere in the world. Each nation must evolve its own values. That evolution will be a historical process in which contending values will work out an equilibrium that will in retrospect be accepted as the national set of values.

THE ROLES OF PARLIAMENT AND THE PRESS

Parliament's main function is to legislate. Legislation governs relations between different entities in society. It governs relations between the government and the public, between different branches of the government, and between different members of the public.

To be effective, laws must be publicised as widely as possible. Those they affect must know their legal rights and obligations. It is one of the functions of the Press to inform society about the laws that Parliament passes " for the welfare of society and just government of men." In a modern complex society the Press is the only meaningful bridge between the general public and Parliament.

The Press reports on proceedings of Parliament. It interprets parliamentary deliberations to the public by commenting on the implications of the deliberations and often passing judgement on one aspect or other of Parliamentary proceedings. The media's role as a bridge with the people is not confined only to the institution of Parliament. The Press

serves as a bridge between individual Members of Parliament and their constituents as well as society at large. Admittedly, most MPs maintain a more direct contact with their constituents through personal appearances at public functions and through development activities. But given the relatively vast distances which such contacts entail, and the relatively ubiquitous nature of mass communications, the Press supplements these personal contacts in a very crucial way.

A bridge, of course, allows for a two-way traffic. Parliament and Parliamentarians use the Press to reach society, but likewise the public uses the Press to reach Parliament and Parliamentarians. It is basically through the Press that Parliament in a modern complex democratic society keeps track of the changing likes and dislikes of the public. To the extent that Parliamentarians adjust their deliberations in accordance with what they perceive in the Press to be the peoples wishes, the Press serves as a facilitator of legislation. Indeed, in some cases it may be said that journalists in many democracies often act as unacknowledged legislators.

This they do when, as in the United States, they endorse candidates for election and use their enormous power of persuasion to get their preferred candidates elected. Once elected, those preferred candidates receive preferential treatment in the Press. Their virtues and programmes are praised whilst those of their opponents are ignored or attacked; their failures and weaknesses are played down whilst those of their opponents are magnified and often sensationalised.

In addition, the Press in most democracies campaigns for causes it believes in. It employs the full might of its persuasive power to create constituencies for those causes which Parliamentarians cannot ignore. The Press not only shapes the deliberations of Parliament, but often sets the agenda and the limits of discourse within the House by determining for Parliamentarians what the public will know and what it wont know; what it will consider important and that it will consider trivial. In many democratic countries, certainly in the United States, Pressmen who deal in national issues tend to develop very close personal relationships with the high and mighty. In the United States, it is one of the functions of the Senate, or Upper House, to give advice and consent to the Executive on major national issues. In recent American history, however, that Senates role has been performed, or usurped by a few powerful politically well-connected media men. Men like Henry Luce of *Time* magazine, Philip Graham and William Bradlee of the *Washington Post* and the Sulzburger family of the *New York Times*, had far reaching influence in the legislative programme of American presidents and actual conduct of Congressional affairs than is generally thought to be possible or desirable in a society where the Press is expected to adopt and maintain an adversarial stance towards government and all centres of power.

Here in Kenya, most politicians are certainly aware of the influence which the Press in general, or individual media men, wield amongst the mighty and powerful. Each one of you has, or desires to have, some close contact with an influential member of the Press. Some of you, Honourable Members, have been accused, rightly or wrongly, of walking about with some members of the Fourth Estate in your pockets. And I am not talking merely of Government ministers and their perceived greater ability to use financial incentives or political power to ensure a better Press for themselves and their friends. In these days of multi-party politics, Pressmen too have the right to hold opinions and to freedom of association. Those amongst the journalistic profession who wish to curry favour with politicians, now have a wider menu to choose from. But the consequences are nearly the same for all concerned; the

Press continues to be intimately involved in the process of legislation for reasons outlined above.

THE BASIS FOR A SYMBIOTIC RELATIONSHIP

It is impossible to think of a parliamentary democracy without a virile functioning Press, just as it is unthinkable that a free Press could exist where there is no parliamentary democracy. Each institution needs the other. The strength of one strengthens the other. The weakness of one constrains the activities of the other.

Our own country is a good example of the symbiotic relationship between the Press and Parliament. Throughout the era of the one-party state, the Press waited until Parliament had discussed certain sensitive issues before it could muster the courage to go public with information which it most often already had. The immunity of Parliamentarians to discuss any issue within Parliament without fear of arrest in turn gave the Press immunity to air issues which would otherwise have been impossible to bring to the attention of the public. The same principle, of course, applied, and still applies, to court proceedings, but the judicial process and the law pertaining to evidence in court cases are such that they do not automatically enhance the role of the Press in protecting the right of the public to know.

Even during the one-party era of our history, the Press in many cases provided Parliamentarians with the necessary platform from which to raise matters of public interest. Usually, this took the form of straight reporting of events un-embellished by editorial comment. A leading personality is reported missing because the relatives complain to the Press. The Press reports the relatives complaint. A number of MPs pick up the report and follow it up in the House with a Parliamentary question. The Government makes a response. Parliamentarians find the response unsatisfactory. Supplementary questions follow. The Press highlights the exchange. The public enter the debate through the columns of the letters to the editors. And within a short while, a process gets under way which forces more disclosures and leads to legislative action, court proceedings, public inquiries and/or censure of the Government.

This symbiotic relationship between the Press and Parliament was definitely most obvious to Kenyans during the two or three years leading up to the return of multi-party politics in Kenya. In the end, it was Parliament which changed the Constitution to usher in the multi-party era once more. But there is no doubt that without the Press we would not be where we are today. The national debate that led to the return of multi-party politics in Kenya was conducted in the pages of the newspapers and magazines as well as over the airwaves of this country.

In Kenya, as in most other English speaking countries in Africa, the transition away from the one-party regime was negotiated not through so-called national conventions, but through the Press. Indeed, it would be of interest to students of political science to study the correlation between the smoothness or turbulence of that transition and the relative tradition of a virile, but not necessarily free Press, in the various African countries that have undergone the transition. It is interesting that the French-speaking countries of Africa, where the transition has been most problematic, and where national conventions have been used, have also been the countries where you have had a much weaker private or independent Press.

In a sense, therefore, the Press in Kenya has made a major contribution to the legislative programme of Parliament, and as the dust settles from the political push and pull

characteristic of the transitional process we are going through, this contribution is likely to grow and deepen in time.

THE AGENDA FOR THE FUTURE

There is, however, a lot of unfinished business to be transacted in order to solidify the symbiotic relationship between Parliament and the Press.

On Parliament's side there is need for more enlightened debate on matters of national interest. While it is true that the Press in Kenya is not particularly competent to perform either the function of reporting or interpreting legislative procedures accurately and meaningfully (and more about this, later), it is true that individual Members of Parliament could do a lot more to liven up Parliamentary proceedings, not with more heat but with more enlightened discourse.

Over the more than three decades in which I have been privileged as a journalist to follow Parliamentary debates in this country, I have often been saddened by the poor grasp by the average Parliamentarian, not only of the rules governing debates within the House, but also of the content of Parliamentary deliberations. Most government bills that have been enacted into law since independence have generated less meaningful discussion than their implications warranted. Many Private Members motions have been introduced without much research as to the facts and the implications, with the result that issues which could have galvanised the attention of the nation have been allowed to peter off or be sidelined by stonewalling on the part of the Executive.

I understand that one of the reasons for this deplorable state of affairs has to do with Parliaments inadequate reference library and research facilities. I understand too that this is something that is being looked into. I do hope that in the not too distant future, any Parliamentarian contributing to debate on a matter of national importance would have at his or her disposal enough background information to make a meaningful contribution. Ideally, a team of researchers, with the requisite university qualifications, should be recruited as staffers and attached to the various Parliamentary committees or key Parliamentarians the way it is in advanced democracies.

These research staffers should be encouraged or even empowered, within the Nation Assembly (Powers and Immunities) Act, to gather any information, other than that excluded by the Act, which would enhance the quality of Parliamentary deliberations by underpinning them on expanded factual information.

This, in my view, is the other side of the coin of the right to un-impeded freedom of speech within Parliament. I believe that Parliamentarians should be protected against judicial proceedings for whatever they say during Parliamentary proceedings. The only sanctions which should be brought to bear upon that freedom are those that pertain to the rules of etiquette and fair play outlined in Standing Orders, as well as the ultimate sanction which the electorate can impose on Parliamentarians (by voting them out) for persistently making frivolous, uninformed, outrageous, or extremist statements in Parliament.

The symbiotic relationship between Parliament and the Press is not likely to bear fruit unless the Press, on its part, improves the quality of its coverage and interpretation of Parliamentary proceedings. Here one is talking of both content and style. Journalists must, like Parliamentarians, improve their knowledge of the major issues which come up to Parliament for deliberation. Unfortunately, this is not very evident in the practice of

journalism in Kenya today. Parliamentarians rightly complain about the frequency with which Parliamentary reporters get the names of MPs wrong. But that is only a minor example of the problem facing the Press in reporting Parliamentary proceedings.

Few Kenya journalists today understand the legislative language in which Bills are couched, let alone the import of those bills. They wait for actual debate in Parliament to communicate the implications of the Bill to the public, and when they do, the resulting public debate is often so skewed due to the misinformation or lack of accurate information that it tends to derail Parliamentary deliberations into unproductive directions.

JOURNALISTIC ETHICS AND PARLIAMENT

It is often said that journalism is not a profession; it is merely an occupation. It does not have a set of institutionalised values and standards to which all journalists readily and freely subscribe. Journalists, in some instances, have been likened to butchers. A particular butcher can be more proficient than another at carving up meat. He gets paid for his skills. But however more adept at carving up meat he gets, he remains a butcher and his claim to professionalism is unlikely to impress anyone. Journalists too gather, carve up and serve out chunks of information. Some journalists are more adept than others at this business of carving. They all get paid for their labour. But they should not consider themselves professionals.

That is, of course, not the view of most journalists about their calling. Most of us consider ourselves as belonging to a profession, even though we may not always act professionally. It would be good if society could encourage us to persevere in this delusion by prodding us to live up to some semblance of professional standards and values. We should, in particular, be allowed to acquire and put to use the tools by which we justify our claim to belonging to a profession.

The key tool is the freedom which the Constitution guarantees journalists. Parliament has a stake in defending and protecting that freedom, both in the aspect of publishing information freely but more important in the aspect of securing reasonably unlimited access to information by journalists. Here, Parliament might consider passing so-called Freedom of Information laws which give the Press, indeed to all citizens, specific right to unlimited access to non-security related information in the possession of the Government.

Parliament might also consider passing specific legislation, or provisions in existing legislation - for so-called whistle blower laws - which protect private employees from reprisals for disclosing illegal activities of their employers.

Parliament might, indeed, wish to be more pro-active about expanding the area of freedom of expression as it pertains to the Press. As everyone knows, the Press in many countries is supposed to be a watch-dog on behalf of the public. But in many young countries the public is not one easily definable entity. In plural societies, such as Kenya, the Press runs the danger of promoting the interests of one group or community over those of others - all in the name of the public. This is particularly the case, where for historical reasons, one or a few communities within society have gained a dominant position within the Press. Under such circumstances, one is faced with communal or group Press monopoly which is almost as inimical to the freedom of expression as state media monopoly.

In many democracies, legislators take pains to ensure that there is no concentration of media power in a few hands. In the United States anti-trust laws exist which prevent

media ownership patterns from emerging which abridge freedom of expression. (Ironically, Americans have laws which prevent foreigners from owning some major media, especially television, but that's another story). In recent times, there have been efforts to give minorities and disadvantaged groups in America the wherewithal to exercise their freedom of expression through equitable representation and participation both in the ownership and operation of the media. This is an area which Parliament may, in due course, have to look at in order to give greater meaning to the freedom of expression which our Constitution has guaranteed all citizens.

We should never forget that though the Press is a watch-dog of society, it is a self-appointed watch-dog, and like most watch-dogs it is more adept at looking at external threats rather than those that spring from within its own operations. No one is suggesting that Parliament indulge in devising intricate formulae for ensuring a pluralistic press to cater for the interests of all communities in the country, but in these days of group interests and competition, not to mention conflicts such as are tearing up whole nations in Yugoslavia and Somalia, it would be foolhardy, if not irresponsible, for law makers in Kenya to ignore the right to freedom of expression not only of individuals and institutions such as Press, but also of communities and social groups.

Finally, there is the issue of the right to reply of anyone injured by inaccurate offensive statements or presentations. In a number of countries - France, Spain and Germany, to mention a few - such an injured party has the right to reply in the same communications outlet where the statements in question were made. But this is not the case with a majority of countries, including the United Kingdom, where most of our parliamentary traditions come from. There the Press is expected to utilise non-legal mechanisms, such as self-policing and self-regulation, to minimise the impact of damaging statements or presentations. Luckily, there is always the right of the aggrieved party to take out libel or defamation action in a court of law.

But what if the supposed damage arises out of statements made in Parliament? What recourse does an aggrieved party have for redress? Certainly not the courts, for the National Assembly (Powers and Privileges) Act precludes that option. Natural justice, however, would seem to suggest that some kind of redress should be open to the aggrieved party. The difficulty lies in finding an avenue for redress which does not circumscribe the freedom of Members of Parliament to speak on any matter which they consider worth discussing in Parliament.

Perhaps the Press could be of assistance to Parliament in this respect. Any Parliamentary statement that may be deemed to have injured anyone would most probably first come to the attention of the individual or party concerned through the Press. Where a genuine case of unjustifiable injury can be established, the Press ought to take it upon itself to offer redress to the injured party by providing him or her with an avenue to reply. Here the Press would merely be doing its duty to correct untruths that have been propagated by its own operations. It is no different a duty from one involving a case where a Member of Parliament were to be quoted by the Press as stating that yesterday the Sun rose from the West. Most people with any common sense, which is to say, all people, would feel aggrieved by such a statement and would demand the right to reply. They might even demand an apology both from the Member concerned and the newspaper that was foolhardy enough to repeat his statement. No one would consider such a demand an unreasonable at all.

If Parliament is to saddle the Press with the burden of making such redress where individuals have been unfairly injured by statements made in Parliament, then it is all the more important for Parliamentarians to carefully weigh what they say, especially regarding those members of the public who have no way of defending themselves effectively. It should always be remembered that by the very nature of the Press, a reply is never as effective as the original allegation. When the reply comes, as it often does, when the public's attention has shifted to other matters, its impact on the public is often nil.

Here is definitely a case where Parliament ought to show greater appreciation for the role that the Press in any democratic system plays to defend the freedom of Parliamentarians to discourse on any matter even when an individual Parliamentarian is not in possession of all the facts or where he or she may let his or her biases get the better of good judgement.

Finally, let me draw the attention of Hon. Members to the technological revolution taking place in the area of communication that poses far reaching implications for the fundamental rights and freedoms of individuals.

The framers of our Constitution had no idea of the potential dangers that would be posed by the explosion in modern technology's ability to gather, store and process vast amounts of information about individuals, which information can in turn be made readily available to others who could use it to the detriment of the individuals concerned. They did not, nor could they be expected to, cater for the ability of modern communications technology to invade the privacy of citizens.

It may be asked, what has this got to do with the Media and Parliament? A lot. The Press today uses modern communications technology. In one sense, this technology makes the Press a better watch-dog. But it also gives it a greater ability to invade the privacy of citizens. Here is a case which raises the old question: Who will watch the watch-dog?

I leave that to your consideration, Hon. Members.

Thank you.

APPENDIX II

THE EVOLUTION OF PARLIAMENTARY DEMOCRACY, PROCEDURES, PRACTICES
AND THEIR DEVELOPMENT IN KENYA

By Mr. J.K. Masya, Clerk of the National Assembly on 5th August, 1993

INTRODUCTION

Honourable Members, Before I begin my formal comments on the subject before us, it is essential that I introduce my office on clear terms so as to erase any lingering misunderstanding or doubts:

Clerk of the National Assembly is the administrative head of the Department of National Assembly. He is the Accounting Officer and the Authorized Officer of both National Assembly and the Electoral Commission of Kenya. But more importantly, he is principal adviser on parliamentary procedures, practices, traditions and conventions to the Speaker, other Presiding Officers and to all Honourable Members, including Ministers. Hence the Clerk's responsibilities are to the House as a whole and his advice and assistance on procedure is available to all Members of the House, regardless of party and regardless of office held. Individual Members and parliamentary party groups have thus an open invitation to seek procedural advice from him at any time. He is present in the House during its sittings, occupying a seat just below the chair of the Speaker in the pit of the Chamber, and is even otherwise constantly available for consultations. In the course of debate, the Presiding Officer on many occasions has to take decisions on the spot and give rulings in cases involving interpretation of the rules of procedure. Although he is guided by provisions of Standing Orders and precedents, their application creates ticklish problems as they are applied in the background and circumstances peculiar to each case. In such delicate situations one witnesses the Clerk personally going to whisper some points to help him to give immediate ruling. The Clerk does not impose his suggestions. He merely offers his opinion and it is for the Presiding Officer to accept or not.

Outside the Chamber, many Hon. Members come to the Clerk and discuss many matters with him before taking them up with the Speaker. Likewise the Speaker at times asks MPs to see the Clerk about certain notices or other problems and the Clerk has to deal with them and satisfy them to the extent that they need not bother the Speaker further. Hence, the Clerk acts as adviser to the Speaker in the matter of exercise of all powers and functions that belong to the Speaker and through him to the House. He acts under authority and takes decisions on admissibility of notices in the name of the Speaker but does not work under delegated authority. Orders passed by the Clerk are the orders in the name of the Speaker and the latter accepts full responsibility for those orders. It is with this background in mind that I feel privileged to comment generally on the evolution of Parliamentary democracy, procedures and practices in Kenya.

LAYING THE STAGE FOR THE SEVENTH PARLIAMENT

The coming into being of the Seventh Parliament is an outcome of the continuous process in the national search aimed at improving on the existing set-ups, systems and institutions vested with power and authority to manage and administer national affairs. It should not, therefore, be seen as an extraordinary or accidental occurrence. It is a creation of Kenyans, by Kenyans and for the Kenyans, resulting from a national consensus, that at this time of the evolution, a multi-party political set-up was more likely to serve their interests better than the previous set-up.

Thus, the Seventh Parliament, has, whatever its perceptions, ambitions, goals, *et cetera*, no choice but contend with the legacy of its predecessors. It does not and can certainly not proceed for a moment as if it were endowed with the open-ended advantages of the Adam and Eve era. The "legacy" of its predecessors is not only a Kenyan making, but one that, being part of the world-wide phenomenon in the realm of parliamentary democratic practices, is both elastic and vulnerable to pertinent evolutionary demands.

Indeed, it will be remembered, by, even pastime students of the processes to our independence in 1963, that, the various legislative measures that eventually ushered in that independence, were the work of the often denigrated Colonial Government and its Legislative Council. And in the period since then, we have seen the resultant framework, in its entirety, as conceived by the departing Colonial Government and Legislature, and nationalist parties, in some cases, amended, modified, repudiated all together, or simply left to fall into abeyance.

The changes in the set-ups, systems and institutions as inherited at independence, and which were carried out by Kenyans, were the outcome of patient studies of prevailing situations. Virtually all such changes were arrived at and finalized as per the procedures then existing. Yes, and the institutions of state and government that effected such changes, had full mandate and competence under the existing legal framework. The changes so effected could not be disowned by posterity. Posterity could in turn amend and modify that heritage to bring it in line with current emergent and anticipated needs and interests.

One of the major changes in our national politics, was effected on December 10, 1991, when the Sixth Parliament, in exercise of the powers vested in them, enacted Act No. 12, which effectively and legally re-introduced multi-partyism. The enactment of December 10, was widely believed to be in line with the wishes of the greatest majority of Kenyans. In just a little less than a year, this parliament, the Seventh Parliament, with Members drawn from seven parties was elected by Kenyans of all walks of life. This Parliament like its predecessors has claim to full mandate and competence to contribute as effectively as it could to the processes of governance of the Republic. Whatever the effective contribution to be made, it would be appropriate to always remember that the legitimacy to do so lies in the fact that, like previous parliaments, this parliament, represents the supreme will of the peoples of Kenya.

The Seventh Parliament, therefore faces a formidable and challenging task, being one expected to bring about some improvements in the processes by which this nation has so far been governed. This does not presuppose that the Seventh Parliament is emerging into a void, and therefore expected to act as in a "tabula rasa" situation. The field and ground of operation, the rules, tasks; however, conceived, have been laid in the last thirty and more years in which a parliamentary system has evolved in Kenya. A look at that period will

reveal certain points of weaknesses and strengths, notwithstanding which, Kenyans expect a success story to be told of the operations of the Seventh Parliament.

VARIED KNOWLEDGE ON PARLIAMENT

Parliamentary institutions are not static and do not operate in total isolation from one country to another, there is a lot of interaction between them. Parliaments as forum to facilitate a discourse by representatives of the people, have been in existence from the days of the Hellenic Greek city-states (5th century B.C.) some 2500 years ago at Athens. For that matter, on Friday 16th August, 1907 at 10.00 a.m. here in Nairobi, the Legislative Council held its first sitting with the Governor presiding. That should be seen as the birth of the Kenyan Parliament. It is part of our legacy.

Our parliament is a descendant of the Westminster model that has evolved from, eleventh century A.D. To-day there are varied models of parliaments, majority of which are close to the Westminster model. Otherwise on Continental Europe, Americas and Asia, there are great variations between them and those in the Commonwealth.

Throughout history, parliamentary institutions have evolved and developed highly sophisticated operational mechanics. These mechanics are not only peculiar to parliamentarism but from one model and parliament to another. Thus, it has been acknowledged that, there has evolved a distinctive work culture with subtle rules, practices, etiquette, conduct and management modules that would take a life time to learn and internalize.

It might be stated that, it would be good were most, if not, all members to master all these mechanisms, but it is due to the fact that their commitments would not allow, that, there are Clerks to assist them find their way round the often dense forest of parliamentary niceties and intricacies.

The Clerks are especially equipped to meet all the procedural needs and requirements of the House and Members in their individual capacities. The training process for Clerks is continuous and ensures their periodic exposure to all forms of parliamentarism. Starting from the home situation, they are systematically exposed to the situation obtaining in both the Commonwealth and non-Commonwealth parliaments. The emphasis in all, is to enrich their knowledge of varied procedures so as to be able to interpret the home situations from a wider perspective.

THE HIGH ESTEEM AND PREMIUM OF PARLIAMENT

Parliamentary institutions have throughout evolution, been described in various ways. The descriptions have been couched in words and phrases, especially selected to express the enduring mystic, awe and reverence that parliaments continue to capture from the electorate. Parliament has thus been perceived and described as, the nerve centre of the nation; the grand national inquest; the opinion leader or setter; the summary of the will of the people; the custodian of the rights of the people; the voice of the people; the expression of the nations' conscience; the modern temple of the nation; *et cetera*.

The foregoing descriptions though filled with an ardent perception of what humanity has at one time or another seen and wished the Parliament to be, have never satisfactorily brought to light the peoples' imaginations. And so attempts to achieve such satisfaction

proliferate. Nonetheless, in a nutshell, what seems to come out of all those descriptions or the message sought to be conveyed to all, is that all societies hold their parliaments in very high esteem. An esteem too high and complex to be adequately described, and for which societies are still prepared to pay a high premium.

The resilient high esteem and premium societies have placed on their parliament is well recorded in its evolution. In ancient times, it is recorded that, Plato, a Greek philosopher, was of the view that, a republican system of governance could only succeed if managed by a philosopher king. The king was to be assisted not by ordinary persons but, an Executive Council (Parliament) of similar standing. Similarly the early British Parliaments did not comprise ordinary persons. They were all nobles and later those with special relationship with royalty and nobility. Even when the parliament was formed by election, the franchise was not common until 1929. From these two examples we see that the premium was sufficiently high to constitute a parliament of particular standing in the society.

Today parliaments are still held in such high esteem and the processes by which they are formed are quite demanding on the resources of society. The qualifications for voters and the candidates are specific and ensure that only persons of sound standing may participate. Indeed the greatest sacrifice is that by the electorate, the ordinary wananchi. Our experiences show that in many cases, they endure long hours of queuing under difficult weather conditions.

Each organization has its own special, peculiar ways which its business is transacted. Some of these peculiar ways are more often than not, recorded or codified. Parliament is no exception. A part from those peculiar ways that are observed without a thought as to why or how they should be obeyed, there are certain codified processes that must be equally obeyed. However, in institutions such as parliament, with a long history, the rules of practice that have come about through the-on-the-spot-study and interpretation of situations in the course of transaction of proceedings; relationships among members or between members and the Chair; other institutions of state and government; or strangers and the staff of the House, are rarely codified but left to the general perception and understanding of members. Such are matters of etiquette, and conduct that give the proceedings, the decorum, befitting wananchi's mystic perception of their parliament.

The high undefinable mystic awe and reverence in which wananchi hold their parliament and by extension the individual member, need to be maintained at all times. Indeed, some years ago, when moves were mooted to start audio-visual broadcasting of the proceedings of the House of Commons at Westminster, certain leading members of the House, among them, the then Prime-Minister, now Lady Thatcher, opposed it on the premise that the cameras would pry into and expose the privacies of the House to the electorate and thus remove the veil of mystery about the House, and thereby undermine the electorate's confidence and admiration of the House! So it became obvious that parliamentarians were not oblivious to the good accruing from maintaining a certain degree of mystery about, parliament, its processes, members' conduct and participation. The electorate are more concerned with the outcome of the deliberations of parliament than the confrontations and adversaries that go on in the process. Those must be kept within. It is easier to keep them within, if all members tried to maintain standard decorum.

Members of Parliament are all equal before the electorate and the Chair. Their equal status is underpinned by the fact that, they hold office by the will of the people. The office they hold is in trust of the electorate. Wananchi have faith and high regard for all of them

and hence the high premium placed on Parliament. Parliamentarians, therefore, cease to be the so and so that they were prior to election. Once elected, they are, whether in their individual capacities or collective capacity, leaders, elders, men and women of ideas, vision, good judgement, admirable etiquette, conduct, good understanding, self-respecting, patient, endowed with tolerance, prepared to sacrifice for the service of others, transparent, *et cetera*. As such wananchi expect that their members would consult continuously on any matter seeming not to please one, to ensure that a respectable solution befitting the conduct of an elder is arrived at.

Thus the picture to be seen by wananchi is always expected to be one of interactions amongst elders who, while not in agreement at all times, expressions of such disagreements are put in such refined manner as not to deprecate a grain of respect from them. Deprecation or dilution of respect for the House or an individual member could come if disagreements or agreements with certain proceeding are couched and expressed in such away as to portray some high handed approach, slighting other members, taking the position and status of another member and or the procedure for granted.

PARLIAMENTARY PRACTICES AND PROCEDURES; AND ITS SOURCES

Parliamentary procedure denotes in one word, all the processes, both written and unwritten, by which Parliament transacts its proceedings, the role and functions. The content of such procedure is drawn from four primary sources: viz; the practice; the codified rules or standing orders; the rulings of Mr. Speaker and other Presiding Officers; and the statutes. Though these sources may vary slightly from one parliament to another, in a nutshell, the approach at Westminster from where most of what is obtaining in the Commonwealth, descends from, remain standard format. It would therefore, be useful to examine the development and sources of parliamentary procedure from the Westminster perspective.

The term "procedure", has with time come to refer to the codified part of practice, which would comprise Standing Orders and the statutes. The "practice" on the other hand refers to the uncoded part which is imbedded in the several traditions, conventions, precedents and rulings of the Chair. Thus the term parliamentary practices and procedures has been coined to refer with definable ease to the whole procedure. Invariably, most, if not all procedure, starts off as practice, the unwritten form, and either develops into codification (the written form), remains as such or is abandoned. Such development is often dictated by moods, circumstances, party relations in the House, *et cetera*, with sufficient safety valves to cater for emergent needs and situations.

At Westminster, Erskine May has observed that, many parliamentary procedures originated in the period when the House of Commons regarded themselves as in Opposition to the Crown and hence devised ways and means of checking and controlling the actions of Ministers. To-day the contrary is the case, as Ministers get to their positions and maintain them due to the general majority support, their party enjoys in the House. The purpose of the procedure now is to ensure equity in the allocation of the time of the House, such that in as much as the Government's right to obtain their business through the House and the Opposition to examine, amend or propose alternatives before approving it, is equally ensured. A major innovation in the procedure that has ensured a perennial balance in the rights and opportunities enjoyed by the majority and minority is the vesting of the often immense discretionary powers in the Speaker.

It has been postulated that it is usually difficult to challenge discretionary powers of the Speaker to rule on such matter as, whether or not to allow a closure of debate or a dilatory motion to be moved and on a daily basis, on which Member to call to speak; is the principal defence against the arbitrary use of the Executive's majority status for its advantage.

The House of Commons has almost total control over its procedure. The decision on any matter before them is taken upon the putting of a Question. Thus at most if not at all times, the House is dealing with a specific matter, whose finalization is marked by the putting of the question. Though ideally some of the procedure is static and could be altered at will by the House, alteration to statutory part is not entirely at the disposal of the House. Some of the statutory procedure requires powers beyond those vested in the House.

Practice, is the earliest and most resilient form of procedure. It is the most elastic of the entire component. In the main, practice is that part of procedure which developed spontaneously in the course of the transaction of business. The authority for many of the old-established forms and rules of practice is unrecorded. At Westminster, in the early days, whenever a case occurred which could not be decided on any existing rule, the House would appoint a Committee to search the journals for precedents on what has been done in like cases; after a careful consideration of the precedents thus collected, the case was settled. Such settlement became itself a precedent for the future. The principal common characteristics of practice was to provide ample opportunity for debate and for ease initiative in choosing subjects for debate. The practice was made through formation of precedents and the recording of the decisions of the House on specific cases. This approach is still in use and it has enabled ease interpretation and application of some of the age-old practices to modern conditions.

Standing Orders are the second primary basic source procedure. They have to be read in conjunction with the practice of the House; as on their own do not form a complete code of procedure. Standing Orders represent the modern form of procedures, founded on the older practices; are essentially the product of modifications and restrictions of those practices. The Standing Orders are orders passed by the House for regulating its own proceedings - mainly the conduct of its business, but also, to some extent, the conduct of its Members and of others involved in the business of the House. In particular, they give specific powers to the Speaker and other occupants of the Chair for the control of debate and other proceedings. At Westminster, no special procedure exists for the making of a Standing Order. However, they are carefully drafted, in accordance with the instructions of the Government so far as their substance is concerned, by the Clerk and his staff and moved under notice by the Leader of the House. Once passed, a Standing Order, remains effective indefinitely, until repealed or modified by further Standing Orders, or unless suspended for particular business by orders of the House. The Standing Orders give priority to the Government in organising the business of the House and in securing the passage of its legislation. They also specify the rights of the Opposition and the private Members.

Rulings from the Chair are the third primary source of procedure. Much of the modern practice is based on the rulings from the Chair. Such rulings are particularly important in achieving consistent interpretation and application of the Standing Orders. The centrality of rulings from the Chair to the entire development of modern practice has been perceived as follows by Erskine May - "If ancient usage corresponds to the Common Law and the Standing Orders to the Statute Law, the rulings of the Speaker in the House, and the Chairman in Committee of the Whole House, afford an obvious parallel to the decision of

judges in the courts." Thus parliament has its own caselaw! Rulings from the Chair are usually given in response to some point of order when deemed desirable by the Chair to provide guidance to the House. They are also useful for the purpose of applying Standing Orders to doubtful or new cases; and for harmonizing the Standing Orders with older practice and with each other. In some areas, almost all the procedures are based on decisions of the Chair, and very little is laid down by Standing Orders. Rulings of the Chair often provide an easier way for changes in the procedure.

Statutory Procedures are the fourth primary source of procedure. The Standing Orders are subsidiary legislation to the Constitution. Some provisions of Standing Orders are direct reproduction of the provisions of the Constitution. However, the element of procedure that derives its authority from this source is comparatively and often static or entrenched. Most of this form of procedure carries effects affecting a wider spectrum of issues and activities beyond the Parliament; which have a direct bearing on the people outside Parliament and reflect on the balances obtaining in the democratic practices of the system.

The primary sources mentioned and briefly discussed above are much in line with what obtains in Kenya. They are applicable in most Commonwealth countries. Nevertheless, the import of the parliamentary procedure is to serve the processes of parliamentary function and role. It is at the service of the House and its Members; in effect a friend who facilitates while remaining flexible to the changing demands of the institution and society.

Procedure of the House of Commons is under supervisory of the Procedure Committee, while in Kenya it is the Standing Orders Committee.

QUESTION TIME

It has been suggested generally that there are five objectives of the parliamentary question.

- (a) as a vehicle for individual backbenchers to raise the individual grievances of their Constituencies.
- (b) as an opportunity for the House as a whole to probe the detailed actions of the Executives;
- (c) as a means of illuminating differences of policy on major issues between the various political parties or of judging the parliamentary skills of individual Member on both sides of the House;
- (d) a combination of these or any other purposes e.g. a way of enabling the government to disseminate information about a particular policy decision;
- (e) as a means of obtaining information by the House from the Government and its subsequent publication.

The first Speaker's ruling in the U.K House of Commons on parliamentary questions to the effect that any Member has a right to put questions to a Minister but the Minister could choose to answer or not, dates from 1783. However, Question Time as a specific period in which written notice of questions to Ministers were answered in sequence appears to have been established in the House of Commons as late as 1869.

In our Parliament, the proceedings reach the peak of liveliness and the seriousness of conduct of business during Question Time. However, Question Time is not part of the Business of the House! The entire process of questions, starting from submission of a draft question by a Member to editing, typing, approval, forwarding to the Ministers, placement on

the Order Paper, are all under the general direction of Mr. Speaker. During Question Time, it is Mr. Speaker who calls out the name of a Member and it remains his prerogative to decide when to limit further supplementaries to the original question. The provisions of Standing Orders Numbers 35 and 37 comprehensively define the procedure to be followed in submitting question.

The reaction of Members during Question Time is critical. This is one time when Government is put to close intensive questioning, grilling, to account for any flaws and if not careful, a Minister could be pushed into making a commitment to effect corrective measures that might not be in line with the current Government policy. And so whereas the backbenchers feel excited by the opportunity to press a point home, the Ministers have to remain on guard and only give such information and make sure undertakings that they are not likely to be embarrassed about.

THE BUSINESS OF THE HOUSE

The Chamber of the House has been described by some experienced parliamentary scene observers as a form of theatre. There is a stage, there are actors; there is a play and an audience. But the theatre has many abnormal features. The way the play develops can have a significant impact on the whole community. The scenery never changes. The actors portray themselves. The subject of the play alters frequently. The actors are paid.

A group of the actors decides the nature of the performance but it does take some notice of what the company as a whole would like to do. Indeed, the group does not decide the whole of the programme and some time is left free so that initiative can pass to other members of the company. Yet when there is dispute about the programme or, more often about the conclusion of a play, the controlling group almost always gets its way for the actors divide themselves into factions and it usually has the support of the largest faction.

They are forced to divide themselves between two sides, each one must either line up behind the governing group or confront and oppose it from the seats opposite. The design is fashioned for verbal jousting and to prevent any possibility of physical aggression during a performance, it is forbidden to cross the floor from one set of benches to the other. Order is maintained by an impartial master of ceremonies, Mr. Speaker. The architecture symbolizes a two-party system.

Our system of government is based on the principle of parliamentary sovereignty which means Parliament can do as it chooses and cannot be lawfully challenged. While the House has vast powers there is a severe limitation on what, in practice, it can achieve. The Parliament cannot govern, it can only call to account those who do govern, the cabinet. So the theatre club can express no confidence in the performance of its guiding group, the Cabinet, but, it cannot do that work itself.

Under the current multi-party system, the House would be expected to be held back not only by the limitations of its organization but also by adherence to political parties. It is commonly said that Members accept party discipline because to defy the party damages the prospect of joining the political ladder that leads to the Cabinet. Members have entered Parliament as a result of active support from their party. They sacrifice time, money, privacy and perhaps a career, to promote a cause. It is not easy to turn away from such a commitment through disagreement on a particular policy. Loyalty has a strong pull. There is a school of thought which asserts that a seat in the House belongs morally to a party, not

to an individual; people, most people, vote for a party not a person. However, it is also felt that the results of the recent general elections indicated that Kenyans voted for personalities rather than parties.

Within Parliament, party organization helps business to proceed smoothly. Representatives of the parties, the whips, hold regular negotiations over the timetable for future debates. An element of give and take in these matters is traditional but the government will always have the last word as it has the majority in the House. Yet the ultimate authority of the House always remains; a Cabinet is doomed if it loses its majority in any division amounting to a vote of confidence. Thus the effect of a breakdown of party loyalty is greatest when the disturbance is among government supporters. Sometimes Members express a party view; occasionally they put forward a personal view that may be critical of their party's policy; sometimes they press a local cause, sometimes they are advocates for some particular interest.

Honourable Members, having said all that, it has to be appreciated that when the electorate cast their votes, they are casting to elect a representative to Parliament. The representative is expected to participate in the business of Parliament on their behalf. The electorate understand that the role of Parliament is part of the governance system that provides for and safeguards their interests. The electorate may not know the niceties and intricacies involved in the parliamentary processes. Not even precisely what Parliament does. What they know is that there is a Parliament which they expect to be operating in delivering goods and services; and in time they start making their judgement of the MPs' performance. The expectations of the electorate on the work and role of Parliament are by and large the same world over. What seems to differ and which is the enduring beauty of parliamentary democracy is that those expectations and the actual business as well as the processes by which it is accomplished are not rigidly defined and regulated. They are varied. The main purpose of Parliament in any democratic state is to provide the wananchi with an effective means of calling to account of their government. Indeed an effective and vigorous parliamentary system relies on the will of the Members, all Members from different parliamentary parties. It is important for Members to remember that regardless of which party they represent, they are entitled to the same rights, privileges and have the same more or less responsibilities.

Nonetheless, since the introduction of political parties and party systems and their presence in parliamentary processes, the direct effect of individual Members have taken backstage. This position of the individual Member is most apparent in system of government modelled along Westminster which depends for its operation and survival upon the party system. Evolution of the party system has vested immense powers in the party leaders by which they are able to impose severe and sometimes rigid discipline on their Members. The occasional frustrations facing some maverick Members not ready to toe the party line at times have led them to complain of having been reduced to "lobby fodder". Of necessity therefore the prime movers on the parliamentary scene are the parliamentary parties. It is the parties represented in Parliament that must work out the modalities for transacting parliamentary business. The approach to the processes by which parliamentary business is worked out vary from one Parliament to another. However, for our purpose I would endeavour to explain the procedure in the House of Commons, United Kingdom.

At Westminster, constitutionally, it is the Government which controls the business of the House of Commons. It is the Government business which absorbs the greatest part of the

time of the House. Thus basically it is the Government which sets the agenda of parliamentary business.

Once a week, the Leader of the House announces, in the House what business will be available in the following week. However the government does not announce this on its own, in total exclusion of the other parliamentary parties. Such announcements are made after behind the scenes consultations, through what is popularly known at Westminster as "the usual channels". The latter implies the Leader of the House, Leader of the Opposition and their Chief Whips. They engage in constant consultations. The agreement secured between them is basically on the timing of certain key businesses in which both or one side has an interest but not on the contents of the business.

At Westminster, it is possible that the Government could seek to use its majority to deny the opposition reasonable opportunity for criticism of its policy or manipulate the business to its advantage. The Opposition has procedural devices to secure its opportunities. In addition, it could employ obstruction means, the process of filibustering, which consumes much of the often limited time available in a session for certain set business. Even at that point, the Government could still get its way through by use of guillotine or closure procedure. However, the Government has practical interest in ensuring that its relations with the Opposition are as harmonious as can be expected and that the Opposition is given as little opportunity as possible for obstruction. The initiative to maintain harmonious and amicable working relationship between the parties has to be undertaken by the Government.

The Whips are very important within Parliament and are really the right hand persons of the Leaders of both sides of the House. The Government Chief Whip, together with the Leader of the House, is responsible for seeing that the Government's timetable runs smoothly at all levels; sessionally, weekly and daily. This calls for good judgement and careful execution to make sure that Government bills make their way through. It is often a delicate undertaking to be executed without emotions and void of frivolous interjections and points of order.

There has to be a considerable flow of information between the parties through the medium of the Whips' offices, on a day to day basis. The two Chief Whips do meet when some matter is in dispute and which intermediaries have failed to resolve; as do the Leader of the House and the Shadow Leader. At Westminster the arrangement of the business and apportionment of time, is not carried out by a specific committee or body of the House. It is as already noted, done through the "usual channels". Nevertheless, there are specific provisions in the Standing Orders that set aside a fixed number of days or periods in a session or on a sitting, when business by the opposition has precedence. In the main there are two roles of any reputable Opposition.

- (a) To scrutinise the Government legislation and any other business that the Government is involved in. By scrutinising, it means that one looks with an open mind at the Government business and decide whether it is proper or not.
- (b) To provide an alternative to the electorate. The Opposition is the alternative Government, and it is very important role of the Opposition to put to the public and to the voters an alternative set of policies to those of the Government of the day.