

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

**Thursday, 17th October, 2002**

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

## PAPERS LAID

The following Papers were laid on the Table:-

The 11th Report of the Public Investments Committee on the accounts of State Corporations Volumes 1, 2 and 3 for the year 2000/2001

*(By Mr. Wamunyinyi)*

- (i) The Report on the Constitution of Kenya Review Commission, Short Version
- (ii) The Draft Constitution of the Republic of Kenya, 2002
- (iii) The Report of the Parliamentary Select Committee on the Draft Constitution of Kenya, 2002

*(By Mr. Raila)*

**Mr. Speaker:** Order! Mr. Raila, you are only entitled to table the Report of the Select Committee and not the Draft Constitution.

**Mr. Raila:** Mr. Speaker, Sir, I think that is the omission of the Clerk. The understanding was that I was to also table the Draft Constitution of Kenya, 2002.

**Mr. Speaker:** No, you will only table the Report of the Select Committee. It is the one that you have tabled and accepted by the Chair.

**Mr. Raila:** Mr. Speaker, Sir, does it mean that I will table these others sometime next week because they are given together? The Report itself is meaningless unless it is read together with the Draft Constitution of Kenya, 2002.

**Mr. Speaker:** Mr. Raila, you will seek the guidance of the Chair, which you shall be given.

## NOTICES OF MOTIONS

### ADOPTION OF SELECT COMMITTEE REPORT ON CKRC

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

THAT, this House adopts the Report of the Select Committee on Constitution of Kenya Review Commission laid on the Table of the House today, Thursday, 17th October, 2002.

### ADOPTION OF 2000/2001 PIC REPORT

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

THAT, this House adopts the Public Investments Committee Report, Volumes 1, 2 and 3 on the accounts of State Corporations laid on the table of the House today, Thursday, 17th October, 2002.

**Mr. Speaker:** Next Order!

## ORAL ANSWERS TO QUESTIONS

**Eng. Toro:** Mr. Speaker, Sir, before I ask my Question, I would like to inform you that I have not received the written reply.

*Question No.342*

DISAPPEARANCE OF MR. KIMANI

**Eng. Toro** asked the Minister of State, Office of the President:-

(a) whether he is aware that Mr. Daniel Wamai Kimani ID/No.213565/64 aged 28 years disappeared on 10th October, 2001 at Etalasa, Hola, during ethnic clashes;

(b) whether he is further aware that police in Hola refused to investigate and establish whether Mr. Wamai was killed or otherwise; and,

(c) if he could establish the whereabouts of Mr. Kimani.

**Mr. Speaker:** Is there any Minister of State, Office of the President present?

**The Minister of State, Office of the President (Mr. Haji):** Mr. Speaker, Sir, what is the Question number?

**Mr. Speaker:** It is Question number 342. It is the first Question on the Order Paper. Mr. Haji, what has happened?

**The Minister of State, Office of the President (Mr. Haji):** Mr. Speaker, Sir, my fellow Minister is coming with its reply.

**Mr. Speaker:** So, it does not fall in your docket?

**The Minister of State, Office of the President (Mr. Haji):** No, Mr. Speaker, Sir.

**Mr. Speaker:** Next Question, Mr Musila!

*Question No.396*

COMPENSATION FOR DEATHS CAUSED BY WILDLIFE

**Mr. Speaker:** Mr. Musila is not here? We will come back to his Question later.

Next Question, Mr. Kanyauchi!

*Question No.498*

WILDLIFE MENACE IN GWASSI

**Mr. Speaker:** Mr. Kanyauchi also not here? We will come back to his Question later.

Next Question, Mr. Kitonga!

*Question No.455*

UPGRADING OF MUTITO HEALTH CENTRE

**Mr. Speaker:** Mr. Kitonga also not here? We will come back to his Question later.

**Hon. Members:** That is the wrong Question, Mr. Speaker, Sir.

**Mr. Speaker:** I am correct!

**The Assistant Minister for Health (Dr. G. Galgalo):** On a point of order, Mr. Speaker, Sir. I have an Order Paper here indicating that it is Question No.314 by Mr. Anyona!

**Mr. Speaker:** Dr. G. Galgalo, I think it was corrected this morning. Is Mr. Anyona's Question directed to the Ministry of Lands and Settlement?

**Hon. Members:** Mr. Speaker, Sir, it is directed to the Ministry of Roads and Public Works.

**Mr. Speaker:** Hon. Members, I am told there was a correction and the correct Order Paper, which I have, is available at the Clerk's Table. It does not contain that Question by Mr. Anyona.

Next Question, Mr Khamasi!

*Question No.441*

## REHABILITATION OF SHITOLI WATER PROJECT

**Mr. Khamasi** asked the Minister for Water Development:-

(a) whether he is aware that Shitoli Water Project has almost collapsed and is not serving the areas for which it was intended; and,

(b) what immediate steps he is taking to ensure that this project benefits the area residents.

**The Assistant Minister for Environment and Natural Resources** (Mr. Noor): Mr. Speaker Sir, I beg to reply.

(a) No, I am not aware. The true position is that Shitoli Water Project is operational. However, its supply is hampered by the existing reserve capacity which is 3,600 cubic metres per day. Whereas the present water demand has risen to 6,000 cubic metres per day due to the increasing population, this increased demand has necessitated rationing of available water in order to serve all the people in the area.

(b) My Ministry, through the National Water Conservation Pipeline Corporation, is pressing to be undertaking the rehabilitation measures to improve the water supply in Shitoli. These measures include replacement of the old pumping equipment which previously had seriously deteriorated and the rehabilitation of tanks. Works are going on at the moment to replace the weak section of the tripod water pump mainly in order to reduce the frequent occurrence of tank bursts. These measures have significant effects on the amount of water available to the beneficiaries.

**Mr. Khamasi:** Mr. Speaker, Sir, the Assistant Minister must have been given wrong information and that is why he said that he is not aware. The fact of the matter is that this project is not operational. Perhaps, it only operates once in a month, or once in every two months. Could the Assistant Minister tell this House, of the intended area of supply, how much of it actually gets water from this project?

**Mr. Noor:** Mr. Speaker, Sir, what I denied was the claim that the project has collapsed. It is true that there is shortage of water in the area because as I said, the supply is 3,600 cubic meters per day against the demand of 6,000 cubic metres per day. However, we are doing the rationing at the moment while we still do the rehabilitation of the remaining part by putting in---

*(A Mobile phone rang in the Chamber)*

**Mr. Speaker:** Order! Where is that mobile phone?

**Mr. Katuku:** Mr. Speaker, Sir, he is switching it off!

**Mr. Speaker:** Is it with you?

**Mr. Katuku:** No, Mr. Speaker, Sir. It should be switched off.

**Mr. N. Nyagah:** On a point of order, Mr. Speaker, Sir. Does this House allow sneaking on other hon. Members, or should the hon. Members on their own be able to own up?

**Mr. Speaker:** What have you said, Mr. N. Nyagah? I have not got you.

**Mr. N. Nyagah:** We would all like to give information regarding other hon. Members. The question was: "Are we allowed to sneak on a question you have put forward, or should the hon. Member own up on his own?"

**Mr. Speaker:** The Member must own up! Who was it? I hope they own up next time. Where were we before we were interrupted by this thing? What was happening that time?

*(Laughter)*

**Mr. Noor:** Mr. Speaker, Sir, I was replying to the supplementary question from the hon. Member. I was saying that, at the moment, the water supply is not enough for the people of the area. As I said, at the moment, we are doing the rationing of the water to the area and simultaneously doing the rehabilitation of some parts so that water can be sufficient in future.

**Mr. Khamasi:** Mr. Speaker, Sir, the Assistant Minister has said that presently, they are undertaking rehabilitation measures in some parts of this project. I come from that area and I have never seen any repairs of any nature being undertaken. Could the Assistant Minister tell us which parts of Ikolomani, Shinyalu, or Butere-Mumias are under repair?

**Mr. Noor:** Mr. Speaker, Sir, we are replacing filter-media, restoring regulators at the treatment plant, installing two additional pumps for treatment of water, one new pump for borehole water and one standby pump.

**Mr. Speaker:** Next Question, Mr. Mwakiringo!

*Question No.380*

**Mr. Mwakiringo** asked the Minister for Environment:-

- (a) if he could explain why Mr. Said Mahababu, P/No.89055503/16, has not been paid his salary difference since his promotion in December, 2000; and,
- (b) what steps he is taking to ensure that Mr. Mahababu is paid.

**The Assistant Minister for Environment and Natural Resources** (Mr. Noor): Mr. Speaker, Sir, I beg to reply.

(a) Mr. Said Mahababu was paid his salary difference and resultant arrears through the Pay Change Advice No.5714001/2002 of 26th December, 2001.

(b) From the foregoing, action has already been taken to pay the officer his dues.

**Mr. Mwakiringo:** Mr. Speaker, Sir, we want to appreciate the answer by the Assistant Minister, but could he tell us why it took one year, since Mr. Mahababu received his letter of promotion, for him to be paid his dues?

**Mr. Noor:** Mr. Speaker, Sir, we apologise for that. But we did not pay that money this month or last month. According to the payslip of Mr. Mahababu, he was paid his dues in April, 2002.

**Mr. Mwakiringo:** Mr. Speaker, Sir, the Assistant Minister has said that Mr. Mahababu was paid his dues through a cheque. To which bank was it sent, or was it through the DC's office?

**Mr. Noor:** Mr. Speaker, Sir, I am sorry I did not give the cheque number. I gave the PCA number and Mr. Mahababu was paid through his payslip of April, 2002. I have the copy of the payslip here.

**Mr. Speaker:** Very well! Next Question, Mr. Anyona!

*Question No.481*

ILLEGAL TRANSFER OF GUSII  
COUNTY COUNCIL PROPERTY

**Mr. Anyona** asked the Minister for Lands and Settlement:-

- (a) if he is aware that Kisii Town Block 111/77/78 was the property of the County Council of Gusii;
- (b) if he is further aware that the County Council of Gusii leased the property to Mr. David Kenya Magare on 1st December, 1968, and 1st September, 1969, respectively for a period of 99 years, who in turn sub-leased it to M/S. Abdul Sultan Jiwa Nathoo Rajwani and Lutafali Jiwa Nathoo Rajwani; and,
- (c) if he could investigate how this public property was purportedly sold and transferred to the sub-leases and take appropriate remedial measures.

**The Minister for Lands and Settlement** (Mr. Ngala): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that plots Kisii Municipality/Block 111/77 and Block 111/78 were vested in the County Council of Gusii in accordance with Section 115(1) of the Constitution of Kenya.

(b) I am also aware that the County Council of Gusii leased the plots to Mr. David Kenya Magare trading as Bonchari Trading Company, and Messrs. David Kenya Magare, Aloiy Manyange Mutuka, Joseph Kakaya and Joseph Mochama, trading as Maendeleo Butchery, respectively.

(c) I have investigated the matter and established that the allocations of the properties and subsequent transfers complied with the statutory requirements. Therefore, no remedial action is required.

**Mr. Anyona:** Mr. Speaker, Sir, the Minister does not dispute the fact that this is trustland, and yet he says that the land has been allocated and transferred. Would he lay on the Table of this House the instruments of allocation and transfer of this land from the County Council of Gusii to whoever may have been the allottees?

**Mr. Ngala:** Mr. Speaker, Sir, I do not have those documents with me here, but I can bring them. But I have a lengthy supplementary information which reads as follows:-

Parcel No.Kisii Municipality/Block 111/77 was allocated to Mr. David Kenya Magare, trading as Bonchari Trading Company for a term of 99 years from 1st December, 1968. In 1972, the lessee sub-leased the property with the consent of the council to sub-lessee, M/S Lutafali Jiwa Rajwani and Abdul Sultan Jiwa Rajwani. Two, Parcel No.Kisii/Block 111/78 was allocated to Messrs. David Kenya Magare, Aloiy Manyange Mutuka, Joseph Mokaya and Joseph Mochama, trading as Maendeleo Butchery for a term of 99 years from 1st September, 1969. Three, Parcel No.Kisii Municipality/Block 111/77 was transferred by the first lessee; Mr. David Kenya Magare, on 13th March, 1992, to Highland Tyres Limited, P.O. Box 200, Kisii. Records held in Kisii District Land Registry indicate that the transfer of lease forms were duly executed by the leasee in the presence of the Commissioner of Oath, who is a lawyer.

On 15th May, 2000, the lease was transferred, again, from Highland Tyres Limited to Kisii Petroleum Products Limited. In all these transactions, the law was strictly followed. Parcel No.Kisii Municipality/Block 111/78 leased to Maendeleo Butchery was transferred to Kenyoro Farmers Society Limited pursuant of court order, HCCC No.22 of 1984 in Kisii High Court registered on 26th September, 1998. The transfer documents so registered were

executed by the Executive Officer of the High Court, Kisii. The transfer of the documents was legal, and if there is any suspected foul play, it can be challenged in a court of law.

**Mr. Anyona:** Mr. Speaker, Sir, I know all that information he is giving to the House, but the question I am asking is this: This is trust land and, for trust land to change ownership to private ownership, there must be proper allocation and proper transfer. Change of user should be done first, and then these other processes follow. All I am asking him is to tell the House who now owns this trust land; is it the County Council or individuals? If it is individuals, could he produce before the House evidence of paper allocation and proper transfer?

**Mr. Speaker:** Order! Transfer documents are public documents. You can obtain them from the Ministry of Lands and Settlement, on payment of the requisite fee and then you can conduct a search. Do not bog the House down with that. Answer the other relevant question; how was the allocation made on trust land? Were the constitutional provisions followed?

**Mr. Ngala:** Mr. Speaker, Sir, what I understand is that after the expiry of the leases under the 99-year term lease regulations, any transactions within that period can be done legally. So, if the county council entered into a lease arrangement for 99 years any transactions done during that time, before the expiry, is legal. So, I would like to believe that the procedures that were entered into were purely legal.

**Mr. Imanyara:** Mr. Speaker, Sir, the provisions of the Constitution that the Minister referred to provide that county councils, and in fact, all local authorities put public property in trust for the residents of the county council concerned, in this case, the Gusii County Council. The same Constitution has very extensive positions on how to convert that land, for it to be held by a private person who is not holding it in trust for any other person except himself. Quite obviously, he is in breach of trust. Are you satisfied that the people who are currently registered as the owners, who you say have been legally registered, are holding this property on behalf of the residents of Gusii County Council as required by the Constitution of Kenya?

**Mr. Ngala:** Mr. Speaker, Sir, I would like to say that I am satisfied, because in both sections, the Commissioner of Oaths was involved, and then the other one, the High Court officer was involved in doing both the transactions. So, I want to believe that everything that was done, was legal. The process of transferring into a lease situation, means that the land now belongs to those who it has been transferred to. But once the lease expires, the land will go back to the ownership of the County Council of Gusii.

**Mr. Imanyara:** On a point of order, Mr. Speaker, Sir. The question was: Under what circumstances did land that was being held in trust for the public converted to private use when the Constitution has very explicit provisions for stepping a path? What you are giving us is a description of how the land was transferred from one person to another to the current owner. You are not answering the question as to how it changed hands from being held on trust for the people of Gusii County Council to the private owners. That is the question that is being asked, and the Minister has not answered it. Could he be asked to answer the question? How were the constitutional provisions that require the County Council to hold this land on behalf of the people breached? The same is being held by a private person in breach of the constitutional provisions.

**Mr. Ngala:** Mr. Speaker, Sir, I have understood the question, but I do not have the details. I will go to the office and try to check the legal processes that were entered into, in transferring the trust land and putting it into individual hands. I will check and give an answer to the House.

**Mr. Anyona:** Mr. Speaker, Sir, arising from what the Minister has said - it was quite obvious that he was not sure of what the legal position was - would I be in order to request that the Minister seeks the legal opinion of the Attorney-General on this matter and comes back to the House with a proper legal and admissible reply to this Question?

**Mr. Ngala:** Mr. Speaker, Sir, we will use all the necessary avenues to get enough information for the House.

**Mr. Speaker:** Eng. Toro's Question for the second time!

*Question No.342*

DISAPPEARANCE OF MR. KIMANI

**Eng. Toro** asked the Minister of State, Office of the President:-

- (a) whether he is aware that Mr. Daniel Wamai Kimani ID/No.213565/64 aged 28 years, disappeared on 10th October, 2001 at Etalasa, Hola, during the ethnic clashes;
- (b) whether he is further aware that police in Hola refused to investigate and establish whether Mr. Wamai was killed or otherwise; and,
- (c) if he could establish the whereabouts of Mr. Kimani.

**The Minister of State, Office of the President** (Mr. Sunkuli): Mr. Speaker, Sir, I wish to apologise for not having been here to answer the Question.

However, I beg to reply.

(a) I am not aware since there is no report in the police records about the disappearance of Mr. Daniel Wamai Kimani.

(b) Arising from my answer to part "a" this question does not arise.

(c) We will commence investigations to establish the whereabouts of Mr. Kimani as soon as a formal report has been made to the police.

**Eng. Toro:** Mr. Speaker, Sir, I do not understand what the Minister wants to be done, because a report was made by a friend of this young man who disappeared when there were tribal clashes. Since I cannot be able to go to the police station and get the report myself, I am convinced that, that report was made in the police station. However, by filing a Parliamentary Question here, can that be taken as a formal report on the issue, where the police would start investigations?

**Mr. Sunkuli:** Mr. Speaker, Sir, I am taking it that it is the first time the hon. Member is informing the Government of the disappearance of this person. I would like to ask the hon. Member to urge the family to also come and give us the details about this particular person, so that we can look for a person we know.

**Eng. Toro:** Mr. Speaker, Sir, the details of the person who disappeared, for example, the identity card number, the date of disappearance and the place where he disappeared, should be given here. The Minister cannot say that a formal report has only been made today, because he has been with this Question for a long time. Could the Minister assure the House that, despite the family not being able to travel from Murang'a to Hola to make this report, he is going to commence investigations to find out whether this young man is dead or he is still alive?

**Mr. Sunkuli:** Mr. Speaker, Sir, the family members do not have to go to Hola. They can report to the nearest police station and give adequate description; whether he was tall, black, who were his next of kin and how old he is. This is information that would help the police to look for this person.

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

**Mr. Musila:** Mr. Speaker, Sir, I sincerely apologise for coming late.

*Question No. 396*

COMPENSATION FOR DEATHS CAUSED BY WILDLIFE

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

(a) whether he is aware that Mwaniki Mwangangi, Mutinda Mumo and Mukungi Mutie of Kalitini Location of Mwingi South Constituency were killed by wildlife on different dates,

(b) whether he is further aware that on 18th April, 2002, the Mwingi District Wildlife Compensation Committee recommended that the next of kin of the three be compensated for the loss of lives of their relatives; and,

(c) if he could inform the House when this compensation will be paid.

**The Minister of State, Office of the President (Mr. Haji):** Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Mwaniki Mwangangi, Mukungi Mutie and Mutinda Mumo of Kalitini Location, Mwingi South Constituency, were killed by wildlife on different dates.

(b) I am further aware that, on 18th April, 2000, the Mwingi District Wildlife Compensation Committee recommended that the next of kin of the three be compensated for the loss of lives of their relatives.

(c) The compensation cheques for Mukungi Mutie and Mutinda Mumo have been processed and sent to the District Commissioner, Mwingi, to release to their respective next of kin. However, the compensation claim for Mwaniki Mwangangi was discussed by the Ministerial Wildlife Compensation Committee and passed for payment to the Kenya Wildlife list No.2 of 16th May, 2002. The cheque is being processed by the Ministerial Wildlife Compensation Committee for dispatch to the DC, Mwingi.

**Mr. Musila:** Mr. Speaker, Sir, I want to thank the Minister - who incidentally happens to be my former colleague in the Public Service - for the answer. I am very grateful for the positive answer, but I would like the Minister to go further and give us the cheque number and the amount sent to the DC, Mwingi. Since the processing of the cheque started from the 16th of May till now, it is now five months. Why has it taken the Compensation Committee five months to process the cheque and how long will this take?

**Mr. Haji:** Mr. Speaker, Sir, I would like to assure my former boss, Mr. Musila, that I will go and look for the cheque numbers and provide them to him. I also agree with him that, occasionally, there are delays in the payment of wildlife compensation claims because of the long process involved. A claim has to go through many committees before it reaches Nairobi.

**Mr. Mwakiringo:** Mr. Speaker, Sir, wildlife has become a menace. Before the KWS came into existence, our people knew at what time to cull these animals so that their population would fit within the National Park. Now that the wildlife officers are in place, our people are not culling them and I know that the population is excessive. Could our communities be allowed to cull them so that we do not lose lives to stray wild animals?

**Mr. Haji:** Mr. Speaker, Sir, in most cases it is very unfortunate that human beings are settling closer and closer to the wildlife, hence the problem that we have.

**Mr. Munyao:** Mr. Speaker, Sir, now that the Minister has admitted that two cheques are lying with the DC, Mwingi, and one is being processed, how much are these two cheques worth?

**Mr. Haji:** In most cases, compensation for loss of life is paid for the sum of Kshs30,000.

**Mr. Musila:** Mr. Speaker, Sir, I will take my friend's word that he will provide me with the cheque numbers for the cheques sent to Mwingi and also ensure that the ones in process are soon processed. This House passed a Motion to the effect that compensation for deaths caused by wildlife be increased to Kshs1 million per person. The Minister has said that every victim will be paid Kshs30,000 which is in accordance with the current Act. Could he tell the House when the Government intends to implement the resolution passed by this House and pay victims of attacks of wildlife more than Kshs30,000, and if possible Kshs1 million?

**Mr. Haji:** Mr. Speaker, Sir, I would like to agree with the Questioner that Kshs30,000 as compensation is on the lower side. This matter will be considered seriously whenever funds are available.

**Mr. Speaker:** Next Question! Mr. Kanyauchi's Question for the second time!

**Mr. Kanyauchi:** Mr. Speaker, Sir, I am sorry I came in late. I probably did not hear the bell ring.

*Question No.498*

WILDLIFE MENACE IN GWASSI

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

- (a) whether he is aware that wild animals around Ruma National Park normally escape from the park and destroy crops and kill livestock belonging to the surrounding community; and,
- (b) what the Ministry is doing to ensure that the menace posed by the wild animals from the park is contained.

**The Minister of State, Office of the President (Mr. Haji):** Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that wild animals around Ruma National Park normally escape from the park, destroy crops and kill livestock belonging to the surrounding communities.

(b) The Government is committed to the protection of people and their property against destruction by wildlife. Thus, all cases reported to the KWS stations, including Ruma National Park, are normally attended to appropriately.

**Mr. Kanyauchi:** Mr. Speaker, Sir, it does appear that the Minister is taking a very casual attitude to this very serious matter when he says that he is not aware of this menace. In fact, in the preceding Question we discussed more or less the same Question and the issue of human and wildlife conflict is an everyday phenomenon. So, for him to say that he is not aware is being too casual with this particular Question. Be that as it may, he says that cases which are reported are attended to. I am a resident of Ruma and we have had this same problem for years despite reporting it to the KWS, the Provincial Administration and other organs. To date, nothing has been done to take care of this menace. What concrete measures is the Government or the KWS taking to ensure that this menace is eradicated?

**Mr. Haji:** Mr. Speaker, Sir, there have been isolated cases of livestock being killed by leopards and hyenas, but all these cases have been attended to by the KWS rangers after receiving reports from the local communities. There have also been isolated cases of destruction of crops by baboons and these have been attended to by the KWS as well. The leopards and baboons do not necessarily come from the national park. Some reside in the isolated bushes within community land. There are plans to capture and relocate any of these wild animals. The KWS has supported a number of projects around Ruma National Park which are communally beneficial to the local population all meant to reduce the impact of wildlife destruction to property. Also, I think the local people should clear these bushes and make use of the land in an appropriate manner.

**Mr. Kanyauchi:** It does not matter to me whether these animals are from nearby bushes or the national park. The responsibility of taking care of wild animals still rests with the Government and, in this case, the KWS. Now that the Minister has admitted that some of these animals come from nearby bushes and that they have tried to cull them but the menace has not gone away, could we, the locals, be allowed to cull the animals ourselves? We cannot stand idle and let human beings and our crops be destroyed while the Government does nothing about it. Could we be allowed to cull them ourselves as we have done this effectively for several years?

**Mr. Haji:** Mr. Speaker, Sir, I think the solution does not lie in culling. The solution lies with the people themselves. If they fence off their property properly and cultivate the land, that menace could be dealt with effectively.

*Question No.455*

UPGRADING OF MUTITO HEALTH CENTRE

**Mr. Speaker:** Mr. Kitonga still not here? His Question is dropped.

*(Question dropped)*

Let us move to Questions by Private Notice.

### QUESTIONS BY PRIVATE NOTICE

#### TERMINAL BENEFITS FOR RETRENCHED CIVIL SERVANTS

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

(a) Is the Minister aware that the 669 civil servants in Nyeri District who were retrenched by the Government two years ago have not been paid their benefits?

(b) Is he further aware that many of their children have dropped out of school for financial reasons?

(c) When will the benefits be paid to the retrenchees and to all the others who have been retrenched?

**The Minister of State, Office of the President (Mr. Haji):** Mr. Speaker, Sir, I beg to reply.

(a) I am not aware that all the 669 civil servants in Nyeri District who were retrenched by the Government two years ago have not been paid their benefits. I am aware that all civil servants who were retrenched and complied with the requirements to fill the forms prescribed for retrenchment and retirement supporting documents were paid their benefits.

(b) I am not aware. Arising from my response to part (a) above, the situation has been resolved because the Government has already provided them with their benefits.

(c) The benefits will be paid as soon as the retrenchment requirements supporting documents are filled and returned to the relevant offices. In case any of them has not been paid in full as indicated in part (a) above, he or she should contact my office as soon as possible.

**Mr. Kihoro:** Mr. Speaker, Sir, the answer that has been given by the Minister tends to ignore the fact that we are talking about 670 civil servants, like he was before he became a Minister. I have the records of all the civil servants with me here. The Government is pleading that it does not have the documentation two years after the fact, from September, 2000. In a letter that I have also received from the Office of the President, there are many benefits that were supposed to be paid. They were supposed to be paid the "golden handshake", severance pay, two-months basic salary and compassionate gratuity. That was something that was stated by the former Minister for Finance to be Kshs240,000 per individual. Why should the Government delay that payment for two years before it can pay its former servants?

**Mr. Haji:** Mr. Speaker, Sir, the Government is not delaying payment. Already, over Kshs1,600,000 has been paid in the year, 2002. We will continue paying them as soon as they comply with the requirements by filling the prescribed forms.

**Dr. Ochuodho:** Mr. Speaker, Sir, the World Bank said that it gave the Government Kshs240,000 per each retrenchee, but the Government is only talking about Kshs40,000. Now that the Government has broken ranks with the World Bank, could the Minister tell this House why the Government cannot recall those who have been retrenched because the whole programme of retrenchment has failed? Why do you still retrench them and not recall them since the World Bank has lost faith in this Government? Why do you not do away with the retrenchment, recall the retrenchees because you are unable to pay them?

**Mr. Haji:** Mr. Speaker, Sir, that is not correct. A total of 18,146 retrenched civil servants have received their dues in full. If you look at the Estimates this financial year, there is going to be another Kshs1,600,000 to be paid to those who will submit the requirement documents.

**Dr. Ochuodho:** On a point of order, Mr. Speaker, Sir. The Minister has not answered by question. My question was: Why can he not undo that retrenchment because the Government is no longer in good books with the World Bank? Why do you have to comply?

**Mr. Haji:** Mr. Speaker, Sir, we cannot undo what has already been done! The compensation will be paid whenever funds are available!

**Mrs. Mugo:** Mr. Speaker, Sir, could the Minister inform this House how much money had already come from the World Bank for the purpose of that exercise for the retrenchees and how many have been paid to date?

**Mr. Haji:** Mr. Speaker, Sir, I think we have answered this Question on many occasions and if my sister will care to put another Question, I will be able to get the figures!

**Mr. Kihoro:** Mr. Speaker, Sir, the Minister has said very clearly that 20,500 former civil servants were



retrenched. The calculation of each civil servant getting Kshs240,000 amounts to a lot of money. That is why the Minister has refused to answer the question by Mrs. Mugo. He should tell us how much money he received from the World Bank. That is the amount that we are interested in. We know that the process was shrouded in mystery and a lot of money was lost, and some of it has gone into the hands of sitting civil servants.

**Mr. Haji:** Mr. Speaker, Sir, that is a serious allegation and I would like to ask the hon. Member to substantiate! As I have stated earlier, people who have not complied with the requirements cannot be paid.

#### MUNGIKI INVASION IN OL KALOU

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

(a) Is the Minister aware that a group of people calling themselves *Mungiki*, invaded Silibwet area (also known as Boiman) in Ol Kalou Constituency and attempted to impose rules, among them:-

(i) a fee for every vehicle leaving the area with farm produce;

(ii) all women be rounded up and be forcibly circumcised?

(b) Is he further aware that when the residents resisted those moves, a physical fight erupted which left one person dead and scores injured, several of them seriously?

(c) What urgent action is the Minister taking to protect the residents of the area against threats by the invaders that they would kill 20 people to avenge the death of the person who died in the skirmishes?

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

(a) I am not aware that there was any invasion of Silibwet by the so-called *Mungiki*. I am, however, aware that there were skirmishes arising from a dispute over a fee that was being imposed by potato brokers, but which was rejected by the farmers and transporters, all of them residents of Silibwet area of Ol Kalou Constituency.

(b) I am aware that, as a result of the clash between the two groups, one person died while undergoing treatment at Nyahururu District Hospital. Two people who were seriously injured were also admitted in the same hospital. A person who was slightly injured was treated and discharged at a local dispensary.

(c) The issue of invaders does not arise as the two groups are all residents of Silibwet area of Ol Kalou Constituency. However, patrols have been intensified to prevent any revenge or recurrence of the skirmishes.

**Eng. Muriuki:** Mr. Speaker, Sir, first of all, the answer that I have is not signed and I hope it is valid. Nonetheless, I would wish, on behalf of the people of Ol Kalou and Silibwet in particular, to request the Minister to kindly be serious. One person has died and two of them were seriously injured and are in hospital.

Mr. Speaker, Sir, at the moment, the people of Silibwet feel and think that *Mungiki* must be a department in the KANU Government because any time they try to report that matter, nobody takes action. The question is: The potato brokers are traditionally paid by the buyers from outside. Those people came and said that they are called *Mungiki* and imposed a fee of Kshs20 on every bus. They went ahead and imposed another fee of Kshs200 on every vehicle. A fracas ensued and the Government did not send any security at all. Finally, the same people calling themselves *Mungiki* said: "By the way, are these women circumcised?" They rounded them up, took them into a room and started checking them one by one! That was when the fracas started and the fighting broke out. It so happened that the person who died was one of the invaders from the *Mungiki* people. The *Mungiki* have now said--

**Mr. Speaker:** Eng. Muriuki, you are now debating! Put the question!

**Eng. Muriuki:** Mr. Speaker, Sir, I was only giving the background because the *Mungiki* have now said they have to revenge their dead person by killing 20 people in Silibwet. Could the Minister explain who are the *Mungiki*, instead of saying that the people who invaded Silibwet are not *Mungiki*, and say whether they are not a department in the Government? Otherwise, why are they not taking any action?

**Mr. Kathangu:** Jambo la nidhamu, Bw. Spika. Swali ambalo limeulizwa lina maana ya kufikiriwa zaidi. Ningetaka kujua ikiwa ni haki kuuliza swali kama hilo; kutuambia ya kwamba wanawake walikusanywa, lakini hakuna hata mmoja alitahiriwa. Kuna sababu gani kuuliza swali kama hilo? Hakuna!

**Mr. Speaker:** What are you saying?

**Mr. Kathangu:** Bw. Spika, nauliza hivi: Kuna maana gani swali liletwe hapa kwamba kuna wanawake ambao walikusanywa kwa minajili ya kutahiriwa, na hakuna hata mmoja alitahiriwa?

**Mr. Speaker:** Yaani wewe ulitaka wafanywe hivyo?

**Mr. Kathangu:** Bw. Spika, ningetaka mhe. Muriuki atueleze walipowakagua, kuna yeyote aliyetahiriwa?

**Mr. Speaker:** Could we be a little bit more serious?

**Mr. Sunkuli:** Mr. Speaker, Sir, I think it is very difficult to be a little bit more serious because Mr. Kathangu was asking the Questioner what the findings of *Mungiki* were, upon investigation. That is not a very serious question to be asked in Parliament. But I think the hon. Member could spare us the rumours from his village and ask the question that I am Ministerially responsible for!

**Mrs. Mugo:** On a point of order, Mr. Speaker, Sir. It is not a rumour! The women have come out and said

that, that is happening and they are living in very great fear! Could this House protect the Kenyan women, and could the Minister be more serious in answering this Question?

**Mr. Speaker:** As you become serious, Mr. Sunkuli, Eng. Muriuki asked you whether the *Mungiki* is a department of your Government, and you have to answer that!

**Mr. Sunkuli:** No! No! Mr. Speaker, Sir, the *Mungiki* is not a department of our Government. In fact, I thought it was a department of the Opposition!

**Mr. Wamae:** On a point of order, Mr. Speaker, Sir. If it is not a department of the Office of the President, why have they been so soft with the *Mungiki* and yet, it is an unlawful society? They are always in KANU rallies!

**Mr. Sunkuli:** Mr. Speaker, Sir, actually, we have proscribed the *Mungiki* and they continue to vote for these hon. Members!

**Mr. Mwenje:** On a point of order, Mr. Speaker, Sir. Is the Minister in order to deny that when, about two or three weeks ago, we saw the *Mungiki* escorting the President with one of the presidential candidates in Nairobi? The police were watching and they never questioned anything about them!

**Mr. Munyasia:** On a point of order, Mr. Speaker, Sir. Is Mr. Sunkuli in order to continue [Mr. Munyasia] taking this House lightly? He says that *Mungiki*, after being outlawed, has continued voting for the Opposition. Could Mr. Sunkuli tell us which elections the *Mungiki* participated in to vote for the Opposition?

**Mr. Sunkuli:** Mr. Speaker, Sir, if the hon. Member has to be serious, then let everybody be required to be the same. The hon. Questioner has asked whether the *Mungiki* is a department of the Government. The Questioner knows which departments of Government exist. I am saying that the *Mungiki* is not a department of the Government. I did not say that they vote for the Opposition. I said that they vote for the hon. Member who asked this Question and not for you!

**Mr. Wamae:** On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to say that the *Mungiki* vote for me? Could he substantiate that allegation or withdraw and apologise?

**Mr. Sunkuli:** Mr. Speaker, Sir, as you know, Mr. Wamae is very popular in his constituency. He got so many votes, including those of the *Mungiki*!

**Mr. Gatabaki:** On a point of order, Mr. Speaker, Sir. The Minister said that *Mungiki* is outlawed but every day and evening, the presence of the *Mungiki* in our towns and cities is as clear as daylight! Considering the ruthlessness of this Government against societies that are outlawed, could the Minister tell the House and Kenyans why the KANU Government has not been as ruthless with the *Mungiki* sect, as it has been ruthless with other sects?

**Mr. Sunkuli:** Mr. Speaker, Sir, at the time when we were trying to arrest quite a number of outlawed persons, the hon. Member wrote in his newspaper, articles condemning the Government about it. We have taken action and arrested members of the *Mungiki* and other people who are perpetrating violence throughout this City.

**Eng. Muriuki:** Mr. Speaker, Sir, I requested the Minister to kindly be serious. I am a serious person! After that incident happened, we had a public meeting which I called and the security people came. I have a video recording of the evidence given by the residents of Silibwet. For the benefit of the House, on the question asked by my colleague, the skirmishes started when they rounded up the women! None of them was cut but in the end, one person died. The only good thing in the area is that it was one of the invaders who died. So, could the Minister tell us, if they are serious in curbing what the *Mungiki* are doing, and who was arrested in those skirmishes?

**Mr. Sunkuli:** Mr. Speaker, Sir, the hon. Member has ignored my answer. I said that, that was not an incident involving the *Mungiki*. It was an incident involving potato brokers who imposed a fee on the farmers and the motor vehicles. The farmers did not accept that fee and the skirmishes arose. If the hon. Member could go to the root cause of the problem, instead of getting a scapegoat, it might help his people!

#### POLICE SHOOTING IN MIGORI TOWN

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

(a) Could the Minister explain what circumstances led to the shooting by police on 6th September, 2002, in Migori Town, which left one person dead, several others injured and property damaged?

(b) How many people had gunshot wounds and how much property was damaged?

(c) What urgent action has the Minister taken to discipline the officers involved?

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

(a) On 6th September, 2002, a group of hawkers convened at Migori Town Centre to stage a protest to the DC's office to protest against the demolition of their kiosks by the municipal council officials. They were joined by other idlers who became unruly and blocked the Migori-Isebania Road with rocks, burning tyres and stoning motorists, thereby bringing business to a standstill. The police were called to restore order, but the demonstrators defied when ordered to disperse peacefully. Instead, they engaged the police in running battles.

(b) I am only aware of one person, the deceased Joseph Ouma, who had a gunshot wound. I am not aware of

any report on the assessment of the damage to property.

(c) An inquiry file has been opened and action will be taken after investigations have been completed.

**Mr. Achola:** Mr. Speaker, Sir, as usual, the Ministry is trying to protect the police. The answer he has given is extremely unsatisfactory. To start with, the police shot a total of 13 people, killing one of them, and the Minister is saying that he is not aware of that. What investigations has he really carried out? Could he inform the House why the police had to use live bullets on innocent demonstrators who were demonstrating legally?

**Mr. Sunkuli:** Mr. Speaker, Sir, if the police had used live ammunition on all those people, they would have wounded very many people. But that was an incident where, in trying to control the unruly crowd, the police were attacked by the mob. In fact, they damaged a number of rifles that were there and injured three police officers; namely, P.C. Edward Odhiambo, P.C. Ronald Matoleke and P.C. Patrick Makolo. That was an incident where the people were violent and the police had to use moderate force to ensure that they brought them to book!

**Mr. Munyasia:** Mr. Speaker, Sir, could the Minister tell us whether Joseph Ouma was shot by the roadside or in the estate?

**Mr. Sunkuli:** Mr. Speaker, Sir, I do not have that information. But I know that he was shot in the course of marching between the kiosks and the DC's office.

**Mr. Nguni:** Thank you, Mr. Speaker, Sir. From the Minister's answer, he has described some demonstrators as idlers. Could he tell the House whether Joseph Ouma was a resident of Migori, a Kenyan or an idler?

**Mr. Sunkuli:** Mr. Speaker, Sir, I used the word "idler" to distinguish between the kiosk owners who were going to demonstrate to the DC's office and people who were not kiosk owners and had no particular interest in the demonstration.

**Dr. Ochuodho:** Thank you, Mr. Speaker, Sir. Migori Town is normally peaceful. What the out-going ruling party will be best remembered for is senseless destruction of kiosks across the country. Could the Minister tell us why he was destroying these kiosks which was the root cause of the problem? Why was he destroying those kiosks and has the objective been achieved?

**Mr. Sunkuli:** Mr. Speaker, Sir, I do not know why he is describing us as the "out-going ruling party". As he knows, we are also the "in-coming" as soon as the elections are held. The hon. Member has also asked me about demolitions of kiosks, but as the Chair knows, that portfolio does not fall under my department.

**Mr. Achola:** Thank you, Mr. Speaker, Sir. First of all, I would like to correct the Minister; that Mr. Joseph Ouma was actually shot inside a shop far away from the scene he has claimed was the source of the problem. Finally, could the Minister explain to the House how independent the inquiry team that he has set up to investigate the circumstances is? This is because the people who were involved in the shooting were the police, and if it is them who will carry out the investigations then we might as well forget about it. Could the Minister tell us when the investigations will be completed, and whether the inquiry team will be independent?

**Mr. Sunkuli:** Mr. Speaker, Sir, the inquiry team will be an objective one.

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

**Mr. Speaker:** Order! I am sorry! We will not be in one Question forever!

Eng. Toro, ask your Question!

#### DEATH OF MR. KIBE

**Eng. Toro:** Mr. Speaker, Sir, I beg to ask the Minister for Foreign Affairs and International Co-operation the following Question by Private Notice.

(a) Under what circumstances was Mr. Charles Kibe, a humanitarian worker employed by the World Vision, killed in Sudan on Monday, 29th July, 2002?

(b) Could the Minister state the whereabouts of Mr. Andrew Omwenga, a colleague of Mr. Kibe, who was taken hostage by the killers?

**Mr. Ndicho:** On a point of order, Mr. Speaker, Sir. The Order Paper I have right now indicates that Question No.3 by Private Notice is mine.

**Mr. Speaker:** Order! There is a correct Order Paper at the entrance!

Mr. Assistant Minister, reply!

**The Assistant Minister for Foreign Affairs and International Co-operation (Mr. Affey):** Mr. Speaker, Sir, I beg to reply.

(a) I am aware that Mr. Charles Kibe, a Kenyan national was killed by a militia group on 29th July, 2002 during the attack on the World Vision offices in Southern Sudan. Mr. Kibe's body was immediately transferred to Lokichoggio in Kenya and the Ministry was informed of this incident on the same day, 29th July, 2002 by the Kenyan Embassy in Khartoum. The Government of Kenya took up the matter with the relevant Government authorities in Khartoum and was assured that investigations were being carried out.

(b) I am happy to report that Mr. Andrew Omwenga, a Kenyan national working with the same organisation

who was taken hostage by the same militia group, was later released and flown back to Nairobi and is now working in the World Vision offices here in Nairobi.

**Eng. Toro:** Mr. Speaker, Sir, I would like to sympathise with Mr. Ndicho because he does not think when he is on the other side of the House. He used to think properly when he was in the Opposition.

**Mr. Ndicho:** On a point of order, Mr. Speaker, Sir. My thinking is as good as that of Aristotle. Did you hear what Eng. Toro said; that when I am on this side of the House I do not think as I was thinking when I was on the other side of the House? That is an insult!

*(Laughter)*

**Mr. Speaker:** Order, hon. Members! Eng. Toro, did you say that your colleague on the other side of the House does not think?

**Hon. Members:** No! No!

**Mr. Speaker:** Order, hon. Members! I am directing the question to Eng. Toro and not to all of you!

**Eng. Toro:** Mr. Speaker, Sir, Mr. Ndicho is holding the wrong Order Paper when everybody else has got the correct one.

**Mr. Speaker:** Order, Eng. Toro! I have absolutely no doubt in my mind that you were never elected to Parliament to come and insult others! Did you or did you not tell Mr. Ndicho that he does not think when he is on the other side of the House? That is not part of your mandate! Could you withdraw and apologise?

**Eng. Toro:** Mr. Speaker, Sir, if I said so, I withdraw and apologise.

**Mr. Speaker:** Eng. Toro, you must unconditionally apologise! I would like to warn you, and the rest of the House, that no hon. Member was elected to this House by the electorate to insult others. The rules are specific: No hon. Member is allowed to use insulting or provocative language. Would you be happy if you were insulted? Will you apologise now?

**Eng. Toro:** Mr. Speaker, Sir, I would like to withdraw and apologise.

**Mr. Speaker:** Very well!

**Mr. Nyanja:** On a point of order, Mr. Speaker, Sir. There is some element of likelihood that Mr. Ndicho is mesmerised by being on the side of the Government.

*(Laughter)*

That is not being done properly. Eng. Toro is an engineer and he did something to do with thinking, brains and---

**Mr. Speaker:** Order! Mr. Nyanja, ordinarily, you are one hon. Member who does not use provocative language here, at least, for the last four years. You are just attempting to be what you used to be and you are making a very bad job out of it! Please, you are well advised to stay the way you have been always.

Hon. Members, every day I get more confused than I was yesterday in the manner in which you sit and applaud. I hope, in all honesty, that when we do prepare the next Constitution this issue will be addressed adequately so that Mr. Speaker can know where hon. Members are. As of now, I am a Speaker of political nomads. This is a very interesting situation, but I have to live through it, and you too, hon. Members, attempt to live through it.

*(Capt. Ntwiga murmured something)*

Order! Who is that again! Is it Mr. Maundu? I can tolerate nomadism, but I will not tolerate hon. Members speaking when I am on my feet! So, you are living through very interesting times with me, but I truly hope that this issue will be addressed effectively. But I am also encouraged that as a situation develops, there will be upheavals, ups and downs, de-tours and contours before we ultimately get our course. I truly believe we will. With that, could we now seriously continue?

**Mr. Kathangu:** On a point of order, Mr. Speaker, Sir. We generally and very sincerely sympathise, particularly now when the Chair says that it is confused every moment; more and more as the days go by. We would also want to know whether the Chair sympathises with us. We would want to know, if the Chair is so confused, how much more this nation would be confused, where they are all looking upon the Chair to give direction as the Chairman of the Standing Orders Committee?

*(Laughter)*

**Mr. Speaker:** Order! Order! Can I assure the hon. Member that, as I am looking at this situation with amazement, my thoughts and insight as to what ought to be, is getting clearer and clearer by the day. I can tell you, I am training all my intellectual ability towards solving that issue, if I am called upon to do so.

(Applause)

**Dr. Ochuodho:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Sorry! We must continue!

**Dr. Ochuodho:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order, Dr. Ochuodho! Dr. Ochuodho, you have a very interesting feeling that, unless you have participated in every issue in this House, that issue has not been dealt with!

Proceed, Eng. Toro!

**Eng. Toro:** Mr. Speaker, Sir, the Minister has said that the Government was assured of investigations. Could the Assistant Minister tell this House whether he has received any investigations from Sudan, and what could be Government policy on Kenyan nationals working overseas?

**Mr. Affey:** Mr. Speaker, Sir, we have not received the report from the Sudanese Government. We are hoping to receive that report as soon as possible. So, the moment that information is received, it will then be communicated to the House.

**Mr. Kihoro:** Mr. Speaker, Sir, Mr. Kibe was killed by a militia group that is fighting against the Government in Khartoum. Is the Assistant Minister right to tell this House that investigations are being carried out by a Government that has lost control of its Southern part of the country? It is a high time they gave independence to that part of the country!

**Mr. Affey:** Mr. Speaker, Sir, as of now, we can only deal with the Government of Sudan, and investigations are being conducted by the Government. Whether they have control of some parts of their country or not, it is not something we can confirm.

**Mr. Sungu:** Mr. Speaker, Sir, the situation in Sudan is very serious indeed. That is a Government which is, day in, day out, bombing civilians, hospitals, markets, name it! I have been there and I have seen it with my own eyes! This Government is constantly treating the Sudanese Government with gloved hands, instead of bare knuckles! Would this Assistant Minister undertake that they would actually go on and recognise the Government in Southern Sudan, because there is a new government in Southern part, which should be recognised? It is a country of its own, and it is bigger than Kenya!

**Mr. Affey:** Mr. Speaker, Sir, I agree with the hon. Member that the situation in Southern Sudan is serious and that is why, as a Government, we have made every effort to make sure that peace in Sudan prevails.

As I speak here now, Kenya is in the forefront, under Inter-Governmental Authority on Development (IGAD), in terms of finding a lasting solution to problems in Sudan. I think, very soon we shall have a breakthrough, and that will be for the benefit of the people of Sudan and for this nation.

**Eng. Toro:** Mr. Speaker, Sir, His Excellency the President has urged Kenyans to go out and become expatriates in other countries. If they go out, then the Government should be able to have a policy on the safety of Kenyans working overseas. I happen to have been a victim, when I was in Kinshaha. There was a military uprising, and we were stranded in the Kenyan Embassy for three days. When all other countries were sending planes to evacuate their nationals, we Kenya nationals could not get evacuation from our Government. Is the Government intending to have a policy for the safety of Kenyans working overseas?

**Mr. Affey:** Mr. Speaker, Sir, we advise Kenyans travelling overseas that, they should visit our Missions abroad for purposes of advice. Where the Mission advises in terms of security implications, Kenyans should be able to heed that advice and avoid areas that they think are risky to their lives.

#### ILLEGAL ALLOCATION OF THIKA CEMETERY

**Mr. Ndicho:** Mr. Speaker, Sir, I beg to ask the Minister for Local Government the following Question by Private Notice.

(a) Is the Minister aware that Councillor Philip Muonki of Thika Municipal Council, has been allocated the Kiandutu Cemetery where he erected beacon recently?

(b) Is he further aware that this is the only cemetery remaining in Thika Town, as the other one is full?

(c) Could he revoke the allocation?

**The Assistant Minister for Local Government (Mr. Kiangoi):** Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that the portion of land measuring two hectares, earmarked for future expansion of Kiandutu Cemetery, was allocated by the Commissioner of Lands, on 1st of December, 1994.

(b) I am also aware that, that is the only cemetery remaining in Thika Town, as the other one is full now.

(c) I am going to take up the matter with my counterpart in the Ministry of Lands and Settlement with a view to reverting the land to its original intended purpose.

**Mr. Ndicho:** Mr. Speaker, Sir, I think the Assistant Minister has got moral obligation or he should morally apologise to this House. This is because the last time I asked this Question, his answer was: (a) "I am not aware. (b), I am not aware; and (c), in view of parts "a" and "b", "c" does not arise."

After I protested and produced the map which shows the area marked for this cemetery, the Assistant Minister has now come up with the correct answer. So, he should apologise to this House, first, for giving a wrong answer; and after my protest and after having given him the documents, he now comes up with a correct answer.

**Mr. Speaker:** Very well, Mr. Ndicho. He will respond.

**Mr. Kiangoi:** Mr. Speaker, Sir, the hon. Member may as well be aware that, when people want to convert land to other uses, other than the intended purposes, they draw up part development plans. I was relying on a part development plan, which I had tabled in this House. Mr. Ndicho later brought another part development plan. When the two were not agreeing, I went further to investigate, hence I came up with this reply, which has satisfied him.

**Mr. Ndicho:** Mr. Speaker, Sir, although that is not an apology, I can still take it. But I am happy that he has now agreed with me that this land belongs to the cemetery, and it has been hived off by a councillor in Thika Municipal Council. Now that he has said he is going to liaise with his counterpart in the Ministry of Lands and Settlements, could he assure this House that he is going to write a letter to the Minister for Lands and Settlement to do exactly what he has answered here, and that he is going to order Thika Municipal Council to fence this land to ward off future grabbers?

**Mr. Kiangoi:** Mr. Speaker, Sir, I assure the hon. Member that we shall communicate.

**Mr. Kiunjuri:** Mr. Speaker, Sir, you know that each and every one of us attends funerals. The President, you and I, attend funerals. But this Government allows some citizens to disturb the peace of the dead. It is an insult to disturb the dead when they are sleeping peacefully. In Nanyuki Town, plots meant for cemeteries have been allocated to individuals. Those individuals have already constructed buildings on those plots. Could the Assistant Minister tell this House whether this Government has respect for the dead or not? If so, what immediate measures is the Government taking to ensure that their peace is guaranteed?

**Mr. Kiangoi:** Mr. Speaker, Sir, the Government of the Republic of Kenya has made provision for the dead, hence, the presence of cemeteries in all urban areas. My answer to this Question would go a long way to prove that we have respect for the dead. Now that we have discovered that land meant for resting of the dead has been converted to other uses, we shall give it to its rightful owners who are the dead.

**Mr. Ndicho:** Mr. Speaker, Sir, I am the Member of Parliament for Juja Constituency. I am the hon. Member for both the living and the dead. I asked the Assistant Minister here---

**Mr. Munyasia:** On a point of order, Mr. Speaker, Sir. All of us know that the dead go to heaven. They do not stay in the cemeteries. Is the hon. Member in order to claim that he is an hon. Member of the dead, when we know that the dead are not here with us?

**Mr. Ndicho:** Mr. Speaker, Sir, I know that those people who die believing in the Lord Jesus Christ go to heaven and live with Him happily forever. Those who died without believing in Him go to what we call biblically eternal condemnation. But I have a moral obligation to protect the bodies that have been buried in that cemetery until the time when Jesus Christ will come back and resurrect them.

**Mr. Speaker:** Order! As you know, I am a custodian of this House; a House that houses living hon. Members of different religious beliefs. I will not allow this House to be turned into a church. I say a prayer myself here that caters for all religions. It will continue that way. I will advise Mr. Ndicho and Mr. Munyasia to have a little fellowship outside the Chamber, so that they would understand what this issue is all about.

**Mr. Ndicho:** Mr. Speaker, Sir, I was answering a question from Mr. Munyasia. But now that the Assistant Minister has admitted that he was given the wrong information by his officer, what action will he take against him because this has been the trend and we have complained about it all along? If I did not pursue this issue, this cemetery was to be allocated to private developers. What action will he take against that officer so that next time he gives him the correct answer?

**Mr. Kiangoi:** Mr. Speaker, Sir, we shall look into the matter and take such action as may be appropriate.

**Mr. Kathangu:** On a point of order, Mr. Speaker, Sir. You may have heard the Assistant Minister say very loudly that they will give that cemetery back to the dead. That is worrying because both Mr. Ndicho and the Assistant Minister are actually talking about belonging to a community of the dead. They are not talking about Kenyans any more. The Assistant Minister said he will look into it, and give the plot back to the dead. Mr. Ndicho is talking about the dead. What is it we are talking about here?

**Mr. Speaker:** Order! Let me tell you the following: I think the Assistant Minister is in charge of the living

persons and their interests. But he is also in charge of the facility used to dispose of the bodies of those who have died. But I wish to say the following as a lawyer because Mr. Kiangoi is also a lawyer. He knows as much as I do, that a person once dead ceases to own any property. Once dead, you do not own anything. I suppose in all this heated debate, he forgot that. But I am sure he knows that. So, could we now dispose of that matter? That is the end of Question Time.

All those hon. Members who wish to seek Ministerial Statements or those hon. Ministers who want to make Ministerial Statements, I will allow them to do so during the Zero-Hour today.

### COMMUNICATIONS FROM THE CHAIR

#### DISTINGUISHED GUEST FROM BOTSWANA

Hon. Members, I am sorry to have done this at the end of Question Time. It is my pleasure to introduce to you, hon. Ambrosia Masalila from the Parliament of Botswana who is here to study the operations of our Parliamentary Service Commission and the general activities of our Parliament. Hon. Ambrosia Masalila has been here for the last three days and will be leaving tomorrow. On your behalf and on my own behalf, I would like to wish him a very nice stay for the balance of the time and a very good voyage back home.

*(Applause)*

I wish to make a ruling. So, I will sit one minute and then all the hon. Members at the Bar can proceed to take their places. I do not want to keep them standing while I go through my communication. Will the hon. Members at the Bar take their positions

*(Several hon. Members entered the Chamber)*

#### CLOSURE OF DEBATE ON FINANCE BILL

I wish to make the following communication from the Chair. Hon. Members, you will recall that yesterday I undertook to make a ruling on the events surrounding the closure of debate on the Finance Bill. From the records of the HANSARD, the following events took place.

(i) The Member for Nithi, Capt. Ntwiga claimed to move that, and I quote: "The Mover be now called upon to reply." He was entitled to do so under Standing Order No.80(1), which provides that:-

"After the question on a Motion the Mover of which has a right to reply has been proposed, a Member rising in his place, may claim to move "That, the Mover be now called upon to reply."

(ii) The Chair did accede to the request and put the Question which was carried.

(iii) Immediately after the Question was put, several hon. Members rose in their places to demand a Division in accordance with Standing Order No.53(1)(b).

(iv) The Members having attained the requisite number under Standing Order No.53(1)(b), the Chair ordered the Division Bell to be rung in accordance with Standing Order No.50(4)(1).

In the meantime, there was disorder in the House and it was at this stage that I resumed the Chair. After consultation, I promised to peruse the HANSARD and make my considered communication from the Chair today. The House was adjourned under Standing Order No.17.

From the foregoing, it is clear to me that the hon. Member for Nithi acted within the Standing Orders in moving a closure and that the Chair exercised its discretion in accordance with the Standing Orders to accede to the request. I have been requested to review the decisions made both by the Temporary Deputy Speaker and the House.

On the decision of the Temporary Deputy Speaker, a ruling was made in this House by my predecessor, the late hon. Humphrey Slade, on 26th June, 1963, that there is no appeal to Mr. Speaker on a ruling made by the Chairman of the Committee of the Whole House, in this case the Deputy Speaker or the Temporary Deputy Speaker when exercising the powers of the presiding officer in accordance with Standing Order No.2(b). On the decision of the House, the Chair has absolutely no power or authority to overturn its decision, and it is only the House which can rescind its decision in accordance with Standing Order No.42. So, under the circumstances, I wish to rule as follows.

One, the House will proceed to Division to determine whether the Mover will be called upon to reply or not. Two, the Division Bell will be rung for five minutes, immediately after I sit down, as provided for by the Standing Orders. Three, if the House confirms the decision arrived at yesterday, it will proceed to Committee to consider the contents of the Bill. I will request that, if that be the position, hon. Members will be given sufficient latitude to

scrutinise the provisions of the Bill while in Committee.

Finally, may I say that the ruling of the Chair can only be re-considered as there are no set procedural mechanisms for an appeal.

Thank you.

*(Applause)*

Hon. Members, as I said, we will skip Order Nos.7 and 8 and proceed to Order No.9, which is the Finance Bill, to decide, in accordance with the Standing Orders, whether the Mover will be called upon to reply. If the Question is negatived, then debate on the Bill will proceed. If it is affirmed, the Mover will be called upon to reply. Therefore, the House will now proceed to determine that issue.

So, let us proceed to the Finance Bill.

## BILL

### *Second Reading*

#### THE FINANCE BILL

*(The Minister for Finance on 16.10.2002)*

*(Resumption of debate interrupted on 16.10.2002)*

Hon. Members, I now order that the Division Bell be rung for five minutes.

*(The Division Bell was rung)*

**Mr. Speaker:** Order! Order! Hon. Members, the five minutes' time is now up. I, therefore, order that all the doors leading into the Chamber, including those behind the Chair, be now locked.

*(The doors were locked)*

Now that the doors have been locked, I further order that the Bar be now drawn.

*(The Bar was drawn)*

The Bar having been drawn, no hon. Member is allowed to leave or get into this Chamber. Only those hon. Members who are present will remain here; they will not leave.

I wish, first of all, to announce the names of the Tellers. For the "Ayes", it will be Eng. Joshua Toro and hon. David Kombe. For the "Noes", it will be hon. John Katuku and hon. Eric Morogo. When I put the Question, those hon. Members in favour of the Motion will proceed to my right and those against it will proceed to my left. You will have 15 minutes to get into the voting booths. After 15 minutes are over, I will draw your attention to that fact, and any hon. Member who will not have got into the voting booth at that time will not be allowed to vote. So, you understand the urgency of this issue. So, when I ask you to proceed to the lobbies, you will do so with due diligence and vote.

Finally, you are not obligated to vote either way. If you do not wish to vote for either Ayes or for Noes, you will approach the Clerk-at-the-Table and record your name as an abstainer; you may abstain from voting.

I just want to make clear what happens after the result of the Division is known. If the result will affirm the decision of the House yesterday, which was that the Mover be called upon to reply, then I will call upon the Minister to reply. We will go to Committee of the Whole House another day and not today, because the Committee Stage is a different process. If the result is that the Motion is defeated, then I will not call upon the Mover to reply. We shall then revert to the situation where we were before the Motion to call upon the Mover to reply was moved; we will resume general discussion of the Bill. So, I hope everybody now understands. After I put the Question you will proceed to vote!

## DIVISION

*(Question put and the House divided)*



*(Question carried by 76 votes to 70)*

*(Applause)*

**AYES:** Messrs. Affey, Dr. Anangwe, Messrs. Arap-Kirui, Biwott, Chanzu, Ekirapa, Dr. Galgalo, Messrs. Galgalo M.A., Githiomi, Haji, Hashim, Jirongo, Kalweo, Kamolleh, Kariuki, Karume, Keah, Col. Kiluta, Messrs. Kimani, Kimkung, Kittony, Kitur, Kochalle, Kombe, Kosgey, Koske, Lagat, Leting, Lomada, Lotodo J.D., Maj. Madoka, Messrs. Maizs, Eng. Manga, Messrs. Maore, Marrirmoi, Maundu, Mbitiru, Mkalla, Mohamed, H.M., Mohamed M.A., Mokku, Morogo E.T., Morogo W.C., Moroto, Mudavadi, Mugalla, Muiruri, Murathe, Muturi, Mrs. Mwewa, Messrs. Ndambuki, Ndicho, Ngala, Ng'eny, Ngutu, Njuki, Ntutu, Capt. Ntwiga, Messrs. Nyagah J., Obure, Okemo, Dr. Omamo, Messrs. Kiangoi, Prof. Ongeru, Messrs. Poghio, Sambu, Samoei, Sasura, Shakombo, Shambaro, Shidiye, Sirma, Sumbeiywo, Sunkuli, Dr. Wako and Dr. Wamukoya

Tellers of the Ayes: Eng. Toro and Mr. Kombe.

**NOES:** Mr. Achola, Prof. Anyang'-Nyong'o, Dr. Awiti, Messrs. Ayoki, Galgalo M.M., Gitonga, Imanyara, Kaindi, Kamanda, Kamotho, Kanyauchi, Kathangu, Karauri, Katuku, Keriri, Khamasi, Khaniri, Kibicho, Kihara, Kihoro, Kikuyu, Kiunjuri, Kuria, Maitha, Dr. Masakhalia, Messrs. Mboko, Michuki, Muchiri, Mugeke, Mrs. Mugo, Messrs. Muihia, Munyasia, Munyao, Munyes, Dr. Murungaru, Eng. Muriuki, Messrs. Musila, Mutiso, Muya, Mwakiringo, Mwalulu, Mwangi P.K., Mwenje, Mwiraria, Nderitu, Ndwiga, Ngure, Ntimama, N. Nyagah, Nyang'wara, Nyanja, Dr. Oburu, Dr. Ochuodho, Messrs. Ojode, Omamba, Omingo, Onyango, Omore, Osundwa, Otita, Dr. Otula, Messrs. Raila, Shitanda, Sungu, Thirikwa, Eng. Toro, Messrs. Wamae, Wambua, Wanjala and Waithaka.

Tellers of the Noes: Messrs. E.T. Morogo and Katuku.

**ABSTENTIONS:** Nil.

**Hon. Members:** Super Alliance, shame! Shame!

**Mr. Speaker:** Order! Order! Order, hon. Members! Yes, Mr. Minister!

**The Minister for Finance** (Mr. Obure): Mr. Speaker, Sir, I want to take this opportunity to thank everybody who contributed to this Bill. I took considerable time to explain the various issues that were raised in the Financial Statement, and I know I will have another opportunity to explain during the Committee Stage. At this stage, I do not wish to say anything more.

With those few remarks, I beg to move.

**Hon. Members:** Well done!

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)*

**Hon. Members:** Shame! Shame!

**Mr. Speaker:** Order, hon. Members! We now revert to Order No.7; Procedural Motion. We will proceed from there and then we will go to Order No.8.

Next Order!

## PROCEDURAL MOTION

### EXTENSION OF HOUSE SITTINGS

**The Minister for Transport and Communications** (Mr. Mudavadi): Mr. Speaker, Sir, I beg to move:-

THAT, notwithstanding the provisions of Standing Order No.17 (1) and (2), this House orders that the sittings of the House be extended as follows for the remainder of the Session:-

Tuesdays from 6.30 p.m. to 8.00 p.m.

Wednesdays from 6.30 p.m. to 8.00 p.m., and,

Thursdays from 6.30 p.m. to 8.00 p.m.

Mr. Speaker, Sir, we discussed this particular Procedural Motion in the House Business Committee, and we unanimously agreed that we needed to extend the sitting hours to allow the House to be able to deal with several Bills that are still pending. I am sure the hon. Members can see that some of them are already listed in the Order Paper today. These include the Finance Bill, which will now go to the Committee Stage. We also have important Bills, like the Presidential Retirement Benefits Bill, and the Appropriation Bill which is yet to come to this House and several

others which we believe, by extending the sitting hours, we should be able to dispose off, including the issue of the election rules, which we hope the House will also deal with in the course of these extended sitting hours.

Mr. Speaker, Sir, it is a Procedural Motion and I would like to urge all hon. Members to support it so that we can get down to serious business.

With those few remarks, I beg to move.

**The Minister for Finance** (Mr. Obure) seconded.

*(Question proposed)*

**Mr. Munyao:** Mr. Speaker, Sir, I rise to oppose this Procedural Motion because the explanation that has been given by the Acting Leader of Government Business is not convincing at all. Even if we sat here from Monday to Sunday and extended the sitting hours to midnight, there is no way we are going to finish whatever business is there. We have got a lot of business which is not even listed on the Order Paper today. We have got to take time also to discuss the constitutional review which has not even been brought here. I do not see why we should deceive ourselves that by extending the sitting hours by another one-and-a-half hours, we will have achieved anything. In any case, it is most certain that during those days, because hon. Members have other things to do; we will not be able to get quorum in this House. Therefore, why sit and soon after Six o'clock, there is no quorum?

With those few remarks, I oppose. I hope the side opposite me will also support us.

**Mr. Speaker:** Order! Order! Let us be very brief, because I intend to dispose of this issue as quickly as I can.

**Mr. N. Nyagah:** Mr. Speaker, Sir, first of all, I want to congratulate the KANU side for being disciplined and being able to come when they are called. I want to appeal to the side behind me that they come when they are asked to come. I want to address the people sitting behind me and I think the ones that are here---

*(Loud consultation)*

**Mr. Speaker:** Order! Order! Mr. N. Nyagah, if you want to address your colleagues, called a *kamkunji*, but for now, address me!

*(Applause)*

**Mr. N. Nyagah:** Mr. Speaker, Sir, through you, I would like to address the hon. Members behind me. In so doing, I would like to tell them about hon. Members of Parliament who cannot be trusted by the people sitting behind me. As we go on until 8.00 p.m. the Government side is going to do wonders to you. You must make sure that you come and remain in Parliament until 8.00 p.m., because they will come with crazy Bills and they will beat you. With that consensus, I would like each one of you to pass that message to other hon. Members, because we have the superiority and the numbers to beat them. Hiki kimekuwa kionjo tu, cha kuwafurahisha.

I beg to oppose.

**The Minister of State, Office of the President** (Mr. Haji): On a point of order, Mr. Speaker, Sir. Is the hon. Member in order to address their own problems on the Floor of the House, when he can sort them out, outside the House?

**Mr. N. Nyagah:** You are new in Parliament! You have only served one term!

**Mr. Speaker:** Order, Mr. N. Nyagah! Cool down!

**The Minister for Trade and Industry** (Mr. Biwott): Mr. Speaker, Sir, I stand to support the Motion. In supporting the Motion and the Chair for asking everybody to cool down, I would like to address this issue in terms of the requests of this House. There has never been any time when this House has been satisfied with the time available. There has always been need for this House to extend time in order to deliberate on all the Bills. The House Business Committee decided to give this House extra time in order to get ample time to discuss the remaining Bills, which are very important.

Mr. Speaker, Sir, as usual, this is a Government which cares. This caring Government has decided that we do business objectively, calmly and without any fear. I hope that the proposal to extend the time by the Deputy Leader of Government Business will meet the aspirations of this House, so that we can deliberate on Bills carefully and without any malice. Hon. Members on the opposite side of the House should not be worried too much about the strength of KANU, because KANU will always care for them. They should not be frightened by that caring spirit.

With those few remarks, I beg to support.

**Mr. Raila:** Mr. Speaker, Sir, I would like to congratulate my former colleagues for the victory, and tell them that they are actually basking in temporary glory. They are like animals which are in a holding ground which are being

fattened for the---

**Mr. Speaker:** Order! Order! Mr. Raila, you are absolutely irrelevant! Will you be relevant to the topic?

**Mr. Raila:** Mr. Speaker, Sir, all that I am trying to say is that---

*(Loud consultations)*

**Mr. Speaker:** Order, hon. Members! Please, listen to him!

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

**Mr. Speaker:** Out of order! Will you sit down, Mr. Ndicho!

**Mr. Raila:** Mr. Speaker, Sir, I rise to support the Motion, because the day before yesterday, in the House Business Committee, we extensively discussed this matter and we resolved to recommend to the House that there is need for extension of our sittings to be able to deal with very pressing business which is pending. One of those pending businesses is a vote of no confidence Motion, of which Notice has been given here. That is why I am saying that these gentlemen are basking in temporary glory. We are bringing a vote of no confidence Motion to send them home, and most of them will not come back to this House again.

**Mr. Speaker:** I will dispose of this issue because the law allows me to do so by putting the Question.

*(Loud consultations)*

Order! Order! Some hon. Members will not give their one minute in their presence in this House to hear and understand a matter on which they are going to vote. How do you vote if you cannot hear what I am saying? Will you please listen, so that you can vote when you have heard?

*(Question put and agreed to)*

### COMMUNICATION FROM THE CHAIR

#### PROCEDURE FOR ADOPTION OF NATIONAL ASSEMBLY AND PRESIDENTIAL ELECTIONS REGULATIONS 2002

**Mr. Speaker:** Hon. Members, before we get to the next Order, which is Order No.8, I wish to explain the procedure. Hon. Members will notice on the Order Paper that the Motion reads as follows:-

"Mr. Speaker do now leave the Chair"

After that Motion is carried, the House will be constituted as a Committee of the whole House. The idea here is that we are debating election rules. If we do it in plenary, so that we just move that the House approves the regulations in plenary, the final Question will be put without giving the opportunity to hon. Members to scrutinise each rule individually. So, to enable hon. Members to scrutinise each rule individually and amend if they so wish, either by deletion, addition or subtraction, we have decided that we have plenary on the general debate, which is that, Mr. Speaker do now leave the Chair, and then the Committee Stage will be limited to scrutinising each rule individually.

Mr. Speaker, Sir, hon. Members will recall that when we approved the Treaty for East African Co-operation, we used this similar procedure. So, we will begin by being in the plenary in a general Motion: That, Mr. Speaker do leave the Chair. If that is carried, we will go to the Committee of the whole House where the House will scrutinise, in Committee, every single rule and a report will be made to the House in the usual fashion. I hope it is understood.

### MOTION

THAT MR. SPEAKER DO NOW LEAVE THE CHAIR

Approval of National Assembly and  
Presidential Elections Regulations 2002

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, I beg to move the following Motion:-  
THAT, this House adopts the draft National Assembly and Presidential Elections (Registration of Electors) Regulations, 2002, and the Presidential and Parliamentary Elections (Amendment) Regulations, 2002 laid on the Table of the House on Thursday, 8th August, 2002.

Mr. Speaker, Sir, I would crave leave to refer extensively to my notes in moving this Motion which is very important. It is to enable, as I have explained, this House to discuss these rules in greater depth. As we all know under Section 1(a)---

**Mr. N. Nyagah:** On a point of order, Mr. Speaker, Sir. I would like the Chair's indulgence to probably request or order the Clerk to avail more copies of the Election Regulations because most of us do not have any. They are finished.

**Mr. Speaker:** It is, in fact, a very reasonable request. Copies of those rules should have been brought here because we are scrutinising them. So, I now order that more than sufficient copies of those Election Rules be availed at the Bar for Members to take. They should be brought here any time now. Could the Clerk ensure that those copies are brought down here immediately?

Proceed!

**The Attorney-General (Mr. Wako):** Mr. Speaker, Sir, the rules which we are about to scrutinise properly are very important in any democratic system. As you are aware, under Section 1(a) of the Constitution of Kenya, Kenya is a multiparty democratic state. In any democratic state the critical issue is whether people are being given the opportunity to either stand as leaders or to vote for leaders. The right to vote is a key right of any person in a democratic state. That right to vote must be genuine and it must be exercised periodically to elect leaders of one's choice. Whereas the general principles of these issues of democracy are set out in the Constitution---

**Mr. Imanyara:** On a point of order, Mr. Speaker, Sir. I rise to seek your clarification because, just this afternoon, the Chairman of the Parliamentary Select Committee on the Constitutional Review has tabled his Report, and annexed to that Report is a draft constitution that will be debated in this House. That draft constitution has provisions for making rules and carrying out elections. Are we not pre-empting the discussions of the Select Committee's Report by going through these rules? I seek your guidance.

**Mr. Speaker:** Order! Mr. Imanyara, first of all, it is not the position that a draft constitution was tabled in this House today. You remember an attempt was made to do that by Mr. Raila Odinga which I refused. The only thing that was tabled in this House is a Report of the Select Committee on their workshop in Mombasa. Even if the draft constitution was tabled as an annexe to the report of the Select Committee, it remains just a draft. It has no force of law. I know of no Bill pending before this House to adopt a new constitution as yet. So, we will not be attempting anything else. So, this Motion is perfectly before the House. Let the hon. Member scrutinise it and please help him to improve the rules. I also thought at one stage this House had debated something to do with the amendment of the rules.

Could you proceed?

**Mrs. Mugo:** On a point of order, Mr. Speaker, Sir. Considering that we have just received this document and the original rules are not attached to it, how would we be able to scrutinise it properly? Would it not be natural justice if we at least had a copy of the original rules and were given time to scrutinise certain important matters?

**Mr. Speaker:** Order! Hon. Members, you must do your job too. I try to help. I have just said that the copies of those rules be brought here. As a matter of fact and public record, these rules were tabled on 8th August, this year. I do understand that hon. Members receive an enormous amount of documents in a very small room, chaotic as it were because of lack of space. So, I have ordered that you get those rules. The Attorney-General is explaining them. We are not yet in the Committee Stage, to scrutinise them. We are still in plenary stage. That is why Mrs. Mugo, if you will recall what I said much earlier, to enable the hon. Members to scrutinise the rules, we will do this in two stages: The first one is plenary for general principles and the second stage for particularly perusing those rules. Those rules will be availed so that you can discuss the general principles. Mr. Attorney-General, this matter is of great interest to hon. Members because they are the greatest consumers of these rules. They are the first consumers of what you intend to do. Take them slowly over the rules and let them understand every single rule. Let them give whatever suggestion they can. Do not ram it over them because they may be the first victims of those rules. So, take them slowly and very kindly.

Now proceed.

**The Attorney-General (Mr. Wako):** Thank you, Mr. Speaker, Sir. Indeed, I will take them slowly. I do support your observation on the point raised by Mr. Imanyara, that any draft constitution that is presented before this House would be improperly before this House because according to the Constitution of Kenya Review Commission (CKRC), we are now at the stage of considering, by public debate and so on, the Report and draft constitution by the CKRC. This is the stage at which we are. As you are aware, the next stage is the convening of the National Constitutional Conference (NCC) which I believe will be convened on 28th October. The list of delegates has been published in the various fora.

It is only after the deliberation of the National Constitutional Conference and maybe a referendum if any, that the draft Bill will come to the Attorney-General. It is the Attorney-General, under the Act, who will bring that draft constitution to this House. Any draft constitution that comes to this House without following the procedure or going through the hands of the Attorney-General, will be irregularly and improperly before this House.

**Mr. Raila:** On a point of order, Mr. Speaker, Sir. The Attorney-General is basically misunderstanding the

issue here. The Report which I laid on the Table of the House and the draft documents which form an annexe to that report are basically drafts which were handed over by the Commission to Parliament. Parliamentarians will have to discuss the draft itself at the Constitutional Conference. There is an intention by the House to hold a workshop for Members of Parliament to discuss that draft before we go to the Constitutional Conference. That is the purpose of trying to bring the Report here. We are not bringing any Bill now. We are very much conversant with the procedures to be followed.

**Mr. Speaker:** Very well. Mr. Attorney-General, I think you had better understand it in that light. Hon. Raila told me, as the Chairman of the Select Committee, that they went over the draft constitution with the CKRC to understand it. I think the Select Committee has the view which I share; that it is important that the whole membership of the House should somehow have a workshop to go through that draft before you go to the National Conference. This will enable hon. Members to understand the draft report. I think it is in that light that he has referred to it.

**The Attorney-General** (Mr. Wako): Mr. Speaker, Sir, in fact, I do agree entirely with what Mr. Raila has stated. I do support what he has said and the procedures there. But I do not agree with the impression which has been created that a draft constitution has already been tabled before this House for debate and enactment. That is wrong. But on the procedure that Mr. Raila has given, I do agree with him; I am aware of it, and I do support it. That is the way to go.

Mr. Speaker, Sir, if I may now go on, as you have rightly stated---

**Mr. Kathangu:** On a point of order, Mr. Speaker, Sir. I have understood what Mr. Raila has said and I have heard the argument the Attorney-General has advanced. I thought we extended time for debate in this House because there was impending dissolution of Parliament. I would like to point out that 28th October, this year, might find this House dissolved. Are we saying that we shall have time to go for workshops and at---

**Mr. Speaker:** Order, Mr. Kathangu! I talk about the present; "the is" and not "the ought"! I talk about what is now and not what ought to be or will be. So, what is now is that the request was presented to us, as a House. By the way, what you, hon. Members, are talking about is irrelevant. What is relevant is the elections rules. That is what the Attorney-General is debating. So, can we concentrate on the election rules? I know elections at this stage of our political life are scaring, but---

**Hon. Members:** No!

**Mr. Kathangu:** Mr. Speaker, Sir, elections cannot scare us because---

**Mr. Speaker:** Very well, I am glad to hear that! Can we now continue?

**The Attorney-General** (Mr. Wako): Thank you, Mr. Speaker, Sir. As you know, Kenya has had a number of elections, but I am glad to say that the elections held under the multi-party state in 1992 and 1997 taught us a number of the good things which we had under our regulations, and a number of the negative things which we had under our existing regulations, and also the vacuum which existed under our regulations. This could have provided an avenue for not having transparent, free and fair elections. I am glad that as far as these regulations, which I am introducing now, are concerned, they have been subjected, for the first time, to intensive consultations.

I would like at this juncture to congratulate the Chairman and the Commissioners in the Electoral Commission of Kenya (ECK), who have held a number of consultative discussions with parliamentary political parties and other political leaders on these rules. Although these rules, under the law, are supposed to be drawn by the ECK, I can say with confidence that in their drawing, the ECK has had extensive input of the representatives of the various political parties, who have, in their experience at the various elections, pin-pointed the weaknesses in the existing rules. Therefore, the rules which we have today, and I would be quite happy to further refine them through amendments, would stand a test of time and enable us to have a transparent election devoid of rigging. These are rules which will also enable the people of this country to choose and elect the leaders of their choice; a choice which is free; a choice which is devoid of any intimidation, fear or threats. The proposed changes will facilitate and empower the voter in many aspects. In that way, the integrity of the electoral process will be enhanced.

Mr. Speaker, Sir, I would have gone through it quickly, but I take your advice that I should go through it carefully because it is a matter which touches on elected hon. Members of Parliament, and I am not one of them. So, I will try to be careful in going through it.

I will start off by discussing the Presidential and Parliamentary Elections (Amendment) Regulations of 2002. In Regulation 2, we are extending the definition of a police officer. The political parties intended to extend the meaning of a police officer to include other law enforcement agencies as the ECK shall, in its wisdom, decide. The law as it stands now allows only regular police and administration police to maintain law and order, and yet we know, in practice, that these officers are not enough to maintain law and order throughout the country. So, this Regulation allows other law enforcement officers from the National Youth Service (NYS) to be called upon to assist. Therefore, this is meant to regularise the position so that the ECK can call on other people to help them maintain law and order. In the coming elections, we are talking about, at least, 20,000 polling stations. Therefore, to maintain law and order in those polling stations, the ECK requires that latitude. It should not just confine itself to the administration police or the

regular police, but also other people who can come in and assist in the maintenance of law and order.

An amendment is being sought in Regulation 6 which is important. Regulation 6 deals with polling areas and stations. The designation of polling areas and stations would have to be gazetted. The additional amendment to Regulation 6 is to enable the definition of a polling station not just to be confined to a building somewhere, but to also include a vehicle or a vessel. I will propose that a polling station also includes a tent. This is very important because there are some areas where you may not have buildings whatsoever. Where the polling station will be a large trailer, we need to know it right in advance. The description of that trailer, vessel or tent has to be gazetted. For example, we should know that trailer, bearing this and that registration number, will be a polling station in some areas of Marsabit District or in other areas of that nature. So, it should clarify that in order to give the ECK more latitude. So, we are adding that they should not just appoint a place(s) but can also designate a vehicle(s) or a vessel(s). That is the purpose of the addition in Regulation 6.

Mr. Speaker, Sir, it was the decision of political parties representatives, who were sitting with the Electoral Commission of Kenya (ECK), who agreed that no candidate's agent or even candidates should wear party uniforms in polling stations. Hence, some other identification symbols can be used, and this is what we call insignia. So, it is deleting the word "uniform" and putting the word "insignia" so as to get rid of party uniforms at polling stations, which in the past have led to insecurity within polling station areas. Insignia will be some item which can identify the agent with a political party. It may be a ribbon; we have a red ribbon for HIV/AIDS or whatever campaign symbols. It can be something that can identify that this person belongs to a particular party; it can be a bunch or something else that will identify that the agent belongs to a particular political party.

In Regulation 11, which is Clause 5, we are introducing, for the first time, a nomination fee for presidential candidates, and we are saying that, that fee would be Kshs50,000. So, every application for the nomination of candidates at presidential elections shall be accompanied by a nomination fee of Kshs50,000, in bankers' draft. That fee will only be refundable in two situations; one, where the returning officer holds that the nomination paper, which is accompanying that amount of Kshs50,000 is invalid; and also where the candidate voluntarily withdraws his candidature, in terms of Regulation 13 (b), which I will come to in a moment.

Under Regulation 12, we are saying that a presidential candidate must have a minimum of 100 supporters---

**Mr. Imanyara:** On a point of order, Mr. Speaker, Sir. The rules which have been circulated to hon. Members appear completely different from what the Attorney-General is reading! We have two sets and none of them is similar. For example, Rule 5 of what we have shows the changes in the electoral register! So, we appear to be dealing with two separate sets of rules. What we have here is not what the Attorney-General is reading!

**The Attorney-General (Mr. Wako):** Mr. Speaker, Sir, first of all, hon. Members should have the correct documents. There are two sets of documents! Okay?

**Mr. Imanyara:** But what you are reading is different from what we have here!

**Mr. Speaker:** Let the Attorney-General explain because, actually, there are two documents.

**The Attorney-General (Mr. Wako):** There are two documents and, therefore, you may be looking at a different document from what I am reading. I am reading the one which deals with the Presidential and Parliamentary Elections (Amendment) Regulations, 2002. After I have finished with that, as per the Motion, I will move to the National Assembly Presidential Elections Registration of Electors Regulations, 2002. When I am referring to the regulations, the mistake you could be making is that, when I say Regulation 5, you might be referring to the other document and not the relevant document.

**Mr. Speaker:** So, could the Clerk, please, avail the two documents to hon. Members?

**Mr. Imanyara:** On a point of order, Mr. Speaker, Sir. I think what the Attorney-General is referring to is that we have two sets of documents that have been circulated, but none of them, for example, have the word "insignia" in Rule 5. So, it not quite clear what we have.

**An hon. Member:** It is not there!

**The Attorney-General (Mr. Wako):** Just read Clause 4 of the Presidential and Parliamentary Election (Amendment) Regulations, 2002. Clause 4, refers to Regulation 10(5).

**Mr. Imanyara:** It is okay!

**The Attorney-General (Mr. Wako):** Are you now with me?

**Mr. Imanyara:** Mr. Speaker, Sir, I am now with you.

**Mr. Speaker:** Maybe, I can just from the Chair assist the Attorney-General. As he has said, there are two documents; one, the National Assembly and Presidential Elections, Registration of Electors Regulations, 2002, and the other one, the National Assembly and Presidential Election Act, Cap.7. So, can we have the two of them and then we follow the proceedings? I think the Attorney-General is now dealing with the National Assembly Presidential Election Act. Am I right, Mr. Attorney-General?

**The Attorney-General (Mr. Wako):** That is true, Mr. Speaker, Sir.

**Mr. Speaker:** So, that is the one being dealt with now. So, follow that path!

**Mr. Munyao:** On a point of order, Mr. Speaker, Sir. Earlier on, you had made a very good ruling and requested that copies of the documents be made available here. I can see that the Attorney-General has gone even to the third page. Could the Chair hold the business a bit; for at least five minutes, so that we can follow the proceedings because it will come a time when the Attorney-General would have gone to the fifth page and we will have not understood anything? Why do we not find a way--- I am saying that, maybe, the documents with the rules which you have ordered be brought there; by the time they are brought to the House, the Attorney-General would have finished moving the Motion.

**Mr. Speaker:** Actually, they have been brought there, but hon. Members have taken them away.

**Mr. Munyao:** I have gone there twice; I have even been asking the Clerk about the same.

**Mr. Speaker:** Would they be made available? But, in the meantime, can you take this from the Chair?

**Mr. Munyao:** No, I want to be fair to the Chair. I also want the Chair to follow.

*(Several hon. Members stood up in their places)*

**Mr. Speaker:** Order! Order! Just listen to me! Can we get those documents now? It is only fair that hon. Members should have them so as to follow the proceedings.

**Mr. Omingo:** On a point of order, Mr. Speaker, Sir. With this confusion in the House, would I be in order to suggest that there is an advance rigging in these matters?

**Mr. Speaker:** Order! Order! There is no confusion. I truly think that hon. Members must be above that. You are always and forever suspicious!

**Mr. Omingo:** It is important, Mr. Speaker, Sir.

**Mr. Speaker:** Even about the rules that were given to you in the month of August?

*(Several hon. Members stood up in their places)*

**Mr. Speaker:** Order! Order! The documents are here now. They will be put on the Table. You can proceed and take a copy. So, can we now proceed?

**The Attorney-General (Mr. Wako):** Mr. Speaker, Sir, I am glad that, at least, the hon. Member is now with me because I would like him to follow all the steps in these types of matters. Let him follow me to wherever I go.

The issue of rigging can only be eliminated if the voters, candidates and everybody else are vigilant.

*(Mr. Omingo consulted with Mr. Imanyara)*

I hope hon. Omingo is listening.

**Mr. Speaker:** Mr. Attorney-General, could you address the Chair and forget about him?

**The Attorney-General (Mr. Wako):** Mr. Speaker, Sir, I want to address Mr. Omingo, through the Chair, because he is the one who---

**Mr. Imanyara:** On a point of order, Mr. Speaker, Sir. Since the Attorney-General never faces the electorate, he is just appointed through a process of rigged elections, the reason for suspicion is very good. Hon. Members are suspicious because the electorate generally points out that the elections are forever rigged and that is why the Attorney-General was appointed to his position by an electoral process that has been rigged. That is why we are suspicious.

**The Attorney-General (Mr. Wako):** Mr. Speaker, Sir, I was appointed properly by a democratically-elected Government, and if there had been any rigging, you should have filed a petition to challenge the results of the election for reasons of rigging. You never filed it, and even if you did, it was dismissed by the court. But the issue of rigging, through the Chair, as raised by hon. Omingo---

*(Hon. Members went for the documents)*

**Mr. Speaker:** Order! Order! I think niceties are now over. Can we go through the rules? Proceed!

**The Attorney-General (Mr. Wako):** Mr. Speaker, Sir, internal vigilance is very important and this is what I wanted the hon. Member to know. You cannot have internal vigilance if the document that was given to you on the 9th, August, 2002, you have not read it up to now, and you are still looking for it.

Let me move on now. Under Clause 6, Regulation 12 is being amended so that a person who wants to stand as President must have a minimum of 100 of supporters specified under Rule (1), and must be a registered elector from at least each of the five provinces out of the eight provinces of Kenya. We are trying to ensure that the presidential candidate has some broad support. This is a principle which is there under our current constitution.

Mr. Speaker, Sir, under Clause 7, we are adding a new provision to Regulation 13(a) which now specifies, for

the first time, the powers of the Electoral Commission of Kenya and the returning officer in the stage of the nomination of a presidential candidate. The present law has no such guidelines; therefore, this causes a lacuna. It clearly states on what grounds a returning officer can hold a nomination paper invalid. The grounds for holding that nomination paper invalid are clearly set out. I do not have to go through each and every one of them, but the reasons can be seen. It is evidence itself.

*[Mr. Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, it is clearly stated that if any of those specified grounds do exist, then the returning officer shall give that candidate his decision on the objection to a nomination paper as soon as practical after the objection is made. Where a returning officer decides that a nomination paper is invalid, he has to record that decision and the reasons thereof on the paper itself, add his signature thereto, and a stamp that says "invalid nomination paper", and hand it to the candidate or its presenter. These are new provisions to close a loophole, which makes it more transparent. If the returning officer decides to reject a nomination paper, then he must reject it on the grounds that have now been clearly specified under the regulations. In so doing, he must also state the specific grounds, write on a piece of paper and sign it.

Under Clause 8, we are amending Regulation 17(3) of the Principal Act. Regulation 17(3) deals with who can witness the delivery of nomination papers. Although the current laws say observers can attend when the nomination papers are being delivered, we had left out members of the Fourth Estate or the Press. Under this regulation, you, members of the Press, have the right to be present when various nomination papers are being delivered. You did not exercise this right before---

**Mr. Munyasia:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Attorney-General in order to directly address members of the Fourth Estate instead of addressing them through the Chair?

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, I am addressing members of Press through the Chair. They should now be on notice that they have the right to be present when nomination papers are being delivered.

Mr. Temporary Deputy Speaker, Sir, we have a new Clause 13(b). It says:-

"A presidential candidate whose nomination papers have been delivered may, before the close of nomination, by notice in writing signed by him and presented to the returning officer withdraw his candidature."

Therefore, even if you have presented a valid nomination paper, you have the right to withdraw it before the closing day.

Mr. Temporary Deputy Speaker, Sir, Clause 9 deals with amendments to Regulation 18. Regulation 18 adopts various decisions of our law courts as well as clarifying certain lacunas in the present law, for example, the validity of the nomination paper. We have just stated what should happen to a candidate withdrawing his candidature under Regulation 19. The candidate's name there initially stands validly nominated. As currently read, it states that where an application has been made in accordance to Regulation 15, then unless a returning officer holds a nomination paper invalid under paragraph 2 of the Regulation or the candidate withdraws his candidature under Regulation 19, the candidate's name therein will stand validly nominated. What is the standard of that withdrawal? So, we have added the words "or proof is given to the satisfaction of the returning officer of the candidate's death."

As you are aware, we have had situations where somebody has died before the closure of nomination but had no opportunity to withdraw his candidature and he goes on to be elected. This is what happened in Mr. Masinde's case in Mathare Constituency. Of course, if he is dead, he cannot withdraw. But if evidence is given to the satisfaction of the returning officer of the candidate's death, he can remove that name from the list of duly nominated candidates. Those are some of the points which have been discovered, just to tie in with various decisions of the court of law and so on. I will not go into details of that.

Mr. Temporary Deputy Speaker, Sir, under Clause 10, Regulation 19 is amended. Regulation 19 is the one which deals with withdrawal of candidature now in greater depth at any time before closure of the nomination, but not later. It says:-

"A candidate whose nomination papers have been delivered to the returning officer, may by notice in writing signed by him and delivered to the returning officer withdraw his candidature."

We have had occasions in the past where, indeed, a letter is written withdrawing the candidature. But, subsequently, it was discovered that it was done under pressure or duress. That is why that letter was accepted. In order to avoid that type of situation, that withdrawal letter signed by the candidate, must be attested to by one other



person.

Mr. Temporary Deputy Speaker, Sir, Clause 11 deals further with more additions on Clause 19; for example, what happens if there are a number of candidates and one of them dies. Does it mean that in respect to that constituency, nomination can go on? To take care of that situation, we have a new Clause 19(a). It says:-

"Where, after the close of the nomination and before the poll is commenced, proof is given to the satisfaction of the returning officer of the death of a person who has been duly nominated, the returning officer shall countermanded notice of the poll for that constituency and all proceedings with reference to election in that constituency shall be commenced afresh as if the writ had been received on the day on which proof of the death was given or in a case of a general election or an election involving other constituencies or electoral areas, the day following the announcement of the last election result, provided that no fresh nomination shall be necessary in case of a person already duly nominated for the countermanded election whose nominations have been valid."

That means if, for instance, there are four candidates in a constituency and one dies, the election in that constituency will not proceed; it will be suspended, and the process will begin afresh. However, there will be no need for the other three candidates, who will already have submitted valid nomination papers, to submit other nomination papers. The political party whose candidate will have died will be given an opportunity to submit nomination papers for another candidate to replace the one who will have died. Thereafter, the election will continue. I hope that I have made myself clear on that aspect. That is what Clause 19(a) is all about.

Mr. Temporary Deputy Speaker, Sir, it is not only the death of a candidate which can disrupt an election in a constituency or ward. Clause 19(b) provides as follows:-

"Where the proceedings for, or in connection with nominations in a constituency, are on any day interrupted, or obstructed by riot, open violence, floods, or other natural catastrophes, the proceedings in that constituency shall be abandoned for that day, and if that is the last day for the delivery of nomination papers, the nomination proceedings in that constituency shall be continued on the next day as if that were the last day for delivery thereof, and that day shall be treated, for purposes of these regulations, as being the last day subject, however, to any further application of this rule in the event of further interruption or obstruction."

So, if we have a situation where there is a catastrophe, violence and floods, among other things, affecting the process, the process can be stopped for that day and then be continued the following day when, hopefully, that catastrophe will have abated. If the catastrophe continues, again, the rule will continue to apply to the process in the subsequent days until the situation is ripe for the nomination to proceed. Again, these are new regulations, clarifying situations which in the past were just left to the discretion of not even the returning officer, but the chairman, who could decide to do anything.

Clause 12 deals with Regulation 24, which states as follows:-

"If after the close of nominations two or more candidates stand validly nominated, the returning officer shall publish a statement in the Gazette and in such other manner as the Electoral Commission of Kenya (ECK) may deem appropriate."

This law is one which has been honoured more in breach rather than in observance. This has never been done because it would have run into thousands of pages in the official Gazette during the elections. In any event, very few people have access to the Kenya Gazette, and hence that publicity is really of no use, and is an unnecessary expense. It should now be left to the ECK to determine how best to carry out the publicity. One way has been provided in the substitution of that particular clause, which reads as follows:-

"It will be posted at a very prominent place, at the returning officer's office, where the public have full access, and in such other places where the public may have easy access."

Everything is now being decentralised. So, publicity is also being decentralised to the local level.

Mr. Temporary Deputy Speaker, Sir, Clause 13 deals with Regulation 22. If the proposed amendment to this regulation is passed, it will provide that ballot papers be of different and distinct colours for each election where elections are held jointly. Without different colours, there could be a confusion as to which election is being held and for what purpose, particularly where we have multiple elections taking place at the same time. So, we shall now require a different colour for each election where elections are held jointly.

**Mr. Gitonga:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The Attorney-General talks of having a different colour at each polling station. Is he talking of a different colour for the presidential election, a different colour for the parliamentary election and a different colour for the civic election?

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, that is correct. Where we have multiple elections taking place at the same time, and we have ballot boxes which look alike, one cannot tell which one is for the presidential election, which one is for the parliamentary election, and which one is for the civic election. So, really, we must have a different colour for each election.

Mr. Temporary Deputy Speaker, Sir, I have proposed an amendment to Clause 14, which deals with Regulation 24, to give the ECK more powers. As it is now, the area of jurisdiction of returning officers and presiding officers is the buildings within which voting takes place. They really have no much authority outside such a building. If voter bribery and other forms of inducement, and other mistakes, take place outside such a building, returning officers and presiding officers cannot intervene. So, we now propose as follows:-

"The powers conferred on a presiding officer and a police officer under Paragraph 4 shall not be limited to the area covered by the polling station only, but shall encompass a radius of 400 metres from the centre of the polling station."

We thought that, that is one way in which the ECK can be empowered to deal with any case of voter bribery that may take place within the vicinity of the voting area.

Clause 16 relates to Regulation 29, which provides for exact polling procedures in a polling station rather than the current procedure, which is very vague. The proposed amendment calls for the cancellation of a voter's name from the voters' register after one votes. The current rule says that a mark be put on the register, without defining the kind of mark. We are now saying that you do not just put a mark - which may subsequently be rubbed off, or which may not be clearly seen - but rather, you delete that name from the register being used for voting purposes. So, the proposed amendment reads:- "The name of the elector shall be deleted from the register after voting but the electoral number of the elector shall be retained as proof that a ballot paper has been delivered."

Mr. Temporary Deputy Speaker, Sir, the regulation proposes detailed procedures to be followed at the polling station. The current ones have been deleted, so that now upon receiving a ballot paper, an elector shall submit his elector's card to be impressed with the seal of the Electoral Commission of Kenya, leaving a permanent impression on the card. After receiving the ballot paper, an elector shall cast his vote in accordance with Regulation 30, which I am coming to just now. He shall thereafter submit to having one of his fingers immersed or dipped in ink of a distinctive colour, which so far, as is possible, is sufficiently indelible to leave a mark for the period of election.

For us who have been voting, normally you dip your finger in ink before you vote. But now, you will vote and then dip your finger in ink. A number of ballot papers, otherwise very well cast, are spoilt by the ink. So, we want you to back that ballot paper with clean paper and pen, then after that, you dip your finger in ink. So, the procedure is the other way round now as opposed to the former one.

Clause 17 also deals with Regulation 30. It talks about doing away with the one tick. In the past, one could have put an "X", a tick or just draw a line, and if you have not used the mark which has been prescribed, that became a spoilt ballot paper. But we are now saying that one can put a cross sign, tick or use any other mark in the box and column provided for the purpose against the name and the party symbol of the candidate for whom he wishes to vote. So, there is now a latitude. We do not want to have, like in the past, situations where most people actually voted correctly, the intention was very clear, but they used the wrong marks and, therefore, their ballot papers were said to be spoilt.

Clause 18 deals with Regulation 31. Here we are dealing with the issue of assisted voters, who may be illiterate or having physical disabilities and, therefore, cannot mark a ballot paper on their own. The new regulation replaces the present one where such voters are automatically assisted by the presiding officer in the presence of an agent for each candidate. The new regulation proposes that such a voter should be assisted by a person of his or her own choice, rather than by the presiding officer. Therefore, the role of the presiding officer is done away with. This deals with complaints that were received that, in fact, presiding officers were marking boxes in the ballot papers not in accordance with the intention of the voter, but in accordance with their favourite candidates. So, may I say that such a voter should be entitled to come with the person he trusts to help him in marking the ballot paper. In such circumstances, only the two will be in the balloting room, just the voter and the person whom he will have come with to assist him.

Even this provision can be misused. For example, there could be a person who may be a permanent assistant to assist all the people who come in, whereas he will be doing so as an agent of another favourite candidate. No one person will be allowed to assist more than one voter to take care of that situation. In any case, a presiding officer will also be vigilant to ensure that the so-called voter assistants will be truly genuine. They must be mature and over 18 years old. You do not need to be a registered voter to be a voter assistant. As long as you are over 18 years old, you can assist a voter. This is very much in accordance with internationally accepted standards on how voters who cannot vote on their own can be assisted.

Mr. Temporary Deputy Speaker, Sir, from Regulation 31 up to Regulation 39, one of the major novelties of these regulations is to ensure that the counting of votes will be done at each polling station rather than in one place in the constituency. This is a very good proposal. You will recall that the counting of votes from all constituencies in a district used to be done at the district headquarters. Then we improved on that and said that it should be done in one

place in the constituency. We are now saying that the counting of votes must be done at each polling station. Clause 22 deals in great detail with what should happen at a polling station. For example, the presiding officer shall in respect of each ballot paper, announce the candidate in whose favour the vote was cast. So, at the close of the voting exercise, the ballot papers will be put on the table. Unlike before, where you had a number of counting clerks who would confer quietly and a lot of rigging used to take place in that way at the place of counting, we are now saying that at the polling station, as each ballot paper is taken from the table, it will be announced for everybody to hear that it has been cast in favour of candidate "A" or "B". Then the ballot papers will be piled together, counted before everybody and the results announced. There are detailed provisions on objections and on how they can be dealt with by the presiding officer. There are details in form 16(a). The presiding officer will fill in a form which is fairly detailed and which will be counter-signed by all those present. It is that form which will then go to the constituency headquarters and the sum of the ballot papers cast totalled up. There will be no other counting at the constituency headquarters because counting will already have been done at the polling station.

Mr. Temporary Deputy Speaker, Sir, other provisions are focused on providing the details for that. For example, if something is disputed, then the presiding officer shall mark every ballot paper which he counted, but whose validity has been disputed or questioned by the candidate with the word "disputed". However, such a ballot paper shall be treated as valid for the purposes of declaration of election results at the polling station. However, you will then dare say that at the level when it goes to the constituency level, the returning officer will make the final decisions on those disputed ballot papers on how they are to be dealt with. Of course, as before, candidates or their agents are allowed not only to be present throughout the exercise, but they are only allowed to affix their own seals on the packets after the counting.

Mr. Temporary Deputy Speaker, Sir, most of what is now provided is merely to ensure that there is no rigging. Details are also provided so that the presiding officers at polling stations know exactly what is required of them. However, even more important, the candidate should also know exactly the duties of the presiding officers.

Mr. Temporary Deputy Speaker, Sir, under Clause 31 we are having a new regulation No.44. The Electoral Commission may make special provisions for the voting of patients in hospitals, persons admitted in sanatoria or homes for the aged and similar institutions, persons who lead a nomadic life on account of vagaries of climate, physically disabled persons and expectant mothers. For the first time we are making it clear--- In fact, the Electoral Commission itself wants to have this power, as they call it, for them to make specific provisions for these disadvantaged groups in our community who are normally forgotten. It is very rare that the Electoral Commission has gone to the hospitals for the patients to vote or to homes of the aged for those people to vote and similar institutions. More important, in nomadic areas where people are moving from one place to another, special provisions have to be made to allow them to vote. If they have been in area "A" and maybe they have moved to area "B", they should be facilitated to vote provided that, that area "B" is still within the constituency or the ward as the case might be.

Mr. Temporary Deputy Speaker, Sir, so, the Electoral Commission is now saying: "We are prepared and we want to do this", and hence I think they have gone as far as they could go under the current Constitution. I know, as I informed Parliament last week, if under the new Constitution those who are serving custodial sentences are allowed to vote, then I am quite sure that the Electoral Commission will also make similar arrangements to allow them to vote. However, under the current Constitution, such persons are neither allowed to be voters nor can they need to be registered as electors.

Mr. Temporary Deputy Speaker, Sir, coming to accreditation of election observers---

**Mr. Mboko:** On a point of order, Mr. Temporary Deputy Speaker, Sir. While on that issue, could the Attorney-General shed some light on the hospital patients? Will those hospitals have the registers of all the patients in those particular hospitals?

**The Attorney-General** (Mr. Wako): The Electoral Commission may make special provisions and they themselves are the ones who have signed these election regulations and I am sure they will make suitable arrangements as may be necessary. Ours is just to give them what they are asking for and then it is up to them now to implement.

Mr. Temporary Deputy Speaker, Sir, for the first time we are having a regulation relating to accreditation of election observers. All these things, since 1992, have been simply done in a haphazard manner; in an administrative way which has not been transparent and clear on what basis decisions were being made. Here, under Regulation No.45, we are now giving the Electoral Commission the authority and the power to accredit observers. We are now giving the Electoral Commission the power to issue guidelines for election observers. We are now giving the Electoral Commission the power to revoke any accreditation to those to whom it has been granted and so on.

Mr. Temporary Deputy Speaker, Sir, accompanying are number of proposals which are there to amend the various proposals; the forms that have to tie in with the new regulations. There are really minor changes here and there, which really relate to the regulations that are now coming into force. They are consequential upon the amendments that have come into force. We now have also a new form 16A and a new form 17A. I am going to give notice that during the Committee Stage, the only amendment I will be seeking to move is to substitute form 17A as appears in the

regulations with a new form 17A, which is far much more comprehensive than the one which is attached to the regulations, but we shall be dealing with that during the Committee Stage.

**Mr. Kihoro:** On a point of order, Mr. Temporary Deputy Speaker, Sir. The hon. Attorney-General was proceeding very well until he decided to skip a whole three pages and in the process we got lost. Why has he decided to skip them and yet I thought his presentation was very clear?

**The Temporary Deputy Speaker (Mr. Imanyara):** Why did you not raise it at the time he was skipping them?

**The Attorney-General (Mr. Wako):** Mr. Temporary Deputy Speaker, Sir, I did say that we now have very detailed procedures at the polling stations and so on, and most of that relates to those detailed provisions, but if there are any questions on those detailed provisions which Members would want me to clarify, I will be quite happy to clarify them in my reply. So, really, the counting of votes at polling stations is one of the major features of these regulations, and it has distinct advantages. The number of ballot boxes are few and hence open and credible. Counting is completed without delay. It is less stressful to candidates and voters. There is really no importation of voters and voters in a polling area really go home knowing who they have voted for; that is their favourite candidate as far as that area is concerned.

With those few remarks, I beg to move and I will ask my colleague, hon. Kipytaor Kiprono Nicholas Biwott, to second me.

**The Minister for Trade and Industry (Mr. Biwott):** Thank you, Mr. Temporary Deputy Speaker, Sir. In seconding this Motion, I would like to stress one or two points which are essential. First, these are the regulations which will govern the conduct of our elections and there is nothing more emotive than the electoral process where every candidate wishes that his or her's interests are taken care of in order to avoid all the other weaknesses which usually result in complaints of rigging, non-attention or biases of any kind. I think it will pay for the hon. Members to follow strictly what has been provided. I believe that these regulations have been drafted carefully by the Electoral Commission, based on complaints that have been received in the previous elections. So, it should theoretically represent the latest closing of loopholes which existed in the past regulations. I think the regulation concerning counting of votes at the polling stations is new, but it will speed up the process of counting. It will also pin the problem that might arise in each polling station to that particular station. But there are dangers where, for example, the agents of one candidate may be weak, or may not be alert enough. But assuming that everybody goes there objectively and with a view to counting correctly so that the right count is arrived at, that would be very good. We should minimise all the problems of transportation and the attendant complaints. It will also reflect the general support of each individual candidate at that particular polling station.

Mr. Temporary Deputy Speaker, Sir, I think the Attorney-General has gone through every regulation in detail, and the only people who stood up are the lawyers, who must of necessity challenge their learned friend in order to show too that they are not left behind. We know that the presiding officers will be the deciding factor, and I would appeal to the Electoral Commission of Kenya to ensure that the people they appoint to man these polling stations are people of integrity and people who are only interested in seeing that the polling is conducted fairly, openly, transparently and with the minimum of commission of any crime. I hope that these regulations will also help to reduce any amount of tension, or conflict or strife. Our elections should be free and fair, and there should never be any intimidation from anybody. I think the use of pressure groups, which are likely to cause chaos or fracas, should be discouraged. It should be done so transparently that there will be no motivation for any people with violent tendencies to get an avenue of doing that. People are always scared of the truth, and if the truth is done in daylight, I think would-be mischievous characters will not be accommodated.

But I think it is incumbent upon every candidate to ensure that he or she reads these regulations and understands them in order to follow them meticulously. As long as people follow the same rules and regulations, it will be easy for those who are managing the polling stations to conduct the elections fairly.

Mr. Temporary Deputy Speaker, Sir, I do not want to dwell so much on this because the Attorney-General has gone through the full details, and I hope that during the Committee Stage, another chance will be offered to those who are interested. It is heartening to see, this late afternoon that, even my own friend, Mr. N. Nyagah, who earlier on was suffering from the heat of the cooking pots of the NAK and the Coalition, and was agitating that they should be here, is now very calm. I hope that, as a result of all this calmness, good reason will prevail so that even those hon. Members who left their KANU home temporarily will find a way of rejoining their good friend so that we can continue to build a strong Kenya.

With these few remarks, I beg to second.

**Mr. Kihoro:** On a point of order, Mr. Temporary Deputy Speaker, Sir. In his closing remarks, the Minister has said that some people have left their home in KANU to join the Opposition. We are taking over the Government and they will never go back to KANU.

**The Temporary Deputy Speaker (Mr. Imanyara):** I am sorry, Mr. Kihoro, you have been overtaken by

events.

*(Question proposed)*

**Mr. Raila:** Thank you, Mr. Temporary Deputy Speaker, Sir, for according me the opportunity to contribute to this Motion. I am grateful to the Attorney-General for coming up with these rules because elections are competitions. Competition cannot be fair if the rules are not observed, and if the rules themselves are not fair. It is important that, as we prepare ourselves to go for the most historical elections in this country since 1963, we should agree upfront on the rules.

Mr. Temporary Deputy Speaker, Sir, I have specific issues that I want to raise. One is that Clause 13A deals with invalid nominations. If you look at page 3, Clause 13A(2)(d) and (e), states as follows:-

"(d) that the proposer or seconder, or so many supporters as would reduce the number of qualified supporters to less than 1,000, are not qualified to be subscribers.

(e) that the nomination paper is presented after another one has been presented by another candidate but the same political party which nomination paper was not declared invalid by the returning officer..."

These two regulations can be very much abused and I speak here from experience. During the last general elections, and I wish the Chairman of the Commission was here, we did lose elections in Gem Constituency; of course, I have nothing against my friend, Mr. Donde, here. But on very flimsy grounds, the Returning Officer disqualified our candidate on the grounds that one of his proposers had proposed a candidate for a civic election and yet it was clearly known that there is no law that bars somebody from proposing a civic, parliamentary and presidential candidate because they are separate elections. The returning officer just refused to accept the papers of our candidate and when we asked him why, he told us to petition the Commission. When we petitioned the Commission, we were told that the Commission would sit to review those cases. Eventually, when the Commission sat, they said they cannot overturn the ruling of a returning officer, and that we have to go to court. When we went to court, the court ruled that we can only wait until elections have been conducted and then we petition. I am saying this because it is very serious. We are talking about competition not just of individuals, but also of political parties. So, you deny a political party a chance to compete merely because your returning officer did not follow the law, and the Commission itself ratifies that illegality.

Mr. Temporary Deputy Speaker, Sir, the other issue is about nomination papers having been presented by another candidate. What happens is that, there are people these days who can print the nomination certificates. There are also people who pinch nomination certificates, and it did happen. Some people pinched nomination certificates and they were at the nomination stations at 6.00 a.m., and as soon as the stations opened, they presented the papers and walked away. By the time the genuine candidates were coming, they had disappeared. The returning officer then says that he has valid nomination documents. Even the petition from the party headquarters from those who were allowed to sign the nomination certificates were not sufficient to overturn the ruling of a returning officer. We must frame this clause in a way that it allows flexibility for a returning officer to deal with those kind of situations. Otherwise, you end up with a fake candidate for the party.

Mr. Temporary Deputy Speaker, Sir, the other issue is the counting of votes at polling stations. I fully support the counting of votes at polling stations because I saw it in Mexico and Nigeria, where I was an election observer. If we follow what is being provided here, in Clause 35(a), on page 11, which states that:-

"Each ballot paper shall be counted as follows:

- (a) The presiding officer shall in respect of every ballot paper announce the candidate in whose favour the vote was cast.
- (b) Display to the candidates or their agents the ballot paper sufficiently, for them to ascertain the vote; and,
- (c) Put the ballot paper at a place on the counting table or other facility provided for this purpose, set for the candidate in whose favour it was cast".

This is turning a presiding officer into a counting clerk. Every presiding officer has to look at each and every ballot paper, and yet we are talking about thousands of ballot paper. If each and every ballot paper has to be shown to the candidates, how many days are we going to be at that polling station? We are, therefore, losing one of the advantages which counting at the polling stations is supposed to provide, which is mainly speed with which to count the ballot papers and then announce the results.

Secondly, it is easier to compromise one presiding officer than to compromise several clerks. Are we, or is it my understanding that we are here doing away with the counting clerks and making a presiding officer also a counting clerk? Where it is done in an efficient manner, it does not take one hour to finish counting the ballot papers in the polling stations and ring quickly to the constituency headquarters. In Mexico, within two hours the results of the whole country were out, and there were 24 million voters in Mexico City alone. I would like something to be done about that Clause.

Mr. Temporary Deputy Speaker, Sir, there is no mention of ballot boxes here, and yet we have been talking a lot about transparent ballot boxes. Even as late as this year, the Electoral Commission purchased several ballot boxes against the same design of opaque ballot boxes. We do not understand what is really wrong; why does our Electoral Commission find it difficult to introduce transparent ballot boxes? It is so easy if we have transparent ballot boxes because as the ballot papers are being thrown in there, people can see. Therefore, the possibility of stacking so many ballot papers is done away with. We do not know why our Electoral Commission cannot listen to the cries and the calls of the Kenyan people to introduce transparent ballot boxes.

Mr. Temporary Deputy Speaker, Sir, the other issue is to do with accreditation of election observers, which is Clause 45, on page 21. The Attorney-General has said that this is an improvement that for the first time, we are having rules that will regulate the activities of election observers. If you look at part "(ii)", we have provided that:-

"The Electoral Commission shall issue guidelines for election observers which shall be binding on election observers upon accreditation by the Electoral Commission".

We are not giving the Electoral Commission any guidelines; we are giving them a *carte blanche* to go and write regulations as they like. Some of them will be that election observers are not allowed within 100 metres from actual booths. We have had very nasty experiences like in Zimbabwe. We know what President Mugabe did with international election observers when he was determined to do massive rigging of elections in Zimbabwe. In order to also assist the Electoral Commission, it will be good to say that they must meet certain international standards. If we just leave the Electoral Commission as it is without the independence we have been talking about - it is not yet an independent Electoral Commission - they will come up with regulations which will make it easier for rigging to take place. Why else do we need international election observers? It is to ensure that our elections meet the international standards. I would like to see a provision here, that these regulations must meet accepted international standards.

Mr. Temporary Deputy Speaker, Sir, the issue of the polling day is a very sticking issue. In the last General Elections or since Kenya became independent, polling has been done only one day. By 6.00 p.m., the polling stations were closed and counting started. But in the last General Election of 1997, out of the blue, we were called as leaders of the parties around 4.00 p.m. and told that we were required to a meeting at the headquarters of the Electoral Commission. When we went there, we were told that due to circumstances beyond the control of the Commission, they had decided that they were extending the polling by one day. We were told that a number of the members of the Electoral Commission had been away, but they had been summoned as early as 10.00 a.m. to come for a meeting. This raised suspicion, because when did the Electoral Commission know that it was going to be necessary to extend the polling by one day? They stated that it was because of confusion.

Investigations have, in fact, shown that, that confusion was deliberate. It was meant to facilitate rigging. That is the reason why ballot papers meant for Murang'a were found somewhere in Kipkelion, and so on and so forth. Then we were told that some areas were impassable, and that ballot boxes were being ferried by helicopters. We found that helicopters were not taking ballot boxes to the actual polling stations where they were supposedly being counted, but to particular destinations. Then there were results of certain polling stations where people never voted. I know this for a fact that in Bura Constituency, in Tana River District, there were four polling stations where people never voted, but the results of those polling stations were also included in the total tally. But in spite of that, our candidate then won the election. In the first counting, the results were that he won by 29 votes. Then they appealed for a recount and messed it up, and announced the other hon. Member of Parliament as having been elected. We know why there was an extension by one day, where the half a million votes were printed and who printed them. We, therefore, know the results. We do not want to see a repeat of this kind of thing again because this can cause a civil war in this country. When people lose faith in the ballot box, the consequences can be very grave. We, therefore, now want to know clearly from the Attorney-General whether the extension by one day was legal or not and who authorised it. The following day was supposed to be a working day, but by the time we were being called to the offices of the Electoral Commission, it had been declared a holiday for people to go and vote. Who declared it a holiday and it was not even gazetted? We do not want the Electoral Commission to be part and parcel of the rigging machinery. As we prepare for the elections I am confident to say that the National Rainbow Coalition will win. We want to have free and fair elections.

Thank you, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Imanyara): The purpose of going to the Committee Stage is to enable each rule to be debated and examined. I do not want to stop any hon. Members from contributing, but I would like us to bear in mind what the Speaker said, that the purpose of going to the Committee Stage is so that we can go through every clause in the rule. So, bearing this in mind, I think I will allow two or three Members to contribute then I will ask for closure so that we can go to Committee Stage.

**The Minister for Public Health** (Prof. Ongeru): Mr. Temporary Deputy Speaker, Sir, I stand here to make general comments. I will raise some pertinent issues at the Committee stage. It is easy to be puritan and to blame others. I think we are all interested parties in the nomination process, and equally in the manner the elections are conducted and, of course, the eventual announcement of results. Every candidate, it does not matter from what side of

the divide you come from, is an interested party and would want to ensure that there is a fair and proper nomination process, and that voting and counting be done in a satisfactory manner. It is in this spirit that I welcome these new rules and regulations because without them it would be extremely difficult to carry out elections in this country.

The main feature which has come out clearly in the new Rules and Regulations is a new kind of format that declares how the papers are to be received for nomination. I would have liked the Electoral Commission, through the Attorney-General, to precisely define how the political parties will process the requisite forms of those who have been validly nominated to come forward because I can see a loophole, where somebody may come through with a fictitious nomination certificate, purporting to be derived from a particular party and, therefore, claiming to be validly nominated at the expense of the person who has been validly nominated. This is the kind of auditing we want to do in order to streamline the nomination process from the party level to the electoral commission level. That is an important level.

I am happy with the question of the insignia. The type of insignias that we will use at the polling stations must be clearly defined. Insignias are important for identification, even for me as a candidate, because I would like to identify the people that I have appointed as my agents in good time, so that we can see how the process and exercise is proceeding. It is quite feasible that some people may put on the insignia, which may not belong to the nominating candidate. This is a grey area that we need to know how to deal with. Machinery should be put in place so that a candidate can be able to raise complaints about particular individuals who are wearing his insignia without his valid permission. Measures should be put in place to disqualify such individuals.

I would, therefore, suggest that alongside the insignia there must be validly signed papers from the candidate to those agents that must be in their possession. Upon asking them to identify themselves, they should be in a position to produce these validly signed papers, being appointed agents by the contending candidates. That, together with the insignia can verify and confirm that the person representing the interests of the candidate is, indeed, the one who has been validly appointed by the candidate in question. Also of importance is the question of patients, invalids and pregnant mothers who may be accorded the opportunity to vote at the polling station. It has been very catastrophic and traumatising to see very pregnant mothers - because of the love they have for a particular candidate - wanting to vote at a given polling station being overrun and being unable to cast their votes. Even when they do, they do so with great difficulties.

I would like to congratulate the Commission and the Attorney-General for making it possible and feasible for members of our society who, for one particular reason or another, may be unable to vote. Those who have physiological, physical or mental problems and are unable to cast valid votes for their preferred candidates should be given that opportunity to cast that vote. The only thing I would request in these rules is that those areas where this opportunity may be accorded to these groups of people should be clearly defined so that we know which people are likely to vote within a given parameter of the polling stations in that region. They should, therefore, be given that opportunity to vote. We should all welcome this move because it has been an extremely traumatic event in the past. Sometimes, candidates have been forced to try and get these people through the lines, and this can be very difficult indeed.

Mr. Temporary Deputy Speaker, Sir, there is one area at the polling station that I think we should be clear about. This is whether the counting will be done at the polling station. I would like us all to be clear that there will be a proper lighting system at the polling station so that the counting of votes can be done openly. I would like to receive a valid vote; I do not want to receive any invalid vote. We want to make sure that the polling stations have enough facilities where there is no electricity. If they will use gas lamps or lanterns, these must be clearly lighted. There should also be enough space so that we can clearly see what is being counted at that polling station. I regret to say that in the last elections, KANU was overrun in some specified areas because we were not able to have our own counting agents there. If there was any rigging done, it was in these areas where KANU was completely put out of action because there were some favoured clergy people who wanted a particular group of people to win. Therefore, KANU was, in fact, very badly messed up in these particular polling stations. This particular element will ensure that all of us receive valid votes for what we have sweated for and for the love and convincing results that one has been able to put across.

**Dr. Ochuodho:** On a point of order, Mr. Temporary Deputy Speaker, Sir. When the Chair was consulting, Prof. Ongeru alleged that there are some areas in this country where KANU was locked out and, therefore, the elections were rigged. KANU is on record saying that the elections were free and fair. Could the Minister tell us the areas where the elections were rigged and why they considered the elections to be free and fair?

**The Minister for Public Health** (Prof. Ongeru): Mr. Temporary Deputy Speaker, Sir, it is in the full knowledge and domain that there were more votes cast in Nyandarua than the registered voters in the register. I do not think I need to belabour the point that the votes that were cast in the ballot boxes were more than the actual registered voters. So, while I am still on that point---

**Mr. Munyasia:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Prof. Ongeru specifically singled out members of the clergy! So, could he be asked to substantiate? The House would like to know who were those members of the clergy who rigged the elections against KANU?

**The Minister for Public Health** (Prof. Onger): Mr. Temporary Deputy Speaker, Sir, I have not come here to do the postmortem of 1997. I have come here to contribute on the rules and regulations for the ensuing 2002/2003 elections. Therefore, that becomes an academic question and hardly a point of order! I would not waste my time in trying to answer that one!

**Mr. Ndwiga:** On a point of order, Mr. Temporary Deputy Speaker, Sir. It is not the postmortem that we are doing! But a Member is responsible for his utterances! Whatever you say in this House, you are fully responsible! Now, where was KANU rigged out? This country knows that it is KANU which, in broad daylight in Westlands here - it did not require lights to be put on - literary took---

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! You are now making a contribution!

**The Minister for Public Health** (Prof. Onger): Thank you, Mr. Temporary Deputy Speaker, Sir. My last point is that having proper lighting systems at polling stations is an important feature and, therefore, I believe the counting at the polling stations should be faster and quicker, so that we can reduce the tension that is built up in some of those polling stations. The only point I would like to make is that when a polling station closes, it should be closed with the full knowledge that it started early, and that nobody was locked out, so that counting could start when everybody within the precincts has cast his or her votes.

With those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Mr. Imanyara): Hon. Members, I have consulted the Whips and the Leader of the Official Opposition and I am giving the Floor to the designated officials - the official spokesmen - and then I will ask the Attorney-General to respond. Thereafter, we will go into the Committee, so that you can have as much time as possible to debate every aspect of the rules. If that is agreed, let me call upon Mr. Munyao to proceed.

**Mr. Mwenje:** On a point of order, Mr. Temporary Deputy Speaker, Sir. This House is not actually controlled by the Whips! The Whips make suggestions and the House may decide on what to do. Even if the Whips---

**The Temporary Deputy Speaker** (Mr. Imanyara): Order!

**Mr. Mwenje:** I am on a point of order!

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Listen to me! I said the Chair is responsible for the proceedings of the House. The Chair said it has consulted in order to reach a consensus to enable Members to make exhaustive contributions to the rules one by one, so that we can even scrutinise them. The Whips, as agreed, made consultations, which is quite in order, Mr. Mwenje. That was the proposal that I was going to put forward. If the House does not agree with that proposal, I will allow you to speak and make contributions!

**Mr. Mwenje:** I do not agree!

**The Temporary Deputy Speaker** (Mr. Imanyara): Do not say you do not agree! You may not agree, but you do not speak for every Member in this House.

Proceed, Mr. Munyao!

**Mr. Keriri:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I would like to seek your guidance. If we go to the Committee Stage at this hour, and we go clause by clause and pass them; and some people may wish to make some amendments to certain clauses, what procedure will be followed? That is because we have not had time to even think about the wording of those clauses!

**The Temporary Deputy Speaker** (Mr. Imanyara): When we reach there, we will cross that bridge!

**Mr. Keriri:** That is okay!

**The Temporary Deputy Speaker** (Mr. Imanyara): Nobody is going to be prevented from making any suggestions, amendments or contributions to any of the rules. What is your point of order, Dr. Ochuodho?

**Dr. Ochuodho:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I just wanted to plead with the Chair that this is a very serious matter that we have before the House, considering that the elections are just around the corner. You already see that temperatures are rising. I want to plead with you because there are Members here who still want to contribute. With due respect, this document has just been made available to us today. Indeed, I must put it on record that one of the two documents was not circulated. My plea with the Chair is to allow a little more time for Members to contribute.

**The Temporary Deputy Speaker** (Mr. Imanyara): Mr. Munyao will continue, and then I will allow a little bit more time.

**Mr. Munyao:** Thank you, Mr. Temporary Deputy Speaker, Sir. Because of what you have said, at the Committee Stage, we will look at the rules more closely, line by line. I would like to make some comments on the broad line of this Motion. I would like to join other speakers to thank the Attorney-General for the efforts he made in explaining these matters very diligently. I also appreciate the presence of the Chairman of the Electoral Commission of Kenya (ECK), who has been here throughout this afternoon. But the Chairman of the ECK should have been accompanied by the other Commissioners, so that they can share what we are saying. However, it suffices to have him here and we appreciate that.

Mr. Temporary Deputy Speaker, Sir, we have heard that we have got 20,000 polling stations. I want to plead



with the Attorney-General and the ECK not to reduce them. Although they have done very well by increasing them from 12,000 to 20,000, there are still some areas where the location of polling stations is still required. I am sure the purpose of putting as many polling stations as possible is to allow people to access them easily. Let it be noted that it will be during the rainy season. We would like people to access the polling stations quickly, go back home to prepare their farms, wait until 6.00 p.m. for the closure of polling stations, and then go back for the counting. That is because we are telling the people: "When you vote, go back and take care of your cattle, farm and other businesses, and when it is nearing 6.00 p.m., go back to the same area, so that in case the counting officers confuse, you can be counted outside there." It should also serve as an additional precaution for people who are in there to know that those voters are genuinely out there. So, I request the ECK to accept the application for additional polling stations.

Mr. Temporary Deputy Speaker, Sir, we have talked, and the Attorney-General has put it very well, on the issue of violence during the elections. Even the ECK has been meeting party leaders in the Old Chamber before the elections are held, both during the general elections and the by-elections which have been held in this country. Even though we put issues very clearly on the table, violence still continues during the elections. That is the time when the ECK comes out to say that they do not have enough powers. Could we be told the powers that the Electoral Commission of Kenya (ECK) requires in order to arrest perpetrators of violence during the election period? We have gone through this and discussed the matter many times. I am very happy that this time round, the police officers who will be attached to the ECK, will be under the Commission and not any other person. This is very good.

Mr. Temporary Deputy Speaker, Sir, something should be done to stop violence during election time. This is because there is nothing as good as having fair and free elections. You cannot have fair and free elections when you are threatened, or there is violence here and there. I will not touch on this aspect more than that because I intend to be specific on these particular aspects. I would like to lay the KANU "minds" on this Table because I know what they are planning to do during the election period. We have also started seeing some signs here and there to that effect. *Tunaambiwa kwamba palipo na moshi pana moto.*

**The Temporary Deputy Speaker** (Mr. Imanyara): Mr. Munyao, are you going to lay some minds on the Table of the House?

*(Laughter)*

**Mr. Munyao:** Mr. Temporary Deputy Speaker, Sir, I am going to lay on the Table of this House their thoughts, written on a piece of paper. I will do that at that time.

The other point I would like to touch on relates to ballot papers. This country spends a lot of taxpayers' money to carry out the registration exercise. We also get ballot papers. This exercise is carried out with taxpayers' money so that whoever is willing to be registered as a voter can do so. That is a very expensive exercise. I would like the Attorney-General to tell us the law we can have in place so that when a person registers as a voter, he or she votes.

In 1992, although we had close to 7 million people who were registered as voters, only about 5 million people voted. The same was repeated in 1997, where over 4 million people who had registered as voters did not vote. If those people who were registered at that time voted for a single candidate, today, we could be having a different President. It is important that once one is registered as a voter, he or she should vote. What provision will the Attorney-General put in place to ensure that when a person has registered as a voter, it is mandatory that he or she must vote?

*(Mr. Wako consulted with Mr. Affey)*

I am surprised because the Attorney-General, who is supposed to take a few notes, is very busy consulting with the Assistant Minister for Foreign Affairs and International Co-operation, Mr. Affey, who does not even vote in this country.

**The Temporary Deputy Speaker** (Mr. Imanyara): Of course, I can see him!

**Mr. Munyao:** Mr. Temporary Deputy Speaker, Sir, it is very important that we put in place a provision which will ensure that once a person is registered as a voter---

**The Assistant Minister for Foreign Affairs and International Co-operation** (Mr. Affey): On a point of order, Mr. Temporary Deputy Speaker, Sir. Did the Chair hear Mr. Munyao refer to me as not being a voter in this country?

**The Temporary Deputy Speaker** (Mr. Imanyara): No, he did not! He only alleged that the Attorney-General was not taking notes and I told him I was seeing him take a few notes.

**Mr. Munyao:** Mr. Temporary Deputy Speaker, Sir, the problem with some of these KANU people is that they do not clean their ears properly. This is because that is not what I had said exactly. Why did he not follow what I had said? He is my very good friend---

**The Minister of State, Office of the President** (Mr. Haji): On a point of order, Mr. Temporary Deputy

Speaker, Sir. Both of us have grey hair. I can assure the House that Mr. Munyao said that Mr. Wako was consulting with the Assistant Minister for Foreign Affairs and International Co-operation who is not a voter in this country. Could he deny that?

**The Temporary Deputy Speaker** (Mr. Imanyara): Mr. Haji, I happen to have been watching and hearing Mr. Munyao. Are you challenging my ruling on what I heard?

**The Minister of State, Office of the President** (Mr. Haji): Mr. Temporary Deputy Speaker, Sir, I am not challenging your ruling. But I am saying that let us be fair. If you refer to the HANSARD, you will find the same words. If you do not find those words in the HANSARD, throw me out of the House for the next one week.

**The Temporary Deputy Speaker** (Mr. Imanyara): We shall look at the HANSARD! Indeed, if that is what he said, then he is definitely out of order. But what I did hear him say was that the Attorney-General, who was supposed to be listening, was busy talking to the Assistant Minister for Foreign Affairs.

**The Assistant Minister for Foreign Affairs and International Co-operation** (Mr. Affey): On a point of order, Mr. Temporary Deputy Speaker, Sir. I would like to confirm to you that Mr. Haji is a religious man and cannot lie. I think Mr. Munyao should withdraw his remarks and apologise--

**The Temporary Deputy Speaker** (Mr. Imanyara): Order, Mr. Affey! You know that no hon. Member lies! Whether it is Mr. Haji, Mr. Munyao or you, none of you lies.

Continue, Mr. Munyao!

**Mr. Munyao:** Thank you, Mr. Temporary Deputy Speaker, Sir. Mr. Affey knows very well that I know where he comes from. I know his area and where he votes. I know that he is a registered voter and that is why he qualified to be appointed an Assistant Minister for Foreign Affairs and International Co-operation in this country. I have been pleading with him that if he wants to retain that position, he should cross over to this other side of the House next week, otherwise it will be a pity.

On a serious note, I was saying that if you look at the number of registered voters, you will find that between 30 per cent and 40 per cent of the registered voters do not vote. We must put a provision in place to ensure that all those people who are registered as voters vote. If you know that you are a registered voter and the Government spent a lot of money to register you as a voter, you must vote, and if you do not, you should be penalised. I am saying this because I have witnessed, during the voting day a very big crowd saying, "*Ikiwa hakuna kitu kidogo hatutapiga kura*". I think it is Mr. Biwott who knows how to do that.

We must eliminate this practice so that we can have free and fair elections. We should encourage people to vote because that is their right. We cannot keep on telling people that it is their right to vote. The ECK does a lot of work and at the end of the day, half of the registered voters do not vote. I would like to emphasise this point because in 1997, the votes which were cast for the presidential election were about 2.4 million. About 3 million voters did not vote, and if they had voted for a single candidate, we could be having a different President now. This is important and we should put in place measures to eradicate *kitu kidogo*.

I witnessed the by-election which was held in Makueni. I visited one polling station and found an assistant chief from that area seated in the voting hall in his uniform. We have been told that during election period, the Provincial Administration ought to stay far from polling stations. They should vote in the morning, go and work or sleep because the exercise is held in one day. How come that some of these administrators are allowed to be in the polling stations? If the Attorney-General has said that we should not allow badges denoting parties or whatever to be worn in polling stations, also chiefs, who are known to be KANU supporters, should not be allowed there. In fact, on that particular day, they should not be allowed to vote when they are in their uniforms. They should be in civilian clothes. If a chief does not have a shirt or a pair of trouser, he should cover himself with a blanket, vote and walk out. A chief should not be allowed to vote when he is in his uniform.

I was rigged out in 1992. During that time, the then Vice-Chairman of the ECK, who came from my area-- The rigging started when I was barred from registering as a voter, and yet I was a Kenyan. I had been elected an hon. Member of Parliament earlier on. That time, when the registration clerks saw me, they ran away. In fact, they shifted the registration centre, which was illegal. They did this even before gazetting the shifting of the registration centre. I thank God because they eventually allowed me to register as a voter. Later, when we were counting the votes, I pleaded with the then returning officer to repeat the process, but he refused. I was told that if I wanted the counting of the votes to be repeated I should come to Nairobi to see the ECK administration. I drove from Mwala Constituency to Nairobi and saw the Chairman of the ECK, who was here in Committee Room No.9. By the time I was here, it was 4.00 p.m. and there was a telephone call to the effect that they had announced the results. I asked myself what to do, since they are so expensive. I had spent all what I had. This was a very clear way of doing things! Let the Attorney-General try and remodify some of these mechanism for assuaging complaints over this issue.

Mr. Temporary Deputy Speaker, Sir, with regard to the issue of transparent ballot boxes----

**The Temporary Deputy Speaker** (Mr. Imanyara): You should suggest the way in which you want him to amend the rules.

**Mr. Munyao:** Mr. Temporary Deputy Speaker, Sir, I am coming to that. I was suggesting---

**The Temporary Deputy Speaker** (Mr. Imanyara): I was telling you that it is perfectly in order for you to suggest the manner in which you want the rules to be amended.

**Mr. Munyao:** Mr. Temporary Deputy Speaker, Sir, I will suggest. As we said, we still have got another stage. I will now be more specific; I just wanted to touch on that issue in broad terms, then come to that one.

The issue of transparent boxes has been touched again. I would want to know what difficulty does the Electoral Commission of Kenya find in using transparent ballot boxes. I understand that in the last General Elections and even that of 1992, if I recollect well, the Danish Government had accepted to donate transparent ballot boxes to the Kenya Government, and even samples of those boxes were brought into the country. They were shown to all of us and we accepted that these were better ballot boxes to be used, because they were very clear and they could be seen inside. As you drop in your vote, you can see it. What is the difficulty in asking for help? Because, if we have been asking for help on all these other things, why not on ballot boxes? The problem here is to accept the offer because the offer is still there, and it is valid. I believe we have got time to transport them by air into the country, and we have time to use them to vote. So, it should be a serious consideration by the Electoral Commission of Kenya.

Finally, the issue of counting ballot papers at polling stations is one of the best gifts this country will have this year. One wonders why this method has not been used for so long, because countries around us; Tanzania, Uganda *et cetera*, have been counting ballot papers at the polling stations. What has been the problem of using the same method in Kenya? We know the reason why this method has not been accepted in Kenya. When we come down into seeking more details about it, it can also be misused, but as of now, it is most convenient because it makes things easy. At least, the Electoral Commission of Kenya will only deliver one ballot box and that is very easy to count because, at whatever time you close the station, you sit around there and start counting the votes. I have seen it happen elsewhere, and it is one of the best ways of counting the votes.

Mr. Temporary Deputy Speaker, Sir, what we may want is the method of counting to be modified. Immediately the ballot boxes are brought around, the presiding officer must announce how many ballot papers had come to that polling station. Later, after the voting, he should announce how many have been used, in broad daylight. They must check that first and ascertain how they had been issued to that station; how many were used; how many were spoilt, and how many remained unused. After that step, which should be very clear and everybody should see it, then counting of ballot papers must be done, even before they are sorted out, in order to know whether they tally mathematically. The total number of ballot papers which had been used in that polling station should tally with the number that is already in that station. If that polling station had 1000 ballot papers, and 900 have come back, 100 are unused, then we know that we have got 900 votes for all the candidates in that polling station.

From there, the second step is to sort them out into symbols used by different parties in that station. They should be sorted out, and each group counts them again and tallies the number. After sorting them out, you can count them, in whatever time you take, counting each group of ballot papers and putting them together to see whether they tally mathematically. If all these stages are done and agreed to, even before we put the figures together, we would have overcome a lot of other problems, and the incidents of women having to carry ballot papers in their handbags will not arise because ballot papers tally at all these other stages. It is crucial because the general elections are costly. We would like, at least, this country to be on record that we have done the best elections ever.

The next Government will still retain the Electoral Commission of Kenya's services and continue displaying more transparency. At least, let us begin with the Attorney-General, through the Chair, supervising this year's elections because there is nothing to lose if we get a new Government or the old one. At least, we need clear and transparent elections this year.

With those remarks, I beg to support.

**Dr. Omamo:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity. I will be very brief.

From my own observation, I would like to thank the Attorney-General for bringing these amendments because I think the purpose of these amendments and regulations is to try to rid Kenya of election rigging. It is the rigging of elections that gives our election process a bad name. Rigging starts pretty early; it starts even during the campaign period, when the would-be voters are intimidated. The night before voting, they are intimidated by violence, and outside the polling station, that violence continues. According to my observation, rigging has been helped by arrangements inside the polling stations. The presiding officers can be very unreliable; they can be biased against a given candidate. Even your own agents, they can also be rigged by being bribed so that they do not help you; instead, they help the other candidate. I am pleased attempts are being made to eliminate or to seal some of these weakness in the process.

Mr. Temporary Deputy Speaker, Sir, I want to make one suggestion because I feel that the regulations are coming out very well and are trying to help the illiterate voter. This is where a lot of rigging takes place. The illiterate voter who comes in is supposed to be helped by the presiding officer, the agents and the clerks. The illiterate voter is at

a loss. I am very pleased that in Section 18, this illiteracy is being targeted because there is a suggestion, which I fully support, that, from now on, the illiterate voter will be set free, not just to depend on the whims and fancies of the presiding officer to put an X for him or for her, but will be allowed to name or bring along somebody to help in putting the X or the tick or whatever method can be used.

Mr. Temporary Deputy Speaker, Sir, I would like to appeal to the Attorney-General to seriously consider deleting Regulation 4. It says-

"No person shall assist more than one elector to vote under this regulation."

This particular regulation defeats the purpose. Imagine a polling station with 10,000 voters out of which 5,000 are illiterate. Who will assist them to vote? We should delete this regulation and leave it to voters to decide whoever they would like to help them. If there is a reliable person liked by voters, then we should allow that particular individual to assist them. Let us open it up. There will be no room at the polling station for many people to assist illiterate electors to vote. I would appeal to the Attorney-General to seriously consider deleting this section because it was introduced without considering the actual practice at the polling station. It is impossible for one single person to help only one voter. There will be too many----

**Mr. Nyanja:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to mislead this House that we have got about 50 per cent illiteracy rate in Kenya? There is no part of Kenya which has 50 per cent illiteracy rates. We have 90 per cent illiteracy rate and I agree with what the Attorney-General has come up with.

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Mr. Nyanja, that is not a point of order, but you have made your point.

**Dr. Omamo:** Mr. Temporary Deputy Speaker, Sir, I was making my point. If the hon. Member comes from an area which has been very fortunate over the last 30 to 40 years to have very many educated voters, I would like to salute him. But, please---

**The Temporary Deputy Speaker** (Mr. Imanyara): Actually, Dr. Omamo, you did not hear him. He said the illiteracy rate is 90 per cent and not 50 per cent.

**Dr. Omamo:** Mr. Temporary Deputy Speaker, Sir, I am not questioning that particular rate. But I was saying that we would not have enough room for people to help the illiterate voters at the polling station. I was just giving an example that those who want to be helped may be too many to permit a situation whereby we will have one helper assisting one elector. That is the point I was making. I was not going into minute mathematics which my friend may know better than I.

Mr. Temporary Deputy Speaker, Sir, if this is done, I am sure that the voters will be very happy because they know that they have voted correctly. It is now allowed that you do not just use X-mark, but you can use any other mark. The people who will probably come forward to help the voters will be people who are properly educated and who know exactly what they will be doing.

Mr. Temporary Deputy Speaker, Sir, with those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Mr. Imanyara): Just a point of clarification. Given the interest that hon. Members have shown, I do not propose to go into Committee Stage immediately. So, hon. Members have the assurance that, that will not happen. Because these regulations were published earlier for hon. Members to get time to give notice of any proposed amendments, I would like the Attorney-General to give some clarifications to hon. Members on how he will proceed to move on the area of amendments before I give other hon. Members a chance to contribute.

**The Attorney-General** (Mr. Wako): Mr. Temporary Deputy Speaker, Sir, I am very happy with the way the debate is going. Some useful ideas are coming up. Of course, hon. Members have had these regulations since 9th August, 2002, but I will not hold that issue against them. However, what I would really want them to do is to cooperate with me and ensure that I receive their detailed amendment proposals by close of business tomorrow. At least I can have a weekend to look at them and decide what I can take on board and what I cannot, so that when we come back on Tuesday, all their proposals will be taken care of. I hope those Members who are here can also inform other hon. Members of Parliament who are not here of these proposals.

**Mr. Mwenje:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I agree with the Attorney-General that he needs time to digest the proposals that we are making here. But since most hon. Members are not here, they may not know that they need to write their proposals. I thought that as we contribute, it is also important for the Attorney-General to note these particular points so that even if they are not in writing, when he replies, he can incorporate them.

**Dr. Ochuodho:** Mr. Temporary Deputy Speaker, Sir, I stand to support the matter before the House. I will begin by proposing a slight amendment on what Dr. Omamo proposed. The proposal that one person should not assist more than one voter could be amended to allow two or three persons to assist. The reason why I say this is, if we leave it open, we know that the party that normally rigs will spend money to rig. They will just have one agent who they will

give money. They will arrange with voters that before they vote, they will be given Kshs100. Once they verify that voters have voted for them, they will give them another Kshs500. So, that same person will be literally purporting to help voters, even those who are literate and do not need any help at all. They will pretend to assist them so that they can ensure that the voters have voted for the party of their choice. So, it is in that regard that I would be against opening it up and saying one helper can assist as many people as possible because that will then be misused. So, I would want to make a slight amendment because I also recognise the fact that in some areas, the illiteracy level may be high. If we make it one to one, there may be people who will be unwilling to assist. So, one helper should not assist more than two illiterate voters.

Having said that, allow me to take this chance to congratulate the Electoral Commission of Kenya. For the first time, they have been open and transparent in this manner. The fact that these rules are a result of consultations between various stakeholders is something that is new in this country. In the past, even accessing the ECK by political parties was not particularly easy. It is in this regard that I must pay tribute to the ECK and its Chairman, in particular, for having opened up to various stakeholders to come up with regulations that involve not just them but other major stakeholders.

I must also, in the process, note the participation of partners, especially the German and American NGOs, who I know have worked closely with the ECK and political parties to arrive at what is being presented to the House.

Mr. Temporary Deputy Speaker, Sir, having said that, I must explain why I support the Motion before the House.

Mr. Temporary Deputy Speaker, Sir, there are a number of areas I intend to bring amendments to. I do not want to belabour the issue of counting votes at polling stations because my colleagues have expounded on it; things like announcing the results on the spot, making provisions for dead candidates, using a tick, if you wish, instead of being obliged to use an "X" sign. These are methods which have been used in the past to mislead illiterate voters. In the past, polls officials would tell an illiterate voter: "If you do not like Dr. Ochuodho, put an "X" in the box against his name." So, the officials would ensure that a Dr. Ochuodho got votes by cheating illiterate people. So, I am glad that these amendments, as much as they may look trivial, carry a lot of weight when we consider the fact that the bulk of our voters are illiterate.

Having made those positive remarks about the regulations, we are discussing, I must also be alive to the fact that all these regulations are good, but unless and until we are assured of having a truly independent Electoral Commission, these regulations may not amount to much. Why do I say this? As the alternative government, we, in the National Alliance Party of Kenya (NAK), have made it clear that we would like the current Commissioners retained. However, there is no guarantee that they will be retained. Depending on the side on which he wakes up in the next morning, the Head of State may decide to appoint a new team of Commissioners, which may comprise of characters we may not be familiar with. It is that kind of lack of independence that we are worried about. Independence is not only in the composition of the Commission, but also in terms of lack of financial independence. There were instances when the Commission claimed that it was denied resources to perform certain functions and was thereby hampered in its proper functioning. So, until the Commission can be truly independent, including financial independence, these regulations may not necessarily be useful.

Mr. Temporary Deputy Speaker, Sir, I have reservations about some of the amendments that have been proposed in these regulations, particularly that which provides that the Electoral Commission of Kenya (ECK) shall clear candidates on a first come, first served basis. Suppose Messrs. Mwenje and Mwiraria are opponents in one constituency, and NAK intends to recommend Mr. Mwiraria for nomination; but in one way or another, Mr. Mwenje manages to get a certificate of clearance from NAK and rushes to present his documents before the ECK and gets cleared; the actual candidate that NAK may want cleared to contest the parliamentary seat will be denied that chance. So, we should find a better way of dealing with this aspect. If clearance of candidates is done on a first come, first served basis, the political party that may have control over the ECK and, by extension, the returning officers, which is the ruling party, chances are that it could plant candidates. Somebody may go to the returning officer and claim to be the candidate for Embakasi on a NAK ticket, and then present his papers, which he may have obtained irregularly. So, the legitimate candidate that the party may have settled for will end up being denied the chance to present his nomination papers. So, we need to look into this aspect.

Another area we should also look into is the aspect of the withdrawal of a candidate. Currently, a candidate can withdraw from an election even after he has been duly nominated. So, we should make a provision for a party to nominate somebody else should the person it nominated withdraws his candidature without its consent. I say so because, as you know, there were times when a party would sponsor a candidate, only for him or her to withdraw from the race without the knowledge of the party. So, I think we should not deny such a party a chance to have a candidate duly renominated.

Mr. Temporary Deputy Speaker, Sir, I must also point out the fact that rigging does not only happen on the voting day; it starts long before the voting day. This is an area over which I would like to take issue with the ECK. You

know, in the runup to the election, there are things which are already known to be wrong. One of them is the fact that many Kenyans have been disenfranchised. The Government has denied more than 3 million adult Kenyans voters' cards. The majority of this lot comprise of young people, who prefer change. So, they would be pro-NAK or pro-Opposition. So, in my view, this is a deliberate attempt by the Government to rig the elections in advance.

I am also concerned about biased media reporting, particularly by the public-owned Kenya Broadcasting Corporation (KBC). I was delighted to hear the ECK caution the KBC that it may have to take it to court, but, in my view, the ECK should have gone right ahead and taken the KBC to court. The KBC has been warned severally, but it continues to do the same thing. The Corporation allocates so much of its news airtime to KANU, and very little time to other matters. So, in terms of levelling the playing field, I would want to see the ECK putting its foot down to ensure that the elections will be free and fair.

Apart from prosecuting the KBC, the ECK should address the issue of violence. The party I associate with has been holding very peaceful rallies across the country. On the other hand, political rallies convened by KANU are always marred by fighting, pitting one faction of the party against another. Whether KANU convenes a political rally in Eldoret, Kakamega, Keiyo, Kisumu, or Homa Bay, you find that one faction of it fights another. I am not sure whether the ECK would only take action during the electioneering period, but, really, these are enough grounds for KANU to have long been disqualified from participating in the elections because it has proved to be a violent party.

How come that we do not see violence when it comes to other parties? So, I hope that the ECK is taking note of these developments, and that when the whistle is finally blown, it will have had enough grounds to disqualify KANU from participating in the elections. I hope that the same measure is going to be used against all the political parties. If the ECK shies away from disqualifying KANU from participating in the coming elections because it is a big party, then we need not have the electoral code. So, I appeal to the ECK to address the aspect of violence because that is what every Kenyan is talking about currently. We want a violence-free election, and this can only be achieved if action is taken.

Mr. Temporary Deputy Speaker, Sir, I would also like to appeal to the ECK to make the voters register available not only in hard copies, but also in soft copies to all the stakeholders. In 1997, a number of Opposition parties engaged a consultant, who kept going to the ECK on a daily basis to get a soft copy of the voters register without success. I hope that this time round, that is not going to be the case. The intelligence information one gets from such data is enormous but, currently, it is only available to KANU. Of course, that gives KANU a head start.

Finally, I would like to emphasise the aspect of the failure by the Attorney-General and, by extension, the ECK, to register Kenyans who are overseas as voters. At one time, this House passed a Motion which allowed Kenyans in foreign countries to participate in the electoral process. There are amendments being made to the regulations. We should also amend these regulations to cater for Kenyans in foreign countries, so that they can also exercise their democratic rights by participating in the elections. The available technology today would allow Kenyans abroad to participate in the election just as much as their counterparts who are in the country. So, I hope that when the time comes, amendments will be brought here to cater for Kenyans abroad.

I must also add my voice to what Mr. Munyao said with regard to transparent ballot boxes. I hope that when the Attorney-General replies to this debate, he will explain why KANU so vehemently opposes the suggestion to use transparent ballot boxes. What harm is there in using transparent ballot boxes?

Mr. Temporary Deputy Speaker, Sir, with those many remarks, I beg to support.

**The Minister of State, Office of the President** (Mr. Haji): Thank you, Mr. Temporary Deputy Speaker, Sir. From the outset, I would like to support the Bill.

## QUORUM

**Mr. Wamunyinyi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. We are deliberating on a very important Bill. It is unfortunate that if we continue this way, we will violate the Standing Orders. We do not have a quorum at the moment.

**The Temporary Deputy Speaker** (Mr.

Imanyara): It is true that there is no quorum in the House. Ring the Division Bell.

*(The Division Bell was rung)*

## ADJOURNMENT

**The Temporary Deputy Speaker** (Mr. Imanyara): Order, hon. Members! It is clear that even after allowing the Division Bell to ring for an extra three minutes, we are still not able to raise a quorum. Unfortunately, therefore, we have to adjourn the proceedings of this House. The House is, therefore, adjourned until Tuesday, 22nd October, 2002, at 2.30 p.m.

The House rose at 7.30 p.m.